### 1NC: Util Fwk

#### Phenomenal introspection is reliable and proves that util’s true.

Sinhababu Neil (National University of Singapore) “The epistemic argument for hedonism” [http://philpapers.org/archive/SINTEA-3 accessed 2-4-16](http://philpapers.org/archive/SINTEA-3%20accessed%202-4-16) JW

The Odyssey's treatment of these events demonstrates how dramatically ancient Greek moral intuitions differ from ours. It doesn't dwell on the brutality of Telemachus, who killed twelve women for the trivial reasons he states, making them suffer as they die. While gods and men seek vengeance for other great and small offenses in the Odyssey, no one finds this mass murder worth avenging. It's a minor event in the denouement to a happy ending in which Odysseus (who first proposes killing the women) returns home and Telemachus becomes a man. That the[y] Greeks could so easily regard these murders as part of a happy ending for heroes shows how deeply we disagree with them. It's as if we gave them a trolley problem with the 12 women on the side track and no one on the main track, and they judged it permissible for Telemachus to turn the trolley and kill them all. And this isn't some esoteric text of a despised or short-lived sect, but a central literary work of a long-lived and influential culture. Human history offers similarly striking examples of disagreement on a variety of topics. These include sexual morality; the treatment of animals; the treatment of other ethnicities, families, and social classes; the consumption of intoxicating substances; whether and how one may take vengeance; slavery; whether public celebrations are acceptable; and gender roles.12 Moral obligations to commit genocide were accepted not only by some 20th century Germans, but by much of the ancient world, including the culture that gave us the Old Testament. One can only view the human past and much of the present with horror at the depth of human moral error and the harm that has resulted. One might think to explain away much of this disagreement as the result of differing nonmoral beliefs. Those who disagree about nonmoral issues may disagree on the moral rightness of a particular action despite agreeing on the fundamental moral issues. For example, they may agree that healing the sick is right, but disagree about whether a particular medicine will heal or harm. This disagreement about whether to prescribe the medicine won't be fundamentally about morality, and won't support the argument from disagreement. I don't think the moral disagreements listed above are explained by differences in nonmoral belief. This isn't because sexists, racists, and bigots share the nonmoral views of those enlightened by feminism and other egalitarian doctrines – they don't. Rather, their differing views on nonmoral topics often are rationalizations of moral beliefs that fundamentally disagree with ours.13 Those whose fundamental moral judgments include commitments to the authority of men over women, or of one race over another, will easily accept descriptive psychological views that attribute less intelligence or rationality to women or the subjugated race.14 Moral disagreement supposedly arising from moral views in religious texts is similar. Given how rich and many-stranded most religious texts are, interpretive claims about their moral teachings often tell us more about the antecedent moral beliefs of the interpreter than about the text itself. This is why the same texts are interpreted to support so many different moral views. Similar phenomena occur with most moral beliefs. Environmentalists who value a lovely patch of wilderness will easily believe that its destruction will cause disaster, those who feel justified in eating meat will easily believe that the animals they eat don't suffer greatly, and libertarians who feel that redistributing wealth is unjust will easily believe that it raises unemployment. We shouldn't assume that differing moral beliefs on practical questions are caused by fundamental moral agreement combined with differing nonmoral beliefs. Often the differing nonmoral beliefs are caused by fundamental moral disagreement. As we have no precise way of quantifying the breadth of disagreement or determining its epistemic consequences, it's unclear exactly how much disagreement the argument requires. While this makes the argument difficult to evaluate, it shouldn't stop us from proceeding, as we have to use the unclear notion of widespread disagreement in ordinary epistemic practice. If 99.9% of botanists agree on some issue about plants, non-botanists should defer to their authority and believe as most of them do. But if disagreement between botanists is suitably widespread, non-botanists should remain agnostic. A more precise and systematic account of when disagreement is widespread enough to generate particular epistemic consequences would be very helpful. Until we have one, we must employ the unclear notion of widespread disagreement, or some similar notion, throughout epistemic practice. Against the background of widespread moral disagreement, there may still be universal or near-universal agreement on some moral questions. For example, perhaps all cultures agree that one should provide for one’s elderly parents, even though they generally disagree elsewhere. How do these narrow areas of moral agreement affect the argument? This all depends on whether the narrow agreement is reliably or unreliably caused. If narrow agreement results from a reliable process of belief-formation, it lets us avoid error, defeating the argument from disagreement. But widely accepted moral beliefs may result from widely prevailing unreliable processes leading everyone to the same errors. There's no special pressure to explain agreement in terms of reliable processes when disagreement is widespread. Explaining agreement in terms of reliable processes is preferable when we have some reason to think that the processes involved are generally reliable. Then we would want to understand cases of agreement in line with the general reliability of processes producing moral belief. But if disagreement is widespread, error is too. Since moral beliefs are so often false, invoking unreliable processes to explain them is better than invoking reliable ones. The next two sections discuss this in more detail. We have many plausible explanations of narrow agreement on which moral beliefs are unreliably caused. Evolutionary and sociological explanations of why particular moral beliefs are widely accepted often invoke unreliable mechanisms.15 On these explanations, we agree because some moral beliefs were so important for reproductive fitness that natural selection made them innate in us, or so important to the interests controlling moral education in each culture that they were inculcated in everyone. For example, parents' influence over their children's moral education would explain agreement that one should provide for one's elderly parents. Plausible normative ethical theories won't systematically connect these evolutionary and sociological explanations with moral facts. If disagreement and error are widespread, they'll provide useful ways to reconcile unusual cases of widespread agreement with the general unreliability of the processes producing moral belief. 1.3 If there is widespread error about a topic, we should retain only those beliefs about it formed through reliable processes Now I'll defend 3. First I'll show how the falsity of others' beliefs undermines one's own belief. Then I'll clarify the notion of a reliable process. I'll consider a modification to 3 that epistemic internalists might favor, and show that the argument accommodates it. I'll illustrate 3's plausibility by considering cases where it correctly guides our reasoning. Finally, I'll show how 3 is grounded in the intuitive response to grave moral error. First, a simple objection: “Why should I care whether other people have false beliefs? That's a fact about other people, and not about me. Even if most people are wrong about some topic, I may be one of the few right ones, even if there's no apparent reason to think that my way of forming beliefs is any more reliable.” While widespread error leaves open the possibility that one has true beliefs, it reduces the probability that my beliefs are true. Consider a parallel case. I have no direct evidence that I have an appendix, but I know that previous investigations have revealed appendixes in people. So induction suggests that I have an appendix. Similarly, I know on the basis of 1 and 2 that people's moral beliefs are, in general, rife with error. So even if I have no direct evidence of error in my moral beliefs, induction suggests that they are rife with error as well. 3 invokes the reliability of the processes that produce our beliefs. Assessing processes of belief-formation for reliability is an important part of our epistemic practices. If someone tells me that my belief is entirely produced by wishful thinking, I can't simply accept that and maintain the belief. Knowing that wishful thinking is unreliable, I must either deny that my belief is entirely caused by wishful thinking or abandon the belief. But if someone tells me that my belief is entirely the result of visual perception, I'll maintain it, assuming that it concerns sizable nearby objects or something else about which visual perception is reliable. While providing precise criteria for individuating processes of belief-formation is hard, as the literature on the generality problem for reliabilism attests, individuating them somehow is indispensable to our epistemic practices.16 Following Alvin Goldman's remark that “It is clear that our ordinary thought about process types slices them broadly” (346), I'll treat cognitive process types like wishful thinking and visual perception as appropriately broad.17 Trusting particular people and texts, meanwhile, are too narrow. Cognitive science may eventually help us better individuate cognitive process types for the purposes of reliability assessments and discover which processes produce which beliefs. Epistemic internalists might reject 3 as stated, claiming that it isn't widespread error that would justify giving up our beliefs, but our having reason to believe that there is widespread error. They might also claim that our justification for believing the outputs of some process depends not on its reliability, but on what we have reason to believe about its reliability. The argument will still go forward if 3 is modified to suit internalist tastes, changing its antecedent to “If we have reason to believe that there is widespread error about a topic” or changing its consequent to “we should retain only those beliefs about it that we have reason to believe were formed through reliable processes.” While 3's antecedent might itself seem unnecessary on the original formulation, it's required for 3 to remain plausible on the internalist modification. Requiring us to have reason to believe that any of our belief-formation processes are reliable before retaining their outputs might lead to skepticism. The antecedent limits the scope of the requirement to cases of widespread error, averting general skeptical conclusions. The argument will still attain its conclusion under these modifications. Successfully defending the premises of the argument and deriving widespread error (5) and unreliability (7) gives those of us who have heard the defense and derivation reason to believe 5 and 7. This allows us to derive 8. (Thus the pronoun 'we' in 3, 6, and 8.) 3 describes the right response to widespread error in many actual cases. Someone in the 12th century, especially upon hearing the disagreeing views of many cultures regarding the origins of the universe, would do well to recognize that error on this topic was widespread and retreat to agnosticism about it. Only when modern astrophysics extended reliable empirical methods to cosmology would it be rational to move forward from agnosticism and accept a particular account of how the universe began. Similarly, disagreement about which stocks will perform better than average is widespread among investors, suggesting that one's beliefs on the matter have a high likelihood of error. It's wise to remain agnostic about the stock market without an unusually reliable way of forming beliefs – for example, the sort of secret insider information that it's illegal to trade on. 3 permits us to hold onto our moral beliefs in individual cases of moral disagreement, suggesting skeptical conclusions only when moral disagreement is widespread. When we consider a single culture's abhorrent moral views, like the Greeks' acceptance of Telemachus and Odysseus' murders of the servant women, we don't think that maybe the Greeks were right to see nothing wrong and we should reconsider our outrage. Instead, we're horrified by their grave moral error. I think this is the right response. We're similarly horrified by the moral errors of Hindus who burned widows on their husbands' funeral pyres, American Southerners who supported slavery and segregation, our contemporaries who condemn homosexuality, and countless others. The sheer number of cases like this requires us to regard moral error as a pervasive feature of the human condition. Humans typically form moral beliefs through unreliable processes and have appendixes. We are humans, so this should reduce our confidence in our moral judgments. The prevalence of error in a world full of moral disagreement demonstrates how bad humans are at forming true moral beliefs, undermining our own moral beliefs. Knowing that unreliable processes so often lead humans to their moral beliefs, we'll require our moral beliefs to issue from reliable processes. 1.4 If there is widespread error about morality, there are no reliable processes for forming moral beliefs A reliable process for forming moral beliefs would avert skeptical conclusions. I'll consider several processes and argue that they don't help us escape moral skepticism. Ordinary moral intuition, whether it involves a special rational faculty or our emotional responses, is shown to be unreliable by the existence of widespread error. The argument from disagreement either prevents reflective equilibrium from generating moral conclusions or undermines it. Conceptual analysis is reliable, but delivers the wrong kind of knowledge to avert skepticism. If all our processes for forming moral beliefs are unreliable, moral skepticism looms. 4 is false only because of one process – phenomenal introspection, which lets us know of the goodness of pleasure, as the second half of this paper will discuss. Widespread error guarantees the unreliability of any process by which we form all or almost all of our moral beliefs. While widespread error allows some processes responsible for a small share of our moral beliefs to predominantly create true beliefs, it implies that any process generating a very large share of moral belief must be highly error-prone. Since the process produced so many of our moral beliefs, and so many of them are erroneous, it must be responsible for a large share of the error. If more of people's moral beliefs were true, things would be otherwise. Widespread truth would support the reliability of any process that produced most or all of our moral beliefs, since that process would be responsible for so much true belief. But given widespread error, ordinary moral intuition must be unreliable. This point provides a forceful response to Moorean opponents who insist that we can't give up the reliability of a process by which we form all or nearly all of our beliefs on an important topic, since this would permit counterintuitive skeptical conclusions. Even if this Moorean response helps against external world skeptics who employ counterfactual thought experiments involving brains in vats, it doesn't help against moral skeptics who use 1 and 2 to derive widespread actual error. Once we accept that widespread error actually obtains, a great deal of human moral knowledge has already vanished. Insisting on the reliability of the process then seems implausible and pointless. I'll briefly consider two conceptions of moral intuition – as a special rational faculty by which we grasp non-natural moral facts, and as a process by which our emotions lead us to form moral beliefs – and show how widespread error guarantees their unreliability. Some philosophers regard moral intuition as involving a special rational faculty that lets us know non-natural moral facts.18 They argue that knowledge on many topics including mathematics, logic, and modality involves this rational faculty, so moral knowledge might operate similarly. This suggests a way for them to defend the reliability of moral intuition in the face of widespread error: if intuition is reliable about these other things, its overall reliability across moral and nonmoral areas allows us to reliably form moral beliefs by using it. This defense won't work. When an epistemic process is manifestly unreliable on some topic, as widespread error shows any process responsible for most of our moral beliefs to be, the reliability of that process elsewhere won't save it on that topic. Even if testimony is reliable, this doesn't imply the reliability of compulsive gamblers' testimony about the next spin of the roulette wheel. Even if intuition remains reliable elsewhere, widespread disagreement still renders it unreliable in ethics. I see ordinary moral intuition as a process of emotional perception in which our feelings cause us to form moral beliefs.19 Just as visual experiences of color cause beliefs about the colors of surfaces, emotional experiences cause moral beliefs. Pleasant feelings like approval, admiration, or hope in considering actions, persons, or states of affairs lead us to believe they are right, virtuous or good. Unpleasant emotions like guilt, disgust, or horror in considering actions, persons, or states of affairs lead us to believe they are wrong, vicious, or bad. We might have regarded this as a reliable way to know about moral facts, just as visual perception is a reliable way to know about color, if not for widespread error. But because of widespread error, we can only see it as an unreliable process responsible for our dismal epistemic situation. Reflective equilibrium is the prevailing methodology in normative ethics today. It involves modifying our beliefs about particular cases and general principles to make them cohere. Whether or not nonmoral propositions like the premises of the argument from disagreement are admissible in reflective equilibrium, widespread error prevents reflective equilibrium from reliably generating a true moral theory, as I'll explain. If the premises of the argument from disagreement are admitted into reflective equilibrium, the argument can be reconstructed there, and reflective equilibrium will dictate that we give up all of our moral beliefs. To avoid this conclusion, the premises of the argument from disagreement would have to be revised away on moral grounds. These premises are a metaethical claim about the objectivity of morality which seems to be a conceptual truth, an anthropological claim about the existence of disagreement, a very general epistemic claim about when we should revise our beliefs, and a more empirically grounded epistemic claim about our processes of belief-formation and their reliability. While reflective equilibrium may move us to revise substantive moral beliefs in view of other substantive moral beliefs, claims of these other kinds are less amenable to such revision. Unless ambitious arguments for revising these nonmoral claims away succeed, we must follow the argument to its conclusion and accept that reflective equilibrium makes moral skeptics of us.20 If only moral principles and judgments are considered in reflective equilibrium, it won't make moral skeptics of us, but the argument from disagreement will undermine its conclusions. The argument forces us to give up the pre-existing moral beliefs against which we test various moral propositions in reflective equilibrium. While we may be justified in believing something because it coheres with our other beliefs, this justification goes away once we see that those beliefs should be abandoned. Coherence with beliefs that we know we should give up doesn't confer justification. Now I'll consider conceptual analysis. It can produce moral beliefs about conceptual truths – for example, that the moral supervenes on the nonmoral, and that morality is objective. It also may provide judgments about relations between different moral concepts – perhaps, that if the only moral difference between two actions is that one would produce morally better consequences than the other, doing what produces better consequences is right. I regard conceptual analysis as reliable, so that the argument from disagreement does not force us to give up the beliefs about morality it produces. Unfortunately, if analytic naturalism is false, as has been widely held in metaethics since G. E. Moore, conceptual analysis won't provide all the knowledge we need to build a normative ethical theory.21 Even when it relates moral concepts like goodness and rightness to each other, it doesn't tell us that anything is good or right to begin with. That's the knowledge we need to avoid moral skepticism. So far I've argued that our epistemic and anthropological situation, combined with plausible metaethical and epistemic principles, forces us to abandon our moral beliefs. But if a reliable process of moral belief-formation exists, 4 is false, and we can answer the moral skeptic. The rest of this paper discusses the only reliable process I know of. 2.1 Phenomenal introspection reveals pleasure's goodness Phenomenal introspection, a reliable way of forming true beliefs about our experiences, produces the belief that pleasure is good. Even as our other processes of moral belief-formation prove unreliable, it provides reliable access to pleasure's goodness, justifying the positive claims of hedonism. This section clarifies what phenomenal introspection and pleasure are and explains how phenomenal introspection provides reliable access to pleasure's value. Section 2.2 argues that pleasure's goodness is genuine moral value, rather than value of some other kind. In phenomenal introspection we consider our subjective experience, or phenomenology, and determine what it's like. Phenomenal introspection can be reliable while dreaming or hallucinating, as long as we can determine what the dreams or hallucinations are like. By itself, phenomenal introspection doesn't produce beliefs about things outside experience, or about relations between our experiences and non-experiential things. So it doesn't produce judgments about the rightness of actions or the goodness of non-experiential things. It can only tell us about the intrinsic properties of experience itself. Phenomenal introspection is generally reliable, even if mistakes about immediate experience are possible. Experience is rich in detail, so one could get some of the details wrong in belief. Under adverse conditions involving false expectations, misleading evidence about what one's experiences will be, or extreme emotional states that disrupt belief-formation, larger errors are possible. Paradigmatically reliable processes like vision share these failings. Vision sometimes produces false beliefs under adverse conditions, or when we're looking at complex things. Still, it's so reliable as to be indispensible in ordinary life. Regarding phenomenal introspection as unreliable is about as radical as skepticism about the reliability of vision. While contemporary psychologists reject introspection into one's motivations and other psychological causal processes as unreliable, phenomenal introspection fares better. Daniel Kahneman, for example, writes that “experienced utility is best measured by moment-based methods that assess the experience of the present.”22 Even those most skeptical about the reliability of phenomenal introspection, like Eric Schwitzgebel, concede that we can reliably introspect whether we are in serious pain.23 Then we should be able to introspectively determine what pain is like. So I'll assume the reliability of phenomenal introspection. One can form a variety of beliefs using phenomenal introspection. For example, one can believe that one is having sound experiences of particular noises and visual experiences of different shades of color. When looking at a lemon and considering the phenomenal states that are yellow experiences, one can form some beliefs about their intrinsic features – for example, that they're bright experiences. And when considering experiences of pleasure, one can make some judgments about their intrinsic features – for example, that they're good experiences. Just as one can look inward at one's experience of lemon yellow and recognize its brightness, one can look inward at one's experience of pleasure and recognize its goodness.24 When I consider a situation of increasing pleasure, I can form the belief that things are better than they were before, just as I form the belief that there's more brightness in my visual field as lemon yellow replaces black. And when I suddenly experience pain, I can form the belief that things are worse in my experience than they were before. Having pleasure consists in one's experience having a positive hedonic tone. Without descending into metaphor, it's hard to give a further account of what pleasure is like than to say that when one has it, one feels good. As Aaron Smuts writes in defending the view of pleasure as hedonic tone, “to 'feel good' is about as close to an experiential primitive as we get.” 25 Fred Feldman sees pleasure as fundamentally an attitude rather than a hedonic tone.26 But as long as hedonic tones are real components of experience, phenomenal introspection will reveal pleasure's goodness. Opponents of the hedonic tone account of pleasure usually concede that hedonic tones exist, as Feldman seems to in discussing “sensory pleasures,” which he thinks his view helps us understand. Even on his view of pleasure, phenomenal introspection can produce the belief that some hedonic tones are good while others are bad. There are many different kinds of pleasant experiences. There are sensory pleasures, like the pleasure of tasting delicious food, receiving a massage, or resting your tired limbs in a soft bed after a hard day. There are the pleasures of seeing that our desires are satisfied, like the pleasure of winning a game, getting a promotion, or seeing a friend succeed. These experiences differ in many ways, just as the experiences of looking at lemons and the sky on a sunny day differ. It's easy to see the appeal of Feldman's view that pleasures “have just about nothing in common phenomenologically” (79). But just as our experiences in looking at lemons and the sky on a sunny day have brightness in common, pleasant experiences all have “a certain common quality – feeling good,” as Roger Crisp argues (109).27 As the analogy with brightness suggests, hedonic tone is phenomenologically very thin, and usually mixed with a variety of other experiences.28 Pleasure of any kind feels good, and displeasure of any kind feels bad. These feelings may or may not have bodily location or be combined with other sensory states like warmth or pressure. “Pleasure” and “displeasure” mean these thin phenomenal states of feeling good and feeling bad. As Joseph Mendola writes, “the pleasantness of physical pleasure is a kind of hedonic value, a single homogenous sensory property, differing merely in intensity as well as in extent and duration, which is yet a kind of goodness” (442).29 What if Feldman is right and hedonic states feel good in fundamentally different ways? Then phenomenal introspection suggests a pluralist variety of hedonism. Each fundamental flavor of pleasure will have a fundamentally different kind of goodness, as phenomenal introspection more accurate than mine will reveal. This isn't my view, but I suggest it to those convinced that hedonic tones are fundamentally heterogenous. If phenomenal introspection reliably informs us that pleasure is good, how can anyone believe that their pleasures are bad? Other processes of moral belief-formation are responsible for these beliefs. Someone who feels disgust or guilt about sex may not only regard sex as immoral, but the pleasure it produces as bad. Even if phenomenal introspection on sexual pleasure disposes one to believe that it's good, stronger negative emotional responses to it may more strongly dispose one to believe that it's bad, following the emotional perception model suggested in section 1.4. Explaining disagreement about pleasure's value in terms of other processes lets hedonists maintain that phenomenal introspection univocally supports pleasure's goodness. As long as negative judgments of pleasure come from unreliable processes instead of phenomenal introspection, the argument from disagreement eliminates them. The parallel between yellow’s brightness and pleasure’s goodness demonstrates the objectivity of the value detected in phenomenal introspection. Just as anyone's yellow experiences objectively are bright experiences, anyone's pleasure objectively is a good experience.30 While one's phenomenology is often called one's “subjective experience”, facts about it are still objective. “Subjective” in “subjective experience” means “internal to the mind”, not “ontologically dependent on attitudes towards it.” My yellow-experiences objectively have brightness. Anyone who thought my yellow-experiences lacked brightness would be mistaken. Pleasure similarly is objectively good. It's true that anyone's pleasure is good. Anyone who denies this is mistaken. As Mendola writes, the value detected in phenomenal introspection is “a plausible candidate for objective value” (712). Even though phenomenal introspection only tells me about my own phenomenal states, I can know that others' pleasure is good. Of course, I can't phenomenally introspect their pleasures, just as I can't phenomenally introspect pleasures that I'll experience next year. But if I consider my experiences of lemon yellow and ask what it would be like if others had the same experiences, I must think that they would be having bright experiences. Similarly, if in a pleasant moment I consider what it's like for others to have exactly the experience I'm having, I must think that they're having good experiences. If they have exactly the same experiences I'm having, their experiences will have exactly the same intrinsic properties as mine. This is also how I know that if I have the same experience in the future, it'll have the same intrinsic properties. Even though the only pleasure I can introspect is mine now, I should believe that others' pleasures and my pleasures at other times are good, just as I should believe that yellow experienced by others and myself at other times is bright. My argument thus favors the kind of universal hedonism that supports utilitarianism, not egoistic hedonism.

#### This outweighs the aff framework.

Sinhababu 2 Neil (National University of Singapore) “The epistemic argument for hedonism” [http://philpapers.org/archive/SINTEA-3 accessed 2-4-16](http://philpapers.org/archive/SINTEA-3%20accessed%202-4-16) JW

A full moral theory including accounts of rightness and virtue can be built from the deliverances of phenomenal introspection combined with conceptual analysis. Shaver, Kagan, and I suggest that phenomenal introspection reveals pleasure to have a kind of goodness that makes states of affairs better in consequentialist moral theories. A state of affairs thus is pro tanto better as there is more pleasure and pro tanto worse as there is more displeasure. More pleasure makes states of affairs better. Conceptual analysis here connects the concept of goodness with the concept of a better state of affairs, and with other moral concepts like rightness and virtue. Even if conceptual analysis cannot connect the moral and the nonmoral as a full normative ethical theory requires, it reveals connections between our moral concepts. For example, the following propositions or something like them seem to be conceptual truths: states of affairs are pro tanto better insofar as they include more goodness, an action is pro tanto better insofar as it causally contributes to better states of affairs, and agents are pro tanto more virtuous insofar as they desire that better states of affairs obtain. These putative conceptual truths about pro tanto relations do not contradict strong forms of deontology, as they allow that obligations may trump good consequences in determining right action. Utilitarians who build their theories along these lines can treat deontology as a conceptually coherent position whose substantive claims are in fact not favored by evidence from any reliable processes. So they need not treat utilitarianism itself as a conceptual truth and run afoul of Moore's open question argument. If the argument from disagreement forces us to abandon belief in all other moral facts, introspecting pleasure's goodness and following these conceptual pro tanto connections to conclusions involving other moral concepts may be the only way to develop a full moral theory through reliable processes.

#### Thus, the standard is maximizing happiness. Prefer the standard:

#### 1. Personal identity doesn’t exist.

Olson Eric T. (Professor of Philosophy at the University of Sheffield) “Personal Identity” Stanford Encyclopedia of Philosophy Aug 20, 2002; substantive revision Oct 28, 2010 <http://plato.stanford.edu/entries/identity-personal/#PsyApp> JW

Whatever psychological continuity may amount to, a more serious worry for the Psychological Approach is that you could be psychologically continuous with two past or future people at once. **If your cerebrum**—the upper part of the brain largely responsible for mental features—**were transplanted, the recipient would be** psychologically continuous with **you** by anyone's lights (even if there would also be important psychological differences). The Psychological Approach implies that she would be you. If we destroyed one of your cerebral hemispheres, the resulting being would also be psychologically continuous with you. (Hemispherectomy—even the removal of the left hemisphere, which controls speech—is considered a drastic but acceptable treatment for otherwise-inoperable brain tumors: see Rigterink 1980.) What **if we** did both at once, **destroy**ing **one hemisphere and transplant**ing **the other**? Then too, **the one who got the transplant**ed hemisphere would be psychologically continuous with you, and according to the Psychological Approach **would be you.** But now **suppose** that **both hemispheres are transplanted, each into a different empty head.** (We needn't pretend, as some authors do, that the hemispheres are exactly alike.) **The two recipients**—call them Lefty and Righty—**will each be** psychologically continuous with **you.** The Psychological Approach as I have stated it implies that any future being who is psychologically continuous with you must be you. It follows that you are Lefty and also that you are Righty. **But that cannot be**: Lefty and Righty are two, and **one thing cannot be** numerically identical with **two things.** Suppose Lefty is hungry at a time when Righty isn't. If you are Lefty, you are hungry at that time. If you are Righty, you aren't. If you are Lefty and Righty, you are both hungry and not hungry at once: **a contradiction.**

#### This means util: only states of affairs have value.

Shoemaker Shoemaker, David (Dept of Philosophy, U Memphis). “Utilitarianism and Personal Identity.” The Journal of Value Inquiry 33: 183–199, 1999. http://www.csun.edu/~ds56723/jvipaper.pdf

Extreme reductionism might lend support to utilitarianism in the following way. Many people claim that we are justified in maximizing the good in our own lives, but not justified in maximizing the good across sets of lives, simply because each of us is a single, deeply unified person, unified by the further fact of identity, whereas there is no such corresponding unity across sets of lives. But if the only justification for the different treatment of individual lives and sets of lives is the further fact, and this fact is undermined by the truth of reductionism, then nothing justifies this different treatment. **There are no** deeply unified **subjects** of experience. **What remains are** merely the **experiences** themselves, and so **any ethic**al theory **distinguishing between individual lives** and sets of lives **is mistaken.** If the deep, further fact is missing, then there are no unities. **The moral**ly significant **units should** then **be the states people are in at particular times**, and **an ethic**al theory that **focused on them** and attempted to improve their quality, whatever their location, **would be** the **most plausible. Util**itarianism **i**s just **such a theory.**

#### 2. Only consequences are morally relevant:

#### A. They determine the degrees of rightness and wrongness for an action. Deontology holds all lies are wrong but certain lies are worse than others because they harm more people. My lie that your shirt looks nice is less wrong than my lie that I’ll pick you up from the airport.

#### B. Intuitions—strong deontology holds we couldn’t save the entire human race if it violated one persons rights which is an absurd conclusion. Prefer intuitions:

#### 1. Reasons can’t override intuitions- that’s a false premise. The basis of logic isn’t justified by more logic; logic is just intuitive. You can’t ever abandon intuitions.

#### 2. Intuitions outweigh even dropped framework warrants. When I can’t refute a Hobo’s rant on the moon landing being faked, I don’t discount this evidence, but given my stronger justification to the contrary I retain my belief*.*

## Hate Speech DA

### 1NC: Hate Speech

#### Hate speech is protected by the aff.

Volokh 15 Eugene (Eugene Volokh teaches free speech law, religious freedom law, church-state relations law, a First Amendment Amicus Brief Clinic, and tort law, at UCLA School of Law, where he has also often taught copyright law, criminal law, and a seminar on firearms regulation policy) “No, there’s no “hate speech” exception to the First Amendment” The Washington Post May 7th 2015 <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/05/07/no-theres-no-hate-speech-exception-to-the-first-amendment/?utm_term=.594939e845c6> JW

I keep hearing about a supposed “hate speech” exception to the First Amendment, or statements such as, “This isn’t free speech, it’s hate speech,” or “When does free speech stop and hate speech begin?” But there is no hate speech exception to the First Amendment. Hateful ideas (whatever exactly that might mean) are just as protected under the First Amendment as other ideas. One is as free to condemn Islam — or Muslims, or Jews, or blacks, or whites, or illegal aliens, or native-born citizens — as one is to condemn capitalism or Socialism or Democrats or Republicans. To be sure, there are some kinds of speech that are unprotected by the First Amendment. But those narrow exceptions have nothing to do with “hate speech” in any conventionally used sense of the term. For instance, there is an exception for “fighting words” — face-to-face personal insults addressed to a specific person, of the sort that are likely to start an immediate fight. But this exception isn’t limited to racial or religious insults, nor does it cover all racially or religiously offensive statements. Indeed, when the City of St. Paul tried to specifically punish bigoted fighting words, the Supreme Court held that this selective prohibition was unconstitutional (R.A.V. v. City of St. Paul (1992)), even though a broad ban on all fighting words would indeed be permissible. (And, notwithstanding CNN anchor Chris Cuomo’s Tweet that “hate speech is excluded from protection,” and his later claims that by “hate speech” he means “fighting words,” the fighting words exception is not generally labeled a “hate speech” exception, and isn’t coextensive with any established definition of “hate speech” that I know of.)

#### Speech codes are necessary to prevent hate speech, which furthers oppression and prevents dialogue and discussion.

Garrett 02 Deanna (graduated from the University of Virginia in 1997 with a bachelor's degree in Religious Studies and a minor in Biology. She is a second-year HESA student and a Graduate Assistant in the Department of Residential Life.) “Silenced Voices: Hate Speech Codes on Campus” The University of Vermont July 29th 2002 <https://www.uvm.edu/~vtconn/?Page=v20/garrett.html> JW

Restricting Hate Speech Hate speech is not defined by "isolated incidents" or "merely jokes"—it is specifically intended to degrade and cause harm to individuals. In the context of historical oppression and discrimination, hate speech has larger implications for all members of the targeted group, not just the individual. Victims of hate speech suffer both emotionally and physically. "Psychological responses to such stigmatization consists of feelings of humiliation, isolation, and self-hatred" (Delgado, 1993, p. 91). Hate speech takes away human dignity and self-worth, and causes self-doubt. For students at colleges and universities, the implications of hate speech are significant. Individuals subjected to harassing environments in which hate speech exists may not be able to focus their attention on academics. They cannot grow and develop in ways typical of their peers and are forced to live in hostile communities. Students who are busy worrying about their physical and emotional safety have no time or energy to participate in university activities. Student affairs professionals have an obligation to ensure a safe environment for students. If institutions value access to education for all students, they must not allow hate speech to interfere with such goals. Although one would want to protect the right to free speech as much as possible, there are certain circumstances in which the benefits of restricting speech outweigh the costs. When lives are at risk or an action is harmful to others, individuals’ rights are outweighed: "the only purpose for which power can be rightfully exercised over any member of a civilized community against his will is to prevent harm to others" (Mill, 1989, p. 13). Laws are meant to protect people. Hate speech codes do just that; they protect individuals from racist and other hateful speech. Many opponents of hate speech codes argue that the right to free speech should never be compromised. However, certain laws already restrict free speech, and appropriately so. Speech laws prohibit falsely yelling "fire!" in a crowded area because it would cause panic and an ensuing stampede. In addition, the government also regulates speech that is libelous, slanderous, or false in nature. That we do not limit hateful speech against people of color, gays and lesbians, and other targeted groups seems suspect in light of these legal speech restrictions. Hate speech codes do not seek to limit constructive dialogue, which is necessary for gaining knowledge and reaching critical consciousness (Freire, 1970). They seek to protect individuals from harmful speech and allow such individuals to feel safe speaking out. By allowing only the most powerful individuals to speak, hate speech effectively silences the voices of minorities and maintains the status quo. Hate speech is not authentic dialogue (Freire, 1970) and therefore, does not deserve protection. According to Freire, dialogue is "an act of creation, it must not serve as a crafty instrument for the domination of one person by another" (p. 70). The Silencing Effect Advocates of hate speech codes contend that the inclusion of racist, sexist, and homophobic speech serves only to silence others’ voices. "Such speech not only interferes with equal educational opportunities, but also deters the exercise of other freedoms, including those secured by the First Amendment" (Strossen, 1994, p. 193). Faced with hate speech, many individuals are silenced or forced to flee, rather than engaging in dialogue (Lawrence, 1993). In higher education, dialogue is key to learning and gaining new knowledge. Students engage in dialogue with one another, challenge each other, and propose new ideas. However, racist speech does not invite this exchange but seeks to silence non-dominant individuals. Post (1994) outlines three ways in which minority groups are silenced by hateful speech: (1) Victim groups are silenced because their perspectives are systematically excluded from the dominant discourse; (2) victim groups are silenced because the pervasive stigma of racism systematically undermines and devalues their speech; and (3) victim groups are silenced because the visceral "fear, rage, [and] shock" of racist speech systematically preempts response. (p. 143)

### Impact – Dialogue

#### Structural inequalities preclude meaningful dialogue—turns the aff.

Sanders 97 Lynn M. Sanders (Associate Professor at the University of Virginia) Against deliberation. Political Theory June 1997 v25 n3 p347(30) NP

The facts about deliberation in American settings, at least as I have gathered them, show that what happens when American citizens talk to each other is often neither truly deliberative nor really democratic. This is partly, but not only, because the material prerequisites for deliberation are unequally distributed. It is partly, but not only, because some Americans are more likely to be persuasive than others, that is, to be learned and practiced in making arguments that would be recognized by others as reasonable ones--no matter how worthy or true their presentations actually are. It is also because some Americans are apparently less likely than others to be listened to; even when their arguments are stated according to conventions of reason, they are more likely to be disregarded. Although deliberators will always choose to disregard some arguments, when this disregard is systematically associated with the arguments made by those we know already to be systematically disadvantaged, we should at least reevaluate our assumptions about deliberation’s democratic potential. Deliberation requires not only equality in resources and the guarantee of equal opportunity to articulate persuasive arguments but also equality in "epistemological authority," in the capacity to evoke acknowledgement of one’s arguments. These are insidious problems, not easily addressed within the confines of arguments about deliberation, which depend crucially on the accomplishment by democratic citizens of mutual respect for each other, but are bereft of evaluations of whether this is a realistic possibility. Because the achievement of mutual respect is practically remote, democratic theorists should ask whether arguments on behalf of deliberation do anything to bring about the achievement of truly democratic, or indeed truly deliberative, discussions. Perhaps a model of democratic discussion other than deliberation would attend more directly to these insidious problems. So I conclude this essay by suggesting that we forget deliberation for the time being, and try to imagine a model for democratic politics that more plausibly encourages mutual respect--something that advocates of deliberation, after all, really want.

## AT: Misapplication

### AT: Speech Codes Misapplied

#### Speech codes aren’t misapplied against minorities—Stanford proves hate speech only applies against minorities.

Fish 94 Stanley Eugune Fish There's No Such Thing As Free Speech : And It's a Good Thing, Too. New York: Oxford University Press, 1994. eBook Collection (EBSCOhost), EBSCOhost (accessed January 16, 2017). NP

Consider, for example, the vexed issue of hate speech on campus. It is often said that the logic of speech codes would require the disciplining of those who spoke scornfully of whites and males and even Nazis as well as the disciplining of those who spoke scornfully of blacks, women, and gays; for after all, if the rule is that one should not discriminate, are not all acts of discrimination equal? The answer, I think, is no, because discrimination is not a problem in logic but a problem in historical fact, and it is a fact about discrimination that it is usually practiced by the powerful at the expense of the relatively powerless. The point has been made by Thomas Grey, professor of law at Stanford and a principal author of that university's code. Grey acknowledges that under the provisions of the Stanford code, calling a black student [the n word]"nigger" would constitute harassment, but calling a white student "white trash" would not. The reasoning is that since in our society whiteness is the norm, not only statistically (and that, of course, may change) but more importantly in the sense that normative values are understood to be derived from a white Anglo-Saxon history, "there are no epithets in this society at this time that are 'commonly understood' to convey hatred and contempt for whites as such." This is so because the common understanding has been fashioned by and for whites, and therefore any epithet denigrating them would be "commonly" regarded as a mistake, something not to be taken seriously. In contrast, insults directed at tradi-tionally persecuted or disadvantaged groups draw their capacity to impose the characteristic civil-rights injury to "hearts and minds" from the fact that they turn the whole socially and historically inculcated weight of ... prejudices upon their victim. Each hatemonger who invokes each of these terms summons a vicious chorus in his support. It is because, given our cultural history, no such general prejudices strike against the dominant groups that there exist no comparable terms of universally understood hatred and con-tempt applicable to whites, males and heterosexuals as such.

### AT: ACLU

#### This card is awful:

#### 1. It’s entirely anecdotal—it just cites two examples, one of which is from Great Britain, not the US, and the other is from almost 30 years ago.

#### 2. The speech code that this card is criticizing got struck down in 1989—this proves that speech codes are malleable and can be reformed.

#### 3. Minimal impact—your evidence says that white students brought 20 cases against black students but only one student was punished.

## AT: Counterspeech

### Counterspeech Fails

#### Counterspeech can’t solve—people can’t rationally change their minds about having stereotypes, psychology proves.

Moles 6 Andrés (read Philosophy at the National University of Mexico (UNAM) finishing in 2001, and received an MA in Philosophy and Social Theory (2003) and a PhD in Politics (2007) both at the University of Warwick) Autonomy, Free Speech and Automatic Behaviour. Springer 2006 NP

Audience-based autonomy defences of free speech argue that audience interests are better served by protecting freedom of expression.67 These defences claim that free speech serves autonomy and critical reflection by offering a wide range of viewpoints whose relative merits audiences can assess. Free speech also offers audiences valuable information and evidence that helps them to decide different aspects of their conception of the good. It is also claimed – notably by J.S. Mill – that free speech forces people to critically assess and defend the grounds of their own views when presented with alternatives. However, free speech also has its costs. It is highly contaminating: consider violent pornography and entertainment, the creation, transmission and enforcement of racial and gender stereotypes, and so on.68 Defences of free speech sometimes try to minimise these costs by advocating ‘more, better speechÕ.69 The idea is that through rational debate and discussion, audiences will autonomously come to realise that the content of stereotypes is false and based on prejudice. Free speech, then, would then have two benefits: it would fight racism and foster rational autonomy. This strategy is not without its problems. Many people who believe they are not racists still manifest racist reactions.70 It is difficult to convince them that, regardless of what they think of them- selves, they sometimes react as racists. Moreover, it has been shown that sometimes trying not to respond according to the stereotype has the ‘ironic effect of increasing the frequency of stereotypical reactions.71 Similarly, it has been argued that we have a tendency to believe propositions we understand, even when we are explicitly told that they are false. Daniel Gilbert argues that due to the way our system of forming beliefs works, we have a tendency automatically to accept propositions we understand. Rejection requires effort. This second step can be inhibited when individualsÕ mental resources are depleted, for instance by devoting attention to other things, or by lack of sleep, or under torture, or time constraints. If the rejection process is interfered with, then individuals may accept propositions which they would otherwise reject.72 More, better speech seems not be able to cope with this problem, mainly because it aims at rational, conscious processes of belief formation, while the challenges I am presenting here occur at automatic, non-conscious levels. Wilson and Brekke suggest that another strategy might be more successful: exposure control. Just as in the case of normal pollution, the best way of protecting oneself is avoiding being exposed to the polluting agent; the most effective strategy to fight mental contamination could be to avoid the sources of bias. This strategy is already used in certain domains. Teachers assess anonymous essays and exams, journals impose blind controls when considering submissions, and so on. Exposure control is not free of problems; first, the main issue about who is to control what people are exposed to remains open. Second, because we cannot neutralise every source of contamination, we need to categorise the weights of different forms of contamination (racial and gender based are particularly important). Regardless of these problems, it seems that controlling exposure to the serious sources of biasing is a necessary condition for autonomy. This in turn requires that social relations are sensitive to contamination and that the exposure to sources of contamination is more or less socially controlled.

#### Counterspeech often fails—practical and structural barriers.

Richards and Calvert 2k summarize Robert D. Richards (Associate Professor of Journalism & Law and Founding Director of the Pennsylvania Center for the First Amendment at Pennsylvania State University. B.A. 1983, M.A. 1984, Communications, Pennsylvania State University; J.D. 1987, American University. Member, State Bar of Pennsylvania) and Clay Calvert (Assistant Professor of Communications & Law and Co-Director of the Pennsylvania Center for the First Amendment at Pennsylvania State University. B.A. 1987, Communica- tions, Stanford University; J.D. (Order of the Coif), 1991, McGeorge School of Law, Univer- sity of Pacific; Ph.D. 1996, Communications, Stanford University. Member, State Bar of Cali- fornia.) “Counterspeech 2000: A New Look at the Old Remedy for "Bad" Speech” BYU Law Review Volume 2000 Issue 2 Article 2 May 1st 2000 <http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=1993&context=lawreview> JW

The idea that “bad speech” can be effectively countered or cured with more speech, however, has recently come under fire in some quarters.9 The effectiveness of counterspeech, for instance, may be limited by the amount of time available to refute the pernicious speech in question and “whether the counter-message comes to the attention of all the persons who were swayed by the original idea.”10 Critical race theorists have argued as well that some minority groups experience “diminished access to private remedies such as effective counterspeech.”11 Hate speech also may have what Professor Owen Fiss describes as a “silencing effect” on its victims, disabling and discrediting “a would-be speaker” and thereby reducing the effectiveness of counterspeech.12 Catharine A. MacKinnon, the outspoken feminist legal scholar, suggests that the same problem observed by critical race theorists— limited access to the means of communication—plagues those who would use counterspeech to criticize individuals in power. She writes that “silencing” may occur through “the refusal of publishers and editors to publish, or publish well, uncompromised expressions of dissent that make them uncomfortable by challenging the distribution of power, including sexual power.”13 It is, in other words, an unfair marketplace of ideas in which unequal access to the means of communication denies some groups the remedy of counterspeech. As legal scholars Robert Jensen and Elvia Arriola write from a critical perspective, “those who have power continue to have the greatest opportunities to speak in an effective manner.”14 Even the United States Supreme Court has recognized that in some cases counterspeech may not be an effective remedy for harmful speech. In Hustler Magazine, Inc. v. Falwell, 15 for instance, the Court suggested, “False statements of fact are particularly valueless” because “they cause damage to an individual’s reputation that cannot easily be repaired by counterspeech, however persuasive or effective.” Counterspeech, in brief, is seen as a constitutionally preferred yet somewhat suspect and sketchy remedy for harmful speech. Although counterspeech is not always a perfect remedy, individuals and courts should seriously consider it as a solution. When used wisely, counter- speech may prove to be a very effective solution for harmful or threatening expression.

#### Studies prove people empirically don’t engage in counterspeech.

Halbrooks 14 Ben Halbrooks (founder and executive director of the Fixed Point Foundation) “The Spiral of Silence” Larry Alex Taunton Blog September 2nd 2014 <http://larryalextaunton.com/blog/the-spiral-of-silence/> JW

“People who use Facebook and Twitter are less likely than others to share their opinions on hot-button issues, even when they are offline,” (emphasis added) says the AP, citing a new survey from the Pew Research Center and Rutgers University. According to the study’s findings, social media sees users shying away from discussing anything controversial and censoring themselves even beyond the web, going so far as to hinder the exchange of opinions in the public marketplace of ideas. Researchers call it the “spiral of silence” phenomenon. This is of particular interest to us, since we’ve noted before how, in a politically correct world, thoughtful, civil discourse has been largely suppressed. Part of Fixed Point’s mission, in fact, is to revitalize it. Far too many people are eager to chime in on issues where they know their audience agrees, but unwilling and fearful to address issues of controversy in any meaningful way. Meaningful is a key word there, because, of course, not all self-censorship is bad. The article concludes with that consideration, discussing the takeaways of Rutgers professor Keith Hampton, who helped conduct the study: While many people might say keeping political debate off Facebook is a matter of tact, Hampton said there is a concern that a person’s fear of offending someone on social media stifles debate. “A society where people aren’t able to share their opinions openly and gain from understanding alternative perspectives is a polarized society,” he said.

#### Their argument assumes that the true position will win out, which is empirically false.

Hilden 2 Julie (graduate of Harvard College, Yale Law School, and Cornell University's M.F.A. program. After law school, she clerked for then-Chief Judge Stephen G. Breyer of the U.S. Court of Appeals for the First Circuit, and for Judge Kimba M. Wood of the U.S. District Court for the Southern District of New York) “The First Amendment and the Internet: Why Traditional Legal Doctrines Apply Differently in Cyberspace” April 16th 2002 <http://writ.news.findlaw.com/hilden/20020416.html> JW

Traditional First Amendment doctrine is based on one basic metaphor, that of the "marketplace of ideas." As the metaphor suggests, the doctrine holds that ideas compete in the world of speech, and gain adherents there. Moreover, they gain adherents based on their truth; a true statement, or a good idea, will always prevail over a false statement, or a bad idea, in the end. Accordingly, government intervention relating to speech is rarely warranted. The market will solve the problem "naturally," without intervention - defeating any bad idea and bringing good ideas to prominence. This metaphor was never entirely accurate. While there is indeed a marketplace for ideas, it does not necessarily favor the true and good ideas. It may instead demand the entertaining or even the sensationalistic. Or it may demand ideas that are comforting, for they are in line with beliefs that we already hold. For example, it may demand ideas that flatter us or bolster our pride - pro-American words and ideas, for example, are in high demand now. On the Internet, it is evident that a joke, with no truth value at all, can circulate much faster than a simple truth. Far worse, rumor with no truth to it at all - such as the claim that Jewish workers did not arrive at the World Trader Center on September 11 - can nevertheless be widely disseminated. Entertainment websites can compete with, and best, news sites for Internet readers' attention. Can it be doubted, at this point, that the "marketplace of ideas" values many commodities, and truth is only one of them? The basic First Amendment idea that in the marketplace, the truth will out, has been empirically disproven.

#### The free marketplace of ideas allows oppressive viewpoints to prevail and doesn’t change minds.

Reynolds 9 Michael (Class of 2009, USC Gould School of Law) 82 S. Cal. L. Rev. 341, “DEPICTIONS OF THE PIG ROAST: RESTRICTING VIOLENT SPEECH WITHOUT BURNING THE HOUSE”, lexis 2009

Criticisms of the marketplace rationale generally fall into one of two categories: arguments about marketplace theory and pragmatic arguments about the reality of the marketplace. With respect to marketplace theory, critics note that the marketplace rationale assumes that the discovery of truth and the attainment of knowledge are valued above all else. n113 In instances where there is a high degree of certainty in the truth and where the minority opinion causes great external harm, however, the search for truth provides poor justification for allowing the minority opinion to be heard. n114 Those considering the reality of the marketplace point out that differing viewpoints and opinions do not compete on a level playing field. As Owen Fiss argues: In a capitalist society, the protection of autonomy will on the whole produce a public debate that is dominated by those who are economically powerful. The market ... does not assure that all relevant views will be heard, but only those that are advocated by the rich, by those who can borrow from others, or by those who can put together a product that will attract sufficient advertisers or subscribers to sustain the enterprise. n115 If truth is to be measured by how widely accepted an idea becomes, then views that reach a greater number of people will have an intrinsic advantage over views unable to reach a wide audience. Critics also note that an essential assumption of the marketplace [\*357] rationale, that people will act and think rationally, is not necessarily supported by empirical evidence. n116 History has shown that false ideas have frequently won out over true ones, even where the true ideas are allowed to disseminate freely. n117 The counterargument is that truth will overcome falsity in the long run, as evidenced by the fact that our knowledge of falsity overcoming truth in the short run means that truth won out in the long run. n118 The problem, noted by Harry Wellington, "is that the short run may be very long." n119

### AT: Calleros 95

#### Calleros’s arguments are a) anecdotal and b) burdensome on minority students.

Delgado & Yun 95 Richard, Charles Inglis Thomson Professor of Law, University of Colorado, & David, Member of the Colorado Bar. J.D., University of Colorado, 1993, 27 Ariz. St. L.J. 1281, “"THE SPEECH WE HATE": FIRST AMENDMENT TOTALISM, THE ACLU, AND THE PRINCIPLE OF DIALOGIC POLITICS”, lexis

The two of us were pleased to read Professor Charles Calleros' article, Paternalism, Counterspeech, and Campus Hate-Speech Codes: A Reply to Delgado and Yun, which the Arizona State Law Journal editors were kind enough to advance. Responding to two articles of ours, one in California's and the other in Vanderbilt's law review, both arguing for limitations on hate speech against racial and sexual minorities and women, Professor Calleros charges that we have given inadequate attention to counterspeech as a possible remedy. Citing examples from Stanford and his own university, Calleros shows how talking back in an effort to raise consciousness empowered the minority victims of hate speech and educated the campus community -- all this without resorting to constitutionally troublesome and heavy-handed disciplinary procedures. Nothing that we said in either of the two articles causes us to disagree with Professor Calleros. Talking back sometimes works. We would just note two reservations. The first is that the talking back solution puts the onus on young minority undergraduates to redress the harm of hate speech. This is a burden to them, one they must shoulder in addition to getting their own educations. In other words, in addition to educating themselves, they must educate the entire campus community, and do so every time a racial incident takes place. Second, it would be a serious mistake for Professor Calleros' readers to generalize from his sunny and optimistic experience. Not every setting is as progressive, supportive, and loving as A.S.U. and Stanford University. Some campuses do not enjoy a strong norm of civility or respect for people [\*1282] of color. And this is certainly true of hundreds of noneducational institutions, such as the military, fraternities, and certain sport teams. And it is even more true of the many ugly street encounters minorities suffer daily. In many of these settings, talking back is not an option. In others, it would be foolhardy, because of the imbalance of power. Ivory tower academics must be careful of generalizing from one or two experiences in which speech -- their favorite mechanism -- seemingly has worked. The social history of pornography and hate speech in the United States argues for caution, and for a multitude of approaches, not just one.