# Radical Democracy 1AC

### Notes

-This was the Aff we read most of the topic

-I’d swap in different underviews and framework args depending on the person I was debating

-The Aff changed a lot as the topic went on – the initial Aff was mostly preempts to hate speech and reasons why codes failed, but as the topic went on it got a little more radical, with solvency related to protests. At the TOC, it became almost entirely about covert racism and exposure taking place.

## 1AC - TOC

### Part 1: Framework.

Omitted

### Part 2: Covering Up

#### NEWSFLASH: most racists don’t admit it – they keep their actions hidden.

**Boatright et al:** Boatright, Su L. [Professor of Psychology, University of Rhode Island], Nathaniel Crockett [Graduate Student Textiles, Fashion Merchandising, and Design, University of Rhode Island], and Yvette Harps-Logan [Associate Professor of Psychology and Textiles, Fashion Merchandising, and Design, University of Rhode Island]. “White Privilege Is Alive and Well on Many College Campuses.” *The Chronicle of Higher Education*, August 15, 2013. CH

Yet many white individuals believe that racism is a societal problem that is primarily restricted to the distant historical past. The majority of whites today view themselves as victims of reverse racism more often than they view blacks as victims of racism. **Overt and covert racism continue to be major problems in today’s society, particularly on predominantly white college campuses. In a 2010 study conducted by Annemarie Vaccaro, the social climate on a college campus in the northeast was described as hostile for women and persons of color**. At other institutions, researchers have reported that 65 percent of black students experience verbal racial harassment. **In fact, about 50 percent of white students admit to exhibiting open dislike toward others because of race,** engaging in physical violence, name calling, and negative facial expressions. D**erald Wing Sue and others have described “racial microaggressions,”** or “the brief, commonplace, and daily verbal, behavioral, and environmental slights and indignities” **directed at persons of color, which often occur automatically and unintentionally.** The negative effects that modern racism and racial microaggressions have on students of color on predominantly white campuses include academic and psychological problems, as well as risk of suicide. **A major corollary of [W]hite privilege is that it** **is** invisible **to white individuals. Therefore, when students of color attempt to describe their feelings of being uncomfortable or feeling alienated on predominantly white campuses, they are likely to be viewed as “complainers” or “paranoid.”** If they mention racism, students of color incur the risk of being seen as individuals who are merely seeking illegitimate special favors. **Attempts to discuss issues of privilege and covert racism with white individuals are often met with a wall of indifference, perhaps even hostility that is very difficult to penetrate.** Given the negative commentary that followed his comments on racism, the president of the United States appears to have encountered this divisive racial wall as well.It is the responsibility of college and university professors to prepare their students for successful careers in a culturally diverse and global society, but recent history suggests that we are failing in this obligation.

#### And speech codes put a Band-Aid on a broken knee; they CAN’T solve because ask those who CAUSE the problem to fix it.

**Wise:** Wise, Tim [Anti-Racism Activist] “Hate Speech Codes Will Not End Racism and Hate Crimes.” *Opposing Viewpoints*,2007. RP

Secondly, hate **speech codes reinforce the common tendency to view racism on the purely** individual **level—as a personality problem in need of adjustment, or at least censure—as opposed to an** institutional arrangement, whereby colleges, workplaces and society at large manifest racial inequity of treatment and opportunity, often without any bigotry whatsoever. So, for example, **racial inequity in the job market is perpetuated** not only, or even mostly by overt racism—though that too is still far too common—but rather **by way of the ‘old boy's networks,’ whereby mostly white, middle class and above, and male networks of friends, neighbors and associates pass along information** about job openings to one another. And this they do, not because they seek to deliberately keep others out, but simply because those are the people they know, live around, and consider their friends. The result, of course, is that **people of color and women of all colors remain locked out of full opportunity**. Likewise, students seeking to get into college are given standardized tests (bearing little relationship to academic ability), which are then used to determine in large measure where (or even *if*) they will go to college at all; this, despite the fact that these students have received profoundly unstandardized educations, have been exposed to unstandardized resources, unstandardized curricula, and have come from unstandardized and dramatically unequal backgrounds. As such, lower income students and students of color—who disproportionately come out on the short end of the resource stick—are prevented from obtaining true educational equity with their white and more affluent peers. **And again, this would have nothing to do with overt bias, let alone the presence of neo-Nazis at the Educational Testing Service or in the admissions offices of any given school. He adds: In other words, by focusing on the overt and obvious forms of racism, hate speech codes** distract **us from the structural and institutional changes necessary to truly address racism and white supremacy as larger social phenomena. And [W]hile we could, in theory, both limit racist speech and respond to institutional racism, doing the former almost by definition takes so much energy (if for no other reason than the time it takes to defend the effort from Constitutional challenges), that getting around to the latter never seems to follow in** practice. Not to mention, by passing hate speech codes, the dialogue about racism inevitably (as at Bellarmine) gets transformed into a discussion about free speech and censorship, thereby fundamentally altering the focus of our attentions, and making it all the less likely that our emphasis will be shifted back to the harder and more thoroughgoing work of addressing structural racial inequity. Perhaps most importantly, even to the extent we seek to focus on the overt manifestations of racism, putting our emphasis on ways to limit speech implies that there aren't other ways to respond to overt bias that might be more effective and more creative, and engage members of the institution in a more thoroughgoing and important discussion about individual responsibilities to challenge bigotry. **So instead of banning racist armbands, how much better might it be to see hundreds of Bellarmine students donning their own come spring: armbands saying things like: "F... Nazism," ‘F...** Racism’ or, for that matter, "F... You, Andrei" (hey, free speech is free speech, after all). That a lot of folks would be more offended by the word 'f...,' both in this article and on an armband, than by the political message of Chira's wardrobe accessory, of course, says a lot about what's wrong in this culture, but that's a different column for a different day. The point here is that such messages would be a good way to test how committed people at Bellarmine really are to free speech, and would also send a strong message that racism will be met and challenged *en masse*, and not just via anonymous e-mails. In other words, if Chira is free to make people of color uncomfortable, then others are sure as s... free to do the same to him and others like him. Otherwise, freedom of speech becomes solely a shield for members of majority groups to hide behind, every time they seek to bash others.

#### Indeed, both globally and domestically, speech codes worsen hate and target minorities – empirics prove.

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *Southern Illinois University Law Journal*, Vol. 25, 2001. RP

**Based on actual experience and observations in countries around the world, the respected international human rights organization, Human Rights Watch, concluded that** suppressing hate speech does not effectively promote equality or reduce discrimination. In 1992, Human Rights Watch issued a report and policy statement opposing any restrictions on hate speech that go beyond the narrow confines permitted by traditional First Amendment principles. Human Rights Watch's policy statement explains its position as follows: The Human Rights Watch policy attempts to apply free speech principles in the anti-discrimination context in a manner that is respectful of both concerns, believing that they are complementary, not contradictory. While we recognize that the policy is closer to the American legal approach than to that of any other nation, it was arrived at after a careful review of the experience of many other countries .... This review has made clear that there is little connection in practice between draconian "hate speech" laws and the lessening of ethnic and racial violence or tension. Furthermore, most of the nations which invoke "hate speech" laws have a long way to go in implementing the provisions of the Convention for the Elimination of Racial Discrimination calling for the elimination of racial discrimination. Laws that penalize speech or membership are also subject to abuse by the dominant racial or ethnic group. Some of the most stringent "hate speech" laws, for example, have long been in force in South Africa, where they have been used almost exclusively against the black majority.42 Similar conclusions were generated by an international conference in 1991 organized by the international free speech organization, Article 19, which is named after the free speech guarantee in the Universal Declaration of Human Rights. That conference brought together human rights activists, lawyers, and scholars, from fifteen different countries, to compare notes on the actual impact that anti-hate-speech laws had in promoting equality, and countering bias and discrimination, in their respective countries. The conference papers were subsequently published in a book, Striking A Balance: 43 Hate Speech, Free Speech, and Non-Discrimination. **The conclusion of all these papers was clear: not even any correlation,** let alone **any causal relationship, could be shown between the enforcement of anti-hate-speech laws by the governments in particular countries and an improvement in equality or inter-group relations in those countries. In fact, often there was an inverse relationship**. These findings were summarized in the book's concluding chapter by Sandra Coliver, who was then Article 19's Legal Director: **Laws which restrict hate speech have been flagrantly abused by the authorities. Thus, the laws in Sri Lanka and South Africa have been used almost exclusively** against **the oppressed and politically weakest communities. In Eastern Europe and the former Soviet Union these laws were vehicles for the persecution of critics who were often also victims of state-tolerated or sponsored anti-Semitism.** Selective or lax enforcement by the authorities, including in the United Kingdom, Israel and the former Soviet Union, allows governments to compromise the right of dissent and inevitably leads to feelings of alienation among minority groups. Such laws may also distract from the need for effective legislation to promotenon-discrimination. The rise of racism and xenophobia throughout Europe, despite laws restricting racist speech, calls into question the effectiveness of such laws in the promotion of tolerance and non- discrimination. One worrying phenomenon isthe sanitized language now adopted to avoid prosecution by prominent racists inBritain, France, Israel and other countries, which may have the effect of making their hateful messages more acceptable to a broader audience." **She adds:**  **The British experience parallels what has happened in the United States, as evidenced by the campus hate speech codes for which enforcement information is available.7 One such code was in effect at the University of Michigan from April 1988 until October 1989**. Because the ACLU brought a lawsuit to challenge the code (which resulted in a ruling that the code was unconstitutional),"2 the university was forced to disclose information that otherwise would have been unavailable to the public about how it had been enforced. This enforcement record, while not surprising to anyone familiar with the consistent history of censorship measures, should come as a rude awakening to any who believes that anti-hate-speech laws will protect or benefit racial minorities, women, or any other group that traditionally has suffered discrimination. **Even during the short time that the University of Michigan rule was in effect, there were more than twenty cases of whites charging blacks with racist** speech. More importantly, there were only two instances in which the rule punished speech on the ground that it was racist-rather than conveying some other type of bias-and both involved the punishment of speech by or on behalf of black students. **Let me underscore that:** 100% **of the speech punished as racist was by or on behalf of African-Americans.** Moreover, the only student who was subjected to a full-fledged disciplinary hearing under the Michigan rule was an African-American student accused of homophobic and sexist expression. In seeking clemency from the punishment that was imposed on him after this hearing, the student asserted that he had been singled out because of his race and his political views.73 **Others who were punished at the University of Michigan included several Jewish students accused of engaging in anti-Semitic expression (they wrote graffiti, including a swastika, on a classroom blackboard, saying they intended it as a practical joke)** and an Asian-American student accused of making an anti-black comment (his allegedly "hateful" remark was to ask why black people feel discriminated against; he said he raised this question because the black students in his dormitory tended to socialize together, making him feel isolated). Likewise, the student who in 1989 challenged the University of Connecticut's hate speech policy, under which she had been penalized for an allegedly homophobic remark, was Asian-American. She claimed that other students had engaged in similar expression, but that she had been singled out for punishment because of her ethnic background. Representing this student, the ACLU persuaded the university to drop the challenged policy.7" **Following the same pattern, [T]he first complaint filed under Trinity College's then-new policy prohibiting racial harassment, in 1989, was against an African-American speaker[.] who had been sponsored by a black student organization**, Black-Power Serves itself. **Again, I stress that [T]hese examples are not just aberrational. Rather, they flow from the very premises of those who advocate hate speech codes**. As they rightly note, discrimination and prejudice is, unfortunately, endemic in United States society-including on campus and in our legal system. Indeed, exhaustive studies of state and federal courts throughout our country consistently show entrenched patterns of racial and gender bias." So, for those of us who are committed to eradicating discrimination, the last thing **we should want to do is to hand over to discriminatory officials and institutions power to enforce necessarily vague hate speech codes that inevitably call for subjective, discretionary decisions. This discretionary power predictably will be used in a way that is hardly helpful to disempowered groups.**

#### And *the type of speech being censored doesn’t matter*; the question is whether colleges have the right to censor it.

Glasser: Glasser, Ira. [Former Executive Director, American Civil Liberties Union] Quoted in Jonathan Haidt’s “Hate Speech is Free Speech.” Spiked-online.com, June 12, 2016. RP

**How is ‘hate speech’ defined, and who decides which speech comes within the definition?** Mostly, it’s not us. **In the 1990s in America, black students favoured ‘hate speech’ bans because they thought it would ban racists from speaking on campuses. But the deciders were white. If the codes the black students wanted had been in force in the 1960s, their most frequent victim would have been Malcolm X.** In England, **Jewish students supported a ban on racist speech. Later, Zionist speakers were banned on the grounds that Zionism is a form of racism. Speech bans are like poison gas: seems like a good idea when you have your target in sight — but the wind shifts, and blows it back on us.**

#### In fact, it’s not enough to show that one type of speech is bad – there must be a *principle* justifying ANY restriction, or it’s totally arbitrary.

**White:** White, Ken. [Criminal Defense Lawyer, Brown, White, & Newhouse] “Lawsplainer: Why Flag Burning Matters, And How it Relates To Crush Videos.” Popehat,November 2016. RP

**In free speech analysis, how you** get **to a conclusion often has much more long-lasting impact than the conclusion itself.** Our legal system runs on precedent. The significance of the precedent isn't "the Supreme Court said that flag burning is protected by the First Amendment." The significance of the precedent is "someone wants to punish this speech and we have to figure out whether or not it's protected by the First Amendment. Let's look at the logic and methods the Supreme Court used to resolve that question when flag burning was the issue, and then apply it here." But the Supreme Court has decided lots of cases about the First Amendment. This is just one precedent, one example of a method of reaching a conclusion. What makes it particularly important? **The Supreme Court's flag burning cases are crucial — not because of how they analyze existing exceptions to the First Amendment, but because they address whether the government can create endless exceptions to the First Amendment. Just like crush videos.** You know, videos of women stomping on small helpless animals. That's . . . that's a thing? Of course it's a thing. Ugh. What does that have to do with flag burning? Or the First Amendment? Congress — having salved all of the nation's ills — passed a law banning crush videos. Because who wouldn't vote for someone who stands against hurting baby animals? The law made it a federal crime to create or sell depictions of animal cruelty in interstate commerce. In 2010, in United States v. Stevens,, the Supreme Court found that the statute violated the First Amendment. That sounds pretty straightforward. Why is it significant? It's significant because of the way the government defended the statute. The government's lead argument wasn't that crush videos were outside of First Amendment protection because they fell into an already-recognized exception, like defamation or obscenity or incitement. They argued that the Supreme Court should recognize a new categorical exception to First Amendment protection for animal cruelty, because animal cruelty is so awful. They also argued that courts can recognize new exceptions to the First Amendment by weighing the "value" of the targeted speech against the harm it threatens. The Supreme Court — in an 8 to 1 decision — firmly rejected those two arguments. **First, the Court said, the historically recognized exceptions to First Amendment protection are well-established, and you can't just go around adding new ones: From 1791 to the present,” however, the First Amendment has “permitted restrictions upon the content of speech in a few limited areas,” and has never “include[d] a freedom to disregard these traditional limitations.”** Id., at 382– 383. These “historic and traditional categories long familiar to the bar,” Simon & Schuster, Inc. v. Members of N. Y. State Crime Victims Bd. , 502 U. S. 105, 127 (1991) ( Kennedy, J. , concurring in judgment)—including obscenity, Roth v. United States , 354 U. S. 476, 483 (1957) , defamation, Beauharnais v. Illinois , 343 U. S. 250, 254–255 (1952) , fraud, Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc. , 425 U. S. 748, 771 (1976) , incitement, Brandenburg v. Ohio , 395 U. S. 444, 447–449 (1969) ( per curiam ), and speech integral to criminal conduct, Giboney v. Empire Storage & Ice Co. , 336 U. S. 490, 498 (1949) —are “well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem.” Chaplinsky v. New Hampshire , 315 U. S. 568, 571– 572 (1942) . Second, the Court said, **[T]he government's proposed methodology — that the Court should identify new categorical exceptions by balancing, on a case-by-case basis, the value of speech against its harm — is antithetical to First Amendment analysis and dangerous**: “ The Government thus proposes that a claim of categorical exclusion should be considered under a simple balancing test: “Whether a given category of speech enjoys First Amendment protection depends upon a categorical balancing of the value of the speech against its societal costs.” Brief for United States 8; see also id., at 12. As a free-floating test for First Amendment coverage, that sentence is startling and dangerous. The First Amendment ’s guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits. The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it. The Constitution is not a document “prescribing limits, and declaring that those limits may be passed at pleasure.” Marbury v. Madison , 1 Cranch 137, 178 (1803). So: in 2010, the Supreme Court overwhelmingly and clearly rejected the idea that legislatures and courts can create new exceptions to the First Amendment based on how strongly they hate speech or how awful it is**. He adds:** The flag-burning cases are important, like the crush videos case was important, because they draw a crucial line between having a few strictly limited exceptions to the First Amendment, on the one hand, and having as many exceptions as we feel like having, on the other hand. Flag burning isn't speech that's uniquely valuable or important to protect. **What's important is that we protect the** principled **method by which we determine which speech is protected and which isn't. The argument that flag burning should be outside the First Amendment can be applied with equal force to just about anything — "hate speech," "cyber-bulling," "revenge porn," "pro-ISIS speech," or whatever the flavor of the month is. If think the majority was wrong in the flag burning cases, here's what you're saying: "the Supreme Court makes bad judgments, and I want to give that Supreme Court the power to decide, on a case-by-case basis, whether the harm of speech outweighs its value**. I don't want the courts to be limited to established, well-defined categories outside of First Amendment protection." But **that's ridiculous. You're damn right it is.**

#### Advocacy: Public colleges and universities in the United States ought not restrict any constitutionally protected speech. This makes them agents of *inaction* – they aren’t *allowed* to restrict speech.

**Kurtz writes:** Kurtz, Stanley. [Contributor, *National Review*] “A Plan to Restore Free Speech on Campus.” *The Corner*,December 2015. RP

First: **Colleges and universities ought to adopt a policy on freedom of expression modeled on Yale’s Woodward Report of 1974, which identifies ensuring intellectual freedom in the pursuit of knowledge as the primary obligation of a university.** While the Woodward Report forthrightly acknowledges the importance of solidarity, harmony, civility, and mutual respect to campus life, it unmistakably marks these values as subordinate in priority to freedom of expression. **In accordance with this, the Woodward Report rejects the proposition that members of an academic community are entitled to suppress speech they regard** as **offensive. Of course, within a university, the need for intellectual freedom is in the service of the pursuit of knowledge**. Freedom of expression is a critical consideration, yet does not in itself fully resolve issues like the structure of the college curriculum. That said, the Woodward Report can and should serve as a model for statements on free expression at our colleges and universities. **Once adopted, new statements on freedom of expression would supersede and replace any pre-existing speech codes.**

### Part 3: Unmasking the University

#### The *only* way to confront covert racism is to let those who experience it expose it.

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal*, Winter 1995. RP

**One** cannot eliminate the possibility that an extremist with a propensity for hostile conduct may be emboldened by his own hostile speech or that of others. n96 Indeed, one can imagine a racist "painting himself into a corner" by taunting a target in front of the speaker's similarly [\*1269] racist buddies and feeling personal or peer pressure to act violently when the target responds in kind. On balance, then, I suspect that the pressure-valve theory against restrictions on speech applies with varying force in different circumstances and that Delgado's and Yun's challenge to it is a fair one. However, they have not adequately addressed **another potential problem of driving hateful speech underground: the missed opportunity to learn from and react appropriately to the hateful message**. When such opportunities are embraced, a campus may not only preserve the autonomy of the hateful speaker but also realize Mills's ideal of enjoying "the fuller understanding of truth which comes from its conflict with error." In a yet more recent article in which **Delgado and Yun respond to the neoconservative case against hate-speech regulations, n98 the authors concede that "all other things being equal, the racist who is known is less dangerous than the one who is not."** n99 They argue, however, that a "cured, or at least deterred" racist is less dangerous still n100 and that rules against racially offensive speech and the consequent disciplinary hearings would not preclude educational measures designed to analyze problems of race or to address their root causes. Of course, rules that restrain speech carry their own educational message, a message of censorship, which should be reserved for the most egregious abuses of speech. In some cases, moreover, an educational response alone is more constructive and healing than one that is coupled with prior restraint of speech or subsequent discipline. Indeed, disciplinary proceedings may dilute the educational measures by diverting attention from the inquiry into bigotry and redirecting it to an equally newsworthy controversy about restraints on speech. For example, in the case described in part B above of the racist poster at A.S.U., the campus community used the racist poster as a "wake-up call" about the need for multicultural diversity. n102 In initial discussions about the poster, students concluded that it reflected fear and ignorance and that it revealed a general gap in the education of many students. The need for multicultural education consequently became a theme of the campus counterspeech, which in turn helped to persuade the Faculty Senate to [\*1270] include a course in American diversity as part of the undergradu- ate breadth requirement. Had the dormitory banned racially offensive posters, the speaker might have been deterred from revealing his bigotry, or a staff member might have removed the poster before it was found by the four African- American women who exposed it to the entire campus community. The lesson of the poster was a painful one, but the campus community learned from it and acted on it. The campus affirmatively used the hateful speech to underscore the need for multicultural education, a truth that was underscored by its collision with the error of hostile racial stereotyping. Moreover, the campus was successful in its educational response precisely because it kept public attention focused on the problem of bigotry and ignorance; it did this by avoiding any action that would raise a competing issue regarding protection of speech. Delgado and Yun argue that rules against hateful speech will not entirely deprive campuses of information about bigotry, because they are not likely to suppress all hate speech. However, it is possible that such rules would provoke the least dangerous kinds of speakers to spew offensive speech: those who use outrageous language simply to make a point about the breadth of their freedom of speech. n103 **A speaker with a more troubling agenda might observe the rule against bigoted speech but engage in more injurious conduct that leaves less of a paper trail than does a hateful poster or other public utterance. For example, in another case on the A.S.U. campus, residents of a dormitory complained about a partially nude female pinup displayed on the outside of a resident's door**. The display was not obscene under legal standards n104 but **was offensive to many who saw it.** Two female staff members responded by organizing a dormitory meeting in which the students could air their views on the matter. **Unfortunately, before the meeting could take place, university police confiscated the poster, thus violating free speech** by singling out the offensive poster among many other similarly displayed posters on the basis of its content. n105 Within a week, the police department admitted its error, returned the poster (which the resident chose not to [\*1271] display again) and stated that it would leave such matters to the residence hall staff in the future. In my discussions of this event with students, I have suggested that the poster, though offensive to many, served an important educative purpose: it warned other residents of the dormitory about the apparent values of the person engaging in the display. If a student objectified women to such a degree that he displayed a female pinup on the outside of his door, **the most conspicuous** forum from which to exclaim his identity to every passerby, one could reasonably wonder -- and a group discussion at the dormitory could examine -- whether he was likely to display any respect for the autonomy of women who visited his room. The display on his door arguably served as a **warning to women on his floor**: "Until you learn more about this person, enter at your own risk and with your guard up." **A rule prohibiting such a display might have deterred him from revealing his values, thus depriving a trusting visitor of valuable information or a residence hall advisor of the incentive to secure assurances of proper behavior from him. In sum, bigotry or the potential for discrimination is sometimes best** revealed. On the other hand, the information value of speech that warns of a speaker's bigotry is not so great that a campus would affirmatively encourage its bigoted students to reveal their most hostile feelings at every turn.

#### Indeed, activists can use free speech to make administrators and fellow students aware of their school’s *own* racism and bias.

**Johnston:** Johnston, Angus. [Writer, *Rolling Stone*] “There's No College P.C. Crisis: In Defense of Student Protesters.” *Rolling Stone*,December 2015. RP

Friedersdorf is shaming activists, not reasoning with them, when he describes them as overwrought children. I'm shaming Friedersdorf, not reasoning with him, when I point that fact out. And that's OK. There's nothing wrong with a little public shaming. In fact, sometimes a little public shaming is exactly what circumstances call for. **Last May,** [**news leaked**](http://www.nbcsandiego.com/investigations/SDSU-Professor-Still-Teaching-After-Sexually-Harassing-Student--301129881.html) **[A]t San Diego State University that Vincent Martin, a tenured professor, had been found by campus investigators to have sexually harassed one of his undergraduate students. He'd neither been terminated nor publicly reprimanded — the whole thing had been swept under the rug. When students found out, they protested. They planned a picket outside of one of Martin's classrooms, and when he canceled that day's classes they plastered his office door and the surrounding walls with their signs and posters. The protesters' goal wasn’t to engage Martin in discussion. They had no reason to believe that a rational consideration of the harms of sexual harassment would dissuade Martin from re-offending**, or, for that matter, convince the university to get him out of the classroom before he victimized someone else. (It has since emerged that Martin sexually harassed multiple students at two different universities.) **No, what the protesters were engaged in was exactly what Friedersdorf criticizes: "stigma, call-outs, and norm-shaping." And they were right. That was what the situation required, and it worked — Vincent Martin is no longer employed at SDSU, and he will have a very difficult time finding another teaching job. Sometimes, as Frederick Douglass once wrote, "it is not light that is needed, but fire; it is not the gentle shower, but thunder**." Some occasions call for rational debate, he said, but others demand nothing less than "a fiery stream of biting ridicule, blasting reproach, withering sarcasm, and stern rebuke."

#### In fact, free speech means students *reclaim public spaces* from racist institutions, creating cultural change.

**Block:** Block, Jim. [Professor of Political Theory and Political Culture, DePaul University] “The Legacy and Promise of the Free Speech Movement.” *Popular Resistance,* October 2014. RP

**This past weekend was the 50th reunion of the Free Speech Movement at the University of California at Berkeley. At the beginning of the fall term of 1964, the university administration imposed a series of strict regulations limiting the right of students to engage in political soliciting on campus. Berkeley students had for several years been active in opposing the House Un-American Activities Committee, pro-labor, and anti-racism protests[.] and demonstrations throughout the Bay area**. This picture of the university as a hotbed of political activism was undermining the carefully honed image being disseminated by the state of California as the leader in public higher education: in the conservative post-war period, Berkeley was being touted as not only a world class research university but at the forefront of preparing a modern elite meritocratic student body primed for corporate and governmental leadership. What the university administration failed to consider was the fact that many activist Berkeley students had embraced new levels of commitment to political organizing by participating in Freedom Summer, an initiative by radical civil rights organizations in the South to mobilize black Americans to challenge segregation and demand voting rights. After resolutely confronting white segregationists and racist – often violent – local public officials as full-fledged democratic activists, a university administration seeking to curtail their political expression and ignoring their insistence on the urgency of social change struck these battle-tested students as demeaning and even infantilizing. Even more decisively, these acts implicated the new model university as the central institution in integrating younger generations into the corporate, hierarchical, expansionist values increasingly driving American society. It suddenly became clear that the degree was being marketed not for any educational value but as a ticket punched to the higher levels of this post-war order and to material success, social status, and a suburban lifestyle widely being identified as the American dream. Once the university intervened, in other words, the political dynamic shifted. **What had begun as an effort to support other movements for social equity and integration quickly shifted before everyone’s eyes to a** demand **for the liberation of students and youth and the democratization of the institutions shaping their lives** as a prelude to broader social transformation**. This is the Free Speech Movement (FSM) whose message spread throughout the U.S. and beyond, catalyzing and exposing generational tensions and revealing the compliance-oriented program of American socialization.** I came to Berkeley as a neophyte, a completely apolitical and uninformed undergraduate, just days before the campus controversies began. And because the events of the next couple of years became the defining experience of my life about which I have written and taught ever since (trying to make sense of it), this reunion gave me an unparalleled opportunity to reflect on and rethink that experience in conversation with this unique community of participants in this defining moment. The weekend of intensive group discussions, panels, and informal interchange helped me to expand on and fine-tune my (always provisional) conclusions. At the time, the heavily politicized students with developed analyses of American political shortcomings, systemic racism, labor inequities, and foreign adventurism appeared to have come from another planet. They were impassioned and determined which contrasted strikingly with my confusion about the issues, uncertainty about what to do, and doubt that big picture issues even mattered. As I worked tirelessly over the next years to overcome the most glaring deficiencies in my political and cultural education and to formulate a beginning social activist agenda and vision of cultural change, I sensed that this journey I took with many other undergraduates led me to a different place than the FSM activists. All these years later, I was able through the reunion weekend to gain new clarity about these differences. Long ago, I had divided the alternative Berkeley students (others of course cared more about the Greek system and football, but they went to Cal and not Berkeley) into three, though somewhat overlapping, groups: the committed politicos, the more theoretically minded intellectuals, and the lifestyle experimenters widely called hippies. I found myself drawn to the intellectuals, and while participating in protest activities (and some lifestyle experimentation) I never got intensively involved enough with political organizing to fully discern their orientation. This weekend, attended overwhelmingly by politicos, was enlightening. The most committed FSM participants were graduate students. Born before or during World War II and coming of age in the late Fifties, their political ideals had been formed not in the just emerging upheavals of the counterculture but in the quiescent era before. Their inspiration, evident in the group sing-a-long late Saturday night of protest folk songs of the Weavers and others and anthems from progressive summer camp and peace school experiences, was anti-McCarthyite and social justice mobilizing extending back to the radical populism of the pre-war social movements. The expectation was that political organizing was a long, hard, rarely successful march against dominant and intransigent institutions, and few of them were prepared for the collapse of the Berkeley administration’s policies and legitimacy in the face of student demands. These participants, true to their early self-definitions, have since then sustained lives of activism in diverse progressive causes, and these made for great and inspiring stories. At the same time, they have returned to the view that progressives rarely win big, though one can retain the joy of principled fighting against the beast on fronts everywhere and in savoring victories when they occur. One can also take heart from movement solidarity for refusing to buckle as others, perhaps even their own families of origin and so many today, often do. And yet, connected with one of the two other groups that only arose with the emerging counterculture after the terrain of controversy shifted to youth politics and the quality of middle class life being portrayed as the universal dream, I could see where the FSM diverged from what came later. The politicos took as their immediate precursors the civil rights and to a lesser degree labor organizing movements, the causes prominent among left activists as they came of age. Occasionally the rhetoric, as with the now deceased FSM leader Mario Savio, identified the particular repressions in the university, yet the tendency was to include students as one dispossessed group demanding a voice with the others. **What I gathered from numerous conversations and group discussions is that they did not really appreciate – or perhaps regard as significant – how the counterculture radically altered the political-cultural landscape**. One reason that the Sixties in its full counterculture profusion broke out first (and more extensively) in Berkeley and the Bay area is that this region of northern California had served for decades as a place of immigration for refugees from mainstream culture, beats and bohemians and idealists and iconoclasts of all kinds. **It had been evolving a new lifestyle and value orientation, affirming more self-actualizing, self-expressive, anti-bureaucratic, libidinally open, artistic and less workaholic and role dependent lives than the places those arriving had come from**. Once the attack on university rigidities and in loco parentis regulations was successful, the way was cleared for students to begin asking questions about and in turn simply reject the repressively conformist American lifestyle.

#### But even if this doesn’t happen, it’s infinitely worse to rely on white administrators who can’t identify real racism to regulate it.

**Sachs:** Sachs, George. [Psychologist and Contributor, *Huffington Post*] “10 Ways White Liberals Perpetuate Racism.” *Huffington Post*, September 2015. RP

**Maybe years of racism have made it hard for people of color to trust White folks—even Atlantic magazine liberals like you and me. Or maybe we’re saying or doing something racially insensitive—perpetuating racism and white privilege**. And we don’t even know it. Maybe the millennials know best. **Microinvalidations are momentary acts that serve to invalidate the very people of color we care about. These unconscious interactions perpetuate the hopelessness many African-Americans, Latinos, Native Americans, and other people of color, feel in this country.** Many of you may stop reading now, thinking, “Here we go with the political correctness.” You say to yourself: “I’m not perpetuating racism, and I’m certainly not invalidating people of color. Donald Trump may be, but not me.” That’s what I used to think. But, right there, you’re committing a microinvalidation. It’s called Denial. **Racism** just won’t die, because its roots are deep. Somewhere down where we don’t like to go, **is a place where racism lives. It’s automatic and hidden.** Binding and resistant to change. No matter how well-meaning we are, no matter how open-minded. Like the “root kit” on a computer, racism is hidden and operating without our knowledge. Paul Pendler, Psy.D., of the Department of Psychiatry & Behavioral Sciences, Feinberg School of Medicine, Northwestern University Medical School and Phillip Beverly, Ph.D., Department of History, Philosophy, and Political Science at Chicago State University, wrote The Racism Root Kit: Understanding the Insidiousness of White Privilege. The paper suggests that White people defer to an internal “root kit,” or set of ingrained responses, to cover our racial biases and shut down those who intend to make us face them. Just like The Atlantic magazine did to today’s college students. Beverly and Pendler reference the work of Derald Wing Sue, PhD: “Sue and his colleagues delineated three forms of microaggressions: microassault, microinsult, and microinvalidation. Microassaults are explicit racial slurs with the intention to hurt an intended victim through name-calling. Microinsults are subtle communications that convey rudeness and attempt to demean one’s racial identity. Finally, microinvalidations are comments that intend to exclude or nullify the feelings or experiences of persons of color.” **Too often these microaggressions, in particular microinvalidations, go unchallenged by people of color, due to the inherent power imbalance felt with White people. Racism is experienced, but not acknowledged. When a person of color does take issue with those types of encounters, many well-meaning White liberals, myself included, can become overly apologetic, defensive, or even offended when confronted with the subtle indignity of our words or actions. These knee-jerk defenses are actually how we as white liberals end up perpetuating racism. Thus, true self-awareness and deeper relationships** with people of color never really happen. This is what young people know instinctively. And what older white Liberals like you and me have a hard time understanding. There’s a problem when we champion change, then hide from it when it really counts. Like it or not, **White superiority is well defended and protected. It may be unintentional. It’s likely unconscious. Without more introspection and sincere interaction,** the racism train keeps rolling. Right now, you might feel angry and misjudged. Maybe you’re a white liberal shaking your head, feeling slighted and angered by the lack of acknowledgement, regarding your efforts and accomplishments concerning racial sensitivity. After all, white liberals are the white folks who really get it. Right? Wrong. This is, in fact, another microinvalidation.

#### Meanwhile, the aff at least makes it possible for minorities to respond *themselves* to offensive speech, an option necessary for ANY more radical alternatives.

**Bon:** Bon, Dorian [Contributor, Socialist Worker] “Who’s Behind the Free Speech Crisis on Campus?” *Socialist Workers*,April 2017. RP

-Student activism key – takes out agent CPs

-Need most free speech and demand for ourselves – answers PIC

THE TRANSFORMATION of the university into a neoliberal regime has intensified the crisis of free speech on campus. Contingent professors are justifiably afraid to express themselves openly with very little job security and power to defend themselves from their employers. Students, saddled with debt, cannot afford to risk discipline or suspension when their hopes of financial security depend on getting their diplomas and finding employment. To top it off, campuses are now dominated by an army of administrators policing student and faculty activity. This frightening state of affairs makes the effort by contingent faculty and graduate students to form labor unions an important struggle for adherents of free speech to support. The greater job security and control that unionization would bring to students, faculty and staff would go a long away toward protecting their right to free expression. **But beyond this, the combination of repression nationwide against students and the decades-long rollback of the gains of past struggles should compel us to make the fight for free speech a centerpiece of our activism on campus today. To do so requires an understanding that universal free speech and expression is a fundamental right--one that we have to expand to be able to pursue** any **of the particular aims we want to fight for on campus. The more we demand and win the right for everyone on campus--regardless of their politics--to speak, publish, organize, assemble and protest as they wish, the more power and space we build for our side** to push for our own politics of social justice and liberation. In addition to opposing campus administrations and regulations that seek to curtail speech, this will also require winning arguments with others on the left who sometimes buy into the notion that protesting injustice requires limiting free speech at an institutional level (at least the speech of those on the right)--and call for actions like banning racists and sexists from speaking on campus, for example. **But endorsing [L]imits on free speech destroys the left's capacity to fight--because such regulations are invariably used against our side. Instead, building the left and advancing our causes necessitates a dramatic *expansion* of civil liberties, including speech--and organizing to mobilize to confront and protest racists, sexists and others on the right in an open and confident manner, with the largest forces possible. During the first student movement in the U.S. in the 1930s, socialist students actually led the struggle for free speech on campus, and became so associated with this principle that the general student body drew a conscious connection between socialism and free expression. The struggle for the "open forum" on UC campuses in 1934 bears this out.** As Robert Cohen points out in his book *When the Old Left Was Young*, communist students with the National Student League led the fight to allow freedom of assembly--known as the "open forum"--for all students anywhere and anytime on UC campuses. UCLA Provost Ernest Moore accused any student who advocated for the open forum of being a communist. At a mass rally on UCLA's campus, one student responding to Moore quipped, "If you are for free speech, you are a communist too." **Student activists in today's age of "free-speech zones" and administrative repression need to take up this strategy. We should aim to make our struggles synonymous with the demand for the right to full free expression and assembly on campus--and beyond. Winning that right will require struggle--and we can't rely on anyone to build that but ourselves.**

## 1AC – Regular Season

### Part 1: Framework

Omitted

### Part 2: Kept on the Inside

#### CAMPUS SPEECH IS UNDER ATTACK FROM EVERY DIRECTION – demagogues use codes to stifle and make students *sit down and shut up*. They keep students ignorant so they don’t even question these practices.

**Friedersdorf:** Friedersdorf, Conor [Friedersdorf is a staff writer at The Atlantic, where he focuses on politics and national affairs. He lives in Venice, California, and is the founding editor of The Best of Journalism, a newsletter devoted to exceptional nonfiction.] “The Glaring Evidence That Free Speech Is Threatened on Campus .” The Atlantic. March 2016. RP

Here’s one: Many college newspapers are struggling with free- speech issues that have nothing to do with race or leftism, as David Wheeler reported. Or consider another narrow area of campus expression that is under threat: the formal speech, delivered to a broad audience. We’ll restrict our “threat survey” to a single year. **In 2015 alone, Robin Steinberg was disinvited from Harvard Law School, the rapper Common was disinvited from Kean University, and Suzanne Venker was disinvited from Williams College. Asra Nomani addressed Duke University only after student attempts to cancel her speech were overturned. UC Berkeley Chancellor Nicholas Dirks participated in an event on his own campus that student protestors shut down. Speakers at USC needed police to intervene to continue an event. Angela Davis was subject to a petition that attempted to prevent her from speaking** at Texas Tech. The rapper Big Sean faced a student effort to get him disinvited from Princeton. Bob McCulloch faced a student effort to disinvite him from speaking at St. Louis University. William Ayers was subject to an effort to disinvite him from Dickinson School of Law. Harold Koh faced a student effort to oust him as a visiting professor at New York University Law School. That list includes speakers from the right and the left. It involves several controversies that have nothing to do with antiracism. How many examples are needed to persuade Stanley that there is a problem? Because I only stopped listing them to avoid being tedious. Those examples are a mere subset of 2015 efforts to censor speakers based on their viewpoints. There are still more from 2014. Further roundups could be written about 2013, 2012, and beyond. Speech is frequently threatened. Speeches are regularly disrupted. Some are cancelled every year. To perceive no threat is to ignore reality. Or forget big speeches and look to another example of left-leaning speech that is threatened. As Glenn Greenwald wrote at The Intercept, “One of the most dangerous threats to campus free speech has been emerging at the highest levels of the University of California system, the sprawling collection of 10 campuses that includes UCLA and UC Berkeley. The university’s governing Board of Regents, with the support of University President Janet Napolitano and egged on by the state’s legislature, has been attempting to adopt new speech codes that— in the name of combating ‘anti-Semitism’—would formally ban various forms of Israel criticism.” For now, no such speech code has been adopted. Does Stanley deny that the powerful, politically connected forces pushing for it are a threat to speech on campus? There are still more examples. Here is a Marquette professor whose tenure was threatened over a blog post. Two years ago, I wrote about the NYPD’s efforts to spy on Muslim students using undercover agents for no reason other than their religion, an effort that spanned months and produced zero leads. Anyone who doubts that this abhorrent profiling chilled the speech of an ethnic-minority group should inform themselves about their understandable reaction to discovering that government spies were in their midst. **To sum up: free speech on campus is threatened from a dozen directions. It is threatened by police spies, overzealous administrators, and students who are intolerant of dissent. It is threatened by activists agitating for speech codes and sanctions for professors or classmates who disagree with them. It is threatened by people who push to disinvite speakers because of their viewpoints and those who shut down events to prevent people from speaking**. Harper and Stanley were unpersuaded that free speech is under threat not because they defend speech codes or sanctions––both say outright at different times that they are for untrammeled speech––but because they are blind to the number and degree of threats to speech.

#### And hate speech is getting worse in the status quo, despite the existence of speech codes.

**Long ’17:** Long, Katherine. [Journalist, *Seattle Times*] “UW on Edge Over Perception of Rise in Hate Speech.” *The Seattle Times*,January 27, 2017. RP

**More than a week after a Breitbart News editor’s speech was punctuated by violence on the University of Washington’s Red Square, students and faculty say the campus is on edge because of the perception that hate speech is on the rise**. Some students and faculty who say they’ve been targeted by online harassment and threats are calling for a more forceful response from the university. The university also is keeping an eye on a possible pro-Donald Trump demonstration on campus Monday. UW spokesman Norm Arkans acknowledged that Trump’s election seems to have resulted in a wave of hate speech, and the university is trying to find ways to support people who are being harassed. “We want them to feel as though we’ve got their backs,” he said. “I think we need to figure out more ways to do that.” **Why does one of the country’s most liberal campuses appear to be suddenly experiencing a rash of prejudice? The switch in people’s willingness to openly express bias and prejudice is real** nationwide**, and it’s wrapped up in the concept of social norms, which changed after Donald Trump was elected to the highest office, an expert on prejudice says. “Literally overnight” after Trump won the election Nov. 8 it became acceptable to disparage Muslims, Mexican immigrants, women and other minority groups**, said Chris Crandall, a University of Kansas psychology professor who grew up in Seattle and received his undergraduate degree at the University of Washington. Crandall said his research shows that President Trump’s election didn’t create new biases. But his win has unleased the expression of those prejudices. People who felt biases against others suddenly decided it was all right to say them out loud, Crandall said. That feeling extended to people on all sides of the political spectrum, including Democrats, who earlier felt it was wrong to express bias, but now believe it’s acceptable, his research shows. In his Jan. 20 speech at the UW, Breitbart editor Milo Yiannopoulos — who’s been banned on Twitter — mocked liberals, Democrats, feminists, gays and lesbians, to his audience’s delight. He concluded by saying that Americans are raising a generation of children who can’t handle words used against them, that cyberbullying is not the same as real bullying, and that people should ignore things they find offensive. “If someone is speaking on campus you don’t like, don’t attend the lecture,” he said. Students who had opposed Yiannopoulos’s appearance on campus argued that the talk should be canceled out of concern for student safety. On the night of the speech, protesters who tried to shut down the event clashed with people standing in line to hear Yiannopoulos, and one man was shot in the stomach. UW President Ana Mari Cauce defended Yiannopoulos’ right to speak, saying to do so meant upholding the public university’s commitment to the free exchange of ideas and expression. But she also condemned the violence. Late this week, a Facebook group calling itself “UW Wall Building Association” advertised a pro-Trump campus demonstration that is to take place Monday on Red Square. The UW College Republicans, who hosted Yiannopoulos, say the event is fake, placed online to bait students and the media. **But the Latinx Student Law Association, which believes UW students are behind the post, called on the university to intervene because the event constitutes harassment, which would violate the UW’s Student** Code of Conduct. “We want the administration to really address this seriously now, especially because of heightened sense of fear and anxiety” among all students, especially undocumented students, said Michelle Saucedo, a member of the Latinx Law Student Association, who helped draft a letter calling on the university to take action. “We’re not trying to limit anyone’s free speech,” Saucedo said. **“We’re calling on the university to stand by the Student Code of Conduct, and investigate” to find out who is behind the post**. The UW Wall group is violating the code, she said, by targeting a specific group based on race, national origin and citizenship. The post also calls for students to bring bricks, which could be used as weapons. The group has created a “hostile and offensive environment in which undocumented and Latinx UW students feel unsafe and unwelcome,” the letter reads. Saucedo said about 1,500 students, faculty, staff and community members have signed it. UW officials say they don’t know if the event is real or fake, but they plan to have security in place on Monday. In response to the rally, Denzil Suite, the UW’s vice president for student life, released a statement Friday saying that anyone who commits criminal acts will be arrested. **Some online threats in recent weeks have extended to individual students and faculty.** Alan-Michael Weatherford, a graduate student who teaches a queer-studies course, said he was harassed online after the Yiannopoulos event, including posts that have included slurs, threats and the release of his personal information. “Let me just say very clearly that having an entire internet presence solely dedicated to finding, contacting and harassing with the promise of potentially harming you is petrifying,” he wrote in a guest editorial to the UW Daily. In an interview, Weatherford said the university is “barely responding, if at all,” and has told him he needs to take care of it himself. He said he thinks other students have also been targeted with harassment. Chanda Hsu Prescod-Weinstein, a theoretical astrophysicist at the UW, said she, too, has been targeted by hate speech, including hate mail and threats, because of her race and religion. She is African American and Jewish. “I am a firm believer in free speech, but it goes both ways, and I’ve been disappointed that while Milo has been vocal about his views, there’s been relative silence from the administration,” she said. Crandall, the psychology professor, said it’s wrong to pretend that words can’t incite people to violence, even if free speech is protected by the Constitution. In arguing that speech is not the same as physical violence, Yiannopoulos is “making the argument that Hitler’s speeches had no effect, and I think that’s a foolish argument,” Crandall said. “What people say really does matter.” Crandall noted that during his election rallies, Trump told his audience to beat up protesters. And some protesters did get assaulted. He advised people who were upset about the increase in expression of prejudice to be open to what others have to say. “Be open to dissent, and be open to dissenting. And we all need to keep doing our jobs, as a reporter, a researcher, a university teacher, the cop on the beat working with the prosecutors to ensure equal justice, the politicians in town making good policy, the parents of students ensuring that the schools and the school board are open to helping all children.” Said Crandall: “There’s no shortage of activities — and activity is much better than sitting in a dark and quiet room with a computer, being enraged and feeling futile.”

#### In fact, campus racism is often *covert*, so speech codes can’t solve it.

**Boatright et al:** Boatright, Su L. [Professor of Psychology, University of Rhode Island], Nathaniel Crockett [Graduate Student Textiles, Fashion Merchandising, and Design, University of Rhode Island], and Yvette Harps-Logan [Associate Professor of Psychology and Textiles, Fashion Merchandising, and Design, University of Rhode Island]. “White Privilege Is Alive and Well on Many College Campuses.” *The Chronicle of Higher Education*, August 15, 2013. CH

Yet many white individuals believe that racism is a societal problem that is primarily restricted to the distant historical past. The majority of whites today view themselves as victims of reverse racism more often than they view blacks as victims of racism. **Overt and covert racism continue to be major problems in today’s society, particularly on predominantly white college campuses. In a 2010 study conducted by Annemarie Vaccaro, the social climate on a college campus in the northeast was described as hostile for women and persons of color.** At other institutions, researchers have reported that 65 percent of black students experience verbal racial harassment. **In fact, about 50 percent of white students admit to exhibiting open dislike toward others because of race, engaging in physical violence, name calling, and negative facial expressions. Derald Wing Sue and others have described “racial microaggressions,” or “the brief, commonplace, and daily verbal, behavioral, and environmental slights and indignities” directed at persons of color, which often occur automatically and unintentionally.** The negative effects that modern racism and racial microaggressions have on students of color on predominantly white campuses include academic and psychological problems, as well as risk of suicide. **A major corollary of white privilege is that it is invisible to white individuals. Therefore, when students of color attempt to describe their feelings of being uncomfortable or feeling alienated on predominantly white campuses, they are likely to be viewed as “complainers” or “paranoid.” If they mention racism, students of color incur the risk of being seen as individuals who are merely seeking illegitimate special favors. Attempts to discuss issues of privilege and covert racism with white individuals are often met with a wall of indifference, perhaps even hostility that is very difficult to penetrate.** Given the negative commentary that followed his comments on racism, the president of the United States appears to have encountered this divisive racial wall as well. It is the responsibility of college and university professors to prepare their students for successful careers in a culturally diverse and global society, but recent history suggests that we are failing in this obligation.

#### Both globally and domestically, speech codes worsen hate and *target minorities* – empirics prove.

**Strossen 1:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *Southern Illinois University Law Journal*, Vol. 25, 2001. RP

**Based on actual experience and observations in countries around the world, the respected international human rights organization, Human Rights Watch, concluded that** suppressing hate speech does not effectively promote equality or reduce discrimination. In 1992, Human Rights Watch issued a report and policy statement opposing any restrictions on hate speech that go beyond the narrow confines permitted by traditional First Amendment principles. Human Rights Watch's policy statement explains its position as follows: The Human Rights Watch policy attempts to apply free speech principles in the anti-discrimination context in a manner that is respectful of both concerns, believing that they are complementary, not contradictory. While we recognize that the policy is closer to the American legal approach than to that of any other nation, it was arrived at after a careful review of the experience of many other countries .... This review has made clear that there is little connection in practice between draconian "hate speech" laws and the lessening of ethnic and racial violence or tension. Furthermore, most of the nations which invoke "hate speech" laws have a long way to go in implementing the provisions of the Convention for the Elimination of Racial Discrimination calling for the elimination of racial discrimination. Laws that penalize speech or membership are also subject to abuse by the dominant racial or ethnic group. Some of the most stringent "hate speech" laws, for example, have long been in force in South Africa, where they have been used almost exclusively against the black majority.42 Similar conclusions were generated by an international conference in 1991 organized by the international free speech organization, Article 19, which is named after the free speech guarantee in the Universal Declaration of Human Rights. That conference brought together human rights activists, lawyers, and scholars, from fifteen different countries, to compare notes on the actual impact that anti-hate-speech laws had in promoting equality, and countering bias and discrimination, in their respective countries. The conference papers were subsequently published in a book, Striking A Balance: 43 Hate Speech, Free Speech, and Non-Discrimination. **The conclusion of all these papers was clear: not even any correlation,** let alone **any causal relationship, could be shown between the enforcement of anti-hate-speech laws by the governments in particular countries and an improvement in equality or inter-group relations in those countries. In fact, often there was an inverse relationship**. These findings were summarized in the book's concluding chapter by Sandra Coliver, who was then Article 19's Legal Director: **Laws which restrict hate speech have been flagrantly abused by the authorities. Thus, the laws in Sri Lanka and South Africa have been used almost exclusively** against **the oppressed and politically weakest communities. In Eastern Europe and the former Soviet Union these laws were vehicles for the persecution of critics who were often also victims of state-tolerated or sponsored anti-Semitism.** Selective or lax enforcement by the authorities, including in the United Kingdom, Israel and the former Soviet Union, allows governments to compromise the right of dissent and inevitably leads to feelings of alienation among minority groups. Such laws may also distract from the need for effective legislation to promotenon-discrimination. The rise of racism and xenophobia throughout Europe, despite laws restricting racist speech, calls into question the effectiveness of such laws in the promotion of tolerance and non- discrimination. One worrying phenomenon isthe sanitized language now adopted to avoid prosecution by prominent racists inBritain, France, Israel and other countries, which may have the effect of making their hateful messages more acceptable to a broader audience." **She adds:**  **The British experience parallels what has happened in the United States, as evidenced by the campus hate speech codes for which enforcement information is available.7 One such code was in effect at the University of Michigan from April 1988 until October 1989**. Because the ACLU brought a lawsuit to challenge the code (which resulted in a ruling that the code was unconstitutional),"2 the university was forced to disclose information that otherwise would have been unavailable to the public about how it had been enforced. This enforcement record, while not surprising to anyone familiar with the consistent history of censorship measures, should come as a rude awakening to any who believes that anti-hate-speech laws will protect or benefit racial minorities, women, or any other group that traditionally has suffered discrimination. **Even during the short time that the University of Michigan rule was in effect, there were more than twenty cases of whites charging blacks with racist** speech. More importantly, there were only two instances in which the rule punished speech on the ground that it was racist-rather than conveying some other type of bias-and both involved the punishment of speech by or on behalf of black students. **Let me underscore that:** 100% **of the speech punished as racist was by or on behalf of African-Americans.** Moreover, the only student who was subjected to a full-fledged disciplinary hearing under the Michigan rule was an African-American student accused of homophobic and sexist expression. In seeking clemency from the punishment that was imposed on him after this hearing, the student asserted that he had been singled out because of his race and his political views.73 **Others who were punished at the University of Michigan included several Jewish students accused of engaging in anti-Semitic expression (they wrote graffiti, including a swastika, on a classroom blackboard, saying they intended it as a practical joke)** and an Asian-American student accused of making an anti-black comment (his allegedly "hateful" remark was to ask why black people feel discriminated against; he said he raised this question because the black students in his dormitory tended to socialize together, making him feel isolated). Likewise, the student who in 1989 challenged the University of Connecticut's hate speech policy, under which she had been penalized for an allegedly homophobic remark, was Asian-American. She claimed that other students had engaged in similar expression, but that she had been singled out for punishment because of her ethnic background. Representing this student, the ACLU persuaded the university to drop the challenged policy.7" **Following the same pattern, [T]he first complaint filed under Trinity College's then-new policy prohibiting racial harassment, in 1989, was against an African-American speaker[.] who had been sponsored by a black student organization**, Black-Power Serves itself. **Again, I stress that [T]hese examples are not just aberrational. Rather, they flow from the very premises of those who advocate hate speech** codes. As they rightly note, discrimination and prejudice is, unfortunately, endemic **in** United States society-including on campus and in our legal system. Indeed, exhaustive studies of state and federal courts throughout our country consistently show entrenched patterns of racial and gender bias**." So, for those of us who are committed to eradicating discrimination,** the last thing **we should want to do is to hand over to discriminatory officials and institutions power to enforce necessarily vague hate speech codes that inevitably call for subjective, discretionary decisions. This discretionary power predictably will be used in a way that is hardly helpful to disempowered groups.**

#### Indeed, *the type of speech being censored doesn’t matter*. The question isn’t whether all speech is good, but whether colleges have the right to define which speech stays and which goes.

Glasser: Glasser, Ira. [Former Executive Director, American Civil Liberties Union] Quoted in Jonathan Haidt’s “Hate Speech is Free Speech.” Spiked-online.com, June 12, 2016. RP

**How is ‘hate speech’ defined, and who decides which speech comes within the definition?** Mostly, it’s not us. **In the 1990s in America, black students favoured ‘hate speech’ bans because they thought it would ban racists from speaking on campuses. But the deciders were white. If the codes the black students wanted had been in force in the 1960s, their most frequent victim would have been Malcolm X.** In England, **Jewish students supported a ban on racist speech. Later, Zionist speakers were banned on the grounds that Zionism is a form of racism.** Speech bans are like poison gas: **seems like a good idea when you have your target in sight — but the wind shifts, and blows it back on us.**

#### And *all* speech codes are arbitrary and reify state power, even if a particular type of speech is bad – exceptions are modeled and undermine free speech.

**White:** White, Ken. [Criminal Defense Lawyer, Brown, White, & Newhouse] “Lawsplainer: Why Flag Burning Matters, And How it Relates To Crush Videos.” Popehat,November 2016. RP

**In free speech analysis,** how you get to a conclusion **often has much more long-lasting impact than the conclusion itself. Our legal system runs on precedent. The significance of the precedent isn't "the Supreme Court said that flag burning is protected by the First Amendment**." The significance of the precedent is "someone wants to punish this speech and we have to figure out whether or not it's protected by the First Amendment. Let's look at the logic and methods the Supreme Court used to resolve that question when flag burning was the issue, and then apply it here." But the Supreme Court has decided lots of cases about the First Amendment. This is just one precedent, one example of a method of reaching a conclusion. What makes it particularly important? **The Supreme Court's flag burning cases are crucial — not because of how they analyze existing exceptions to the First Amendment, but because they address whether the government can create endless exceptions to the First Amendment. Just like crush videos.** You know, videos of women stomping on small helpless animals. That's . . . that's a thing? Of course it's a thing. Ugh. What does that have to do with flag burning? Or the First Amendment? Congress — having salved all of the nation's ills — passed a law banning crush videos. Because who wouldn't vote for someone who stands against hurting baby animals? The law made it a federal crime to create or sell depictions of animal cruelty in interstate commerce. In 2010, in United States v. Stevens,, the Supreme Court found that the statute violated the First Amendment. That sounds pretty straightforward. Why is it significant? It's significant because of the way the government defended the statute. The government's lead argument wasn't that crush videos were outside of First Amendment protection because they fell into an already-recognized exception, like defamation or obscenity or incitement. They argued that the Supreme Court should recognize a new categorical exception to First Amendment protection for animal cruelty, because animal cruelty is so awful. They also argued that courts can recognize new exceptions to the First Amendment by weighing the "value" of the targeted speech against the harm it threatens. The Supreme Court — in an 8 to 1 decision — firmly rejected those two arguments. **First, the Court said, the historically recognized exceptions to First Amendment protection are well-established, and you can't just go around adding new ones: From 1791 to the present,” however, the First Amendment has “permitted restrictions upon the content of speech in a few limited areas,” and has never “include[d] a freedom to disregard these traditional limitations.”** Id., at 382– 383. These “historic and traditional categories long familiar to the bar,” Simon & Schuster, Inc. v. Members of N. Y. State Crime Victims Bd. , 502 U. S. 105, 127 (1991) ( Kennedy, J. , concurring in judgment)—including obscenity, Roth v. United States , 354 U. S. 476, 483 (1957) , defamation, Beauharnais v. Illinois , 343 U. S. 250, 254–255 (1952) , fraud, Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc. , 425 U. S. 748, 771 (1976) , incitement, Brandenburg v. Ohio , 395 U. S. 444, 447–449 (1969) ( per curiam ), and speech integral to criminal conduct, Giboney v. Empire Storage & Ice Co. , 336 U. S. 490, 498 (1949) —are “well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem.” Chaplinsky v. New Hampshire , 315 U. S. 568, 571– 572 (1942) . Second, the Court said, **[T]he government's proposed methodology — that the Court should identify new categorical exceptions by balancing, on a case-by-case basis, the value of speech against its harm — is antithetical to First Amendment analysis and dangerous[.]**: “ The Government thus proposes that a claim of categorical exclusion should be considered under a simple balancing test: “Whether a given category of speech enjoys First Amendment protection depends upon a categorical balancing of the value of the speech against its societal costs.” Brief for United States 8; see also id., at 12. As a free-floating test for First Amendment coverage, that sentence is startling and dangerous. The First Amendment ’s guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits. The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it. The Constitution is not a document “prescribing limits, and declaring that those limits may be passed at pleasure.” Marbury v. Madison , 1 Cranch 137, 178 (1803). So: in 2010, the Supreme Court overwhelmingly and clearly rejected the idea that legislatures and courts can create new exceptions to the First Amendment based on how strongly they hate speech or how awful it is**. He adds:** The flag-burning cases are important, like the crush videos case was important, because they draw a crucial line between having a few strictly limited exceptions to the First Amendment, on the one hand, and having as many exceptions as we feel like having, on the other hand. Flag burning isn't speech that's uniquely valuable or important to protect. **What's important is that we protect the** principled **method by which we determine which speech is protected and which isn't. The argument that flag burning should be outside the First Amendment can be applied with equal force to just about anything — "hate speech," "cyber-bullying," "revenge porn," "pro-ISIS speech," or whatever the flavor of the month is. If think the majority was wrong in the flag burning cases, here's what you're saying: "the Supreme Court makes bad judgments, and I want to give that Supreme Court the power to decide, on a case-by-case basis, whether the harm of speech outweighs its value**. I don't want the courts to be limited to established, well-defined categories outside of First Amendment protection." But **that's ridiculous. You're damn right it is.**

### Advocacy

#### Public colleges and universities in the United States ought not restrict any constitutionally protected speech. *This makes them agents of inaction – they aren’t allowed to restrict speech.*

**Kurtz:** Kurtz, Stanley. [Contributor, *National Review*] “A Plan to Restore Free Speech on Campus.” *The Corner*,December 2015. RP

First: **Colleges and universities ought to adopt a policy on freedom of expression modeled on Yale’s Woodward Report of 1974, which identifies ensuring intellectual freedom in the pursuit of knowledge as the primary obligation of a university.** While the Woodward Report forthrightly acknowledges the importance of solidarity, harmony, civility, and mutual respect to campus life, it unmistakably marks these values as subordinate in priority to freedom of expression. **In accordance with this, the Woodward Report rejects the proposition that members of an academic community are entitled to suppress speech they regard as offensive. Of course, within a university, the need for intellectual freedom is in the service of the pursuit of knowledge**. Freedom of expression is a critical consideration, yet does not in itself fully resolve issues like the structure of the college curriculum. That said, the Woodward Report can and should serve as a model for statements on free expression at our colleges and universities. **Once adopted, new statements on freedom of expression would supersede and replace any pre-existing speech codes.**

### Part 3: Let the Words Fall Out

#### Deregulating campus speech sets legal precedents that enable movements and protests, even if it protects bigots – Civil Rights prove.

**ACLU:** The American Civil Liberties Union. “Hate Speech on Campus,” American Civil Liberties Union, 2016. BE

A: Free speech rights are indivisible. **Restricting the speech of one group or individual jeopardizes everyone's rights because the same laws or regulations used to silence bigots can be used to silence you.** Conversely, l**aws that defend free speech for bigots can be used to defend the rights of civil rights workers, anti-war** protesters**, lesbian and gay activists and others fighting for justice.** For example, **in** the 1949 case of **Terminiello v. Chicago, the ACLU successfully defended an ex-Catholic priest who had delivered a racist and anti-semitic speech. The precedent set in that case became the basis for the ACLU's** successful defense of civil rights demonstrators **in the 1960s and '70s.** The indivisibility principle was also illustrated in the case of Neo-Nazis whose right to march in Skokie, Illinois in 1979 was successfully defended by the ACLU. At the time, then ACLU Executive Director Aryeh Neier, whose relatives died in Hitler's concentration camps during World War II, commented: "Keeping a few Nazis off the streets of Skokie will serve Jews poorly if it means that the freedoms to speak, publish or assemble any place in the United States are thereby weakened." Q: I have the impression that the ACLU spends more time and money defending the rights of bigots than supporting the victims of bigotry!!?? A: Not so. Only a handful of the several thousand cases litigated by the national ACLU and its affiliates every year involves offensive speech. Most of the litigation, advocacy and public education work we do preserves or advances the constitutional rights of ordinary people. But it's important to understand that the fraction of our work that does involve people who've engaged in bigoted and hurtful speech is very important: **Defending First Amendment rights for the enemies of civil liberties and civil rights means defending it for you and me.** Q: Aren't some kinds of communication not protected under the First Amendment, like "fighting words?" A: The U.S. Supreme Court did rule in 1942, in a case called Chaplinsky v. New Hampshire, that **intimidating speech directed at a specific individual in a face-to-face confrontation amounts to "fighting words," and that the person engaging in such speech can be punished if "by their very utterance [the words] inflict injury or tend to incite an immediate breach of the peace."**

#### Further, the question isn’t whether all speech is good, but who should regulate it: administrators, or students themselves – empirics show community counter-speech solves.

**Majeed:** Majeed, Azhar. [J.D., University of Michigan] “Defying the Constitution: The Rise, Persistence, and Prevalence Of Campus Speech Codes.” *Georgetown Journal of Law & Public Policy*, 7 Geo. J.L. & Pub. Pol’y 481, 2009. CH

**Moreover, the counterspeech approach can have** significant benefits **for minority students. One commentator writes that “only by pointing out the weaknesses and the moral wrongness of an oppressor’s speech can an oppressed group realize the strength of advocating a morally just outcome.” [250] As is the case whenever one participates in campus dialogue and debate, minority students can expect to bolster their arguments and sharpen their views; “Through the active, engaging, and often relentless debate on issues of social and political concern,” they “learn the strengths of their own arguments and the weaknesses of their opponents’. With this knowledge, these groups are better able to strike at the heart of a bigoted argument with all of the fervor and force necessary to combat hateful ideas.”** Therefore, the experience and knowledge gained through the process of debate and discussion will serve minority students well in the long run. **Minority students also benefit in that engaging in counterspeech, rather than appealing to the authorities for protection, may provide a strong sense of self-autonomy and empowerment. The efforts of minority students will often be met by a** receptive **campus audience, one which is curious to hear how they respond to hateful and prejudicial messages, affording these students the opportunity to meaningfully impact the way many individuals on campus think about important issues. Counterspeech “can serve to define and underscore the community of** support **enjoyed by the targets of the hateful speech, faith in which may have been shaken by the hateful speech.”** Consequently, when minority students respond to hateful speech with counterspeech, successfully engage the campus community, and inform their fellow students’ views, they gain “a sense of self-reliance and constructive activism” as well as “a sense of community support and empowerment.”[254] Nadine Strossen asserts that, for this reason, counterspeech “promotes individual autonomy and dignity.”[255] These are significant benefits that other methods of responding to hateful speech do not offer, and it is difficult to place a value or measure on the positive impact this can have on students’ lives. **He adds**: Charles Calleros provides two illustrative examples of such an opportunity. **The first arose at Arizona State University, where one of a group of female African-American students who found a racist poster in a dormitory convinced one of the students who had put up the poster to voluntarily take it down, then sent a copy of the poster to the campus newspaper along with a letter discussing its racist stereotypes.** Calleros, supra note 216, at 1259. She also requested action from the director of the residence hall, which resulted in a residents’ group meeting to discuss the issues involved. Id. Ultimately, **“the result was a series of opinion letters in the campus newspaper** discussing **the problem of racism, numerous workshops on race relations and free speech, and overwhelming approval in the Faculty Senate of a measure to add a course on American cultural diversity to the undergraduate breadth requirement.” Id. The second episode took place at Stanford University. There, students, faculty, and administrators at the law school responded to a student’s homophobic speech by sending opinion letters to the campus newspaper, writing comments on a poster board at the law school, and signing a published petition disassociating the law school from the speaker’s message.** Id. at 1261. Several students even wrote a letter reporting the incident to a prospective employer of the speaker. Id. **These two experiences, by their very facts and the results achieved, speak volumes about the effectiveness of counterspeech when used to respond to hateful messages.**

#### Affirming promotes radical protests that *don’t rely on traditional speech*.

**Johnston:** Johnston, Angus. [Writer, *Rolling Stone*] “There's No College P.C. Crisis: In Defense of Student Protesters.” *Rolling Stone*,December 2015. RP

The demographics of American higher education have been transformed dramatically since the 1960s, and the concerns of protesters have changed as a result. **No previous generation of American student protesters foregrounded the concerns of women, students of color and LGBT students like this one has, or was so visibly led by people who weren't middle-class-or-better straight white men.** And much of the jargon of the current movement — [trigger warnings](https://www.insidehighered.com/views/2014/05/29/essay-why-professor-adding-trigger-warning-his-syllabus), microaggressions, safe spaces — can be off-putting, particularly to non-initiates.  But these explanations only go so far, particularly since so many of the movement's critics are self-proclaimed free-speech advocates. Even if they think the students' ideas are bad or weird, the right to put them forward is surely worth defending. **But that premise — that campus activists have free-speech rights that are worthy of robust and aggressive defense — has been largely absent from mainstream writing about contemporary campus culture.** Many high-profile commentators, in fact, have taken the opposite tack, claiming that the students' ideas are so bad and so weird as to represent a threat to free speech itself. A bizarre, but not unrepresentative, example: Early this year, a student theater group at Mount Holyoke College announced that they would no longer be staging their annual production of The Vagina Monologues, explaining that the play's "perspective on what it means to be a woman" is too "narrow" and "reductionist" for their taste. When word of this decision broke in the media, the troupe was widely accused of censorship. By canceling the play, Lizzie Crocker [wrote in The Daily Beast](http://www.thedailybeast.com/articles/2015/01/16/holyoke-is-too-pc-for-vagina-monologues.html), "you're excluding me from watching something I want to see." Feminist writer Meghan Murphy asserted that the group was "[silencing women](http://www.feministcurrent.com/2015/01/16/all-womens-college-mount-holyoke-deems-vaginas-exclusionary/)." New York magazine's Jonathan Chait, a leading critic of today's student activists, highlighted the Mount Holyoke case in [a widely read essay](http://nymag.com/daily/intelligencer/2015/01/not-a-very-pc-thing-to-say.html) that condemned political correctness as an "attempt to regulate political discourse by defining opposing views as bigoted and illegitimate." But who exactly was being censored here? Who was being silenced? What was being regulated? The troupe hadn't been forbidden to stage the play. They'd just decided not to. Surely the same freedom of speech that had given them the right to perform it gave them the right to stop. And even if other students had encouraged them in their decision — if, say, activists had gone to the troupe and explained their objections to the play and asked them not to put it on again, and the performers had mulled the request and decided to honor it — that wouldn't have been censorship either. It would have been dialogue, discussion — exactly the encounter of minds and ideas that the university is supposed to nurture.  Some will argue that I'm painting too rosy a picture of typical campus "discussions" around issues of identity and ideology in the year 2015. It's not rational discourse that such activists use to change people's behavior, [argues Conor Friedersdorf of The Atlantic](http://www.theatlantic.com/politics/archive/2015/11/race-and-the-anti-free-speech-diversion/415254/), a persistent critic of the movement, but "stigma, call-outs, and norm-shaping." But even granting that premise, since when is upholding norms something to condemn? When has publicly shaming people who do publicly bad things ever not been a legitimate part of political debate? Friedersdorf is shaming activists, not reasoning with them, when he describes them as overwrought children. I'm shaming Friedersdorf, not reasoning with him, when I point that fact out. And that's OK. There's nothing wrong with a little public shaming. In fact, sometimes a little public shaming is exactly what circumstances call for. **Last May,** [**news leaked**](http://www.nbcsandiego.com/investigations/SDSU-Professor-Still-Teaching-After-Sexually-Harassing-Student--301129881.html) **at San Diego State University that Vincent Martin, a tenured professor, had been found by campus investigators to have sexually harassed one of his undergraduate students. He'd neither been terminated nor publicly reprimanded — the whole thing had been swept under the rug. When students found out, they protested. They planned a picket outside of one of Martin's classrooms, and when he canceled that day's classes they plastered his office door and the surrounding walls with their signs and posters. The protesters' goal wasn't to engage Martin in discussion. They had no reason to believe that a rational consideration of the harms of sexual harassment would dissuade Martin from re-offending**, or, for that matter, convince the university to get him out of the classroom before he victimized someone else. (It has since emerged that Martin sexually harassed multiple students at two different universities.) **No, what the protesters were engaged in was exactly what Friedersdorf criticizes: "stigma, call-outs, and norm-shaping." And they were right. That was what the situation required, and it worked — Vincent Martin is no longer employed at SDSU, and he will have a very difficult time finding another teaching job. Sometimes, as Frederick Douglass once wrote, "**it is not light that is needed, but fire**; it is not the gentle shower, but thunder**." Some occasions call for rational debate, he said, but others demand nothing less than "a fiery stream of biting ridicule, blasting reproach, withering sarcasm, and stern rebuke."

#### And protests are a means of grassroots reform that can spillover to broader social change.

**Barnhardt:** Barnhardt, Cassie. [Assistant Professor, College of Education, University of Iowa] “Embracing Student Activism.” *Higher Education Today*,March 2, 2016. MZ

This past November, the country witnessed a watershed for American student activism at the University of Missouri, now known across the country by its familiar name, Mizzou. In response to a series of racial incidents on campus, protests coordinated by the student activist group ConcernedStudent1950, including a powerful boycott from the university’s Black football players, ended in the resignation of both the president and the chancellor. **While multiple matters drove the Mizzou students’ calls for change, concerns regarding the racial climate were certainly at the top of their list, motivating them to mobilize.** The racial turbulence and injustice surrounding the events in Ferguson, MO the previous year also had left an imprint on the Mizzou student community, a campus comprised of upwards of 60 percent Missouri residents. **Links between the broader social context of what is happening off campus and students’ on-campus activism have long been a means for students to personalize,** contextualize **and make sense of what it means to pursue social change. The events at Mizzou helped galvanize nascent efforts at other universities and brought urgency to an ongoing national conversation about improving postsecondary access and success for underrepresented students, dismantling racial oppression and undoing routines of inequity.** Campus leaders and the public may perceive the high-profile activism at Mizzou, University of Michigan, UCLA, or the lesser-known petitions and protests on campuses as a signal that U.S. universities have become unduly entrenched by identity politics or oversensitivity, or that these patterns of protest present obstacles to the tasks of student learning and employability. However, campuses derive their legitimacy in part on their commitment to developing excellence, integrity and a sense of community among their students. Student activism provides a space for institutions to be thoughtful about enacting those very commitments. **The campus-based movements of the 1960s are often the** reference point **for the connection between student activism and social change.** However, a pre-1960s perspective shows that each period of structural and cultural transition from the nation’s founding to today has a corresponding story of campus protest and dissent (see “Student Activism and Social Change on Campus Before the 1960s**”). From the earliest historical accounts, campus-based activism has reflected grievances based in the political dynamics of the nation. In the process of student protest, those broad social grievances were projected and** transferred **into more precise, localized calls for transformation** on campus. This pattern continued with the campus-based movements of the 1960s. In particular, the activism surrounding area **and** ethnic studies curricular offerings (depicted in books by Robert Rhoads, Fabio Rojas, and Mikaila Mariel Lemonik Arthur) were uniquely tied to **larger social movements** aimed at marginalized social identity groups, and represented a discrete effort to achieve structural changes in the academy (i.e., adopting new programs and majors). **Recent campus unrest, then, may be a signal that universities remain deeply connected to social change, even at a time when society is renegotiating predominant understandings of social status, with race and ethnicity in the foreground.** Perhaps as a result of the turbulence that characterized the anti-war and racial justice campus movements of the 1960s, there is a logic in higher education practice that characterizes student activism merely as a short-lived product of students’ identities, rather than emphasizing the role of the academy as a site of activism and social change. But as a society that values higher education, we must not lose sight that student activism is an opportunity to scrutinize the campus contexts, conditions and social realities that speak to students’ underlying claims or grievances.

#### Beyond that, free speech means students reclaim public spaces from racist institutions and create *a cultural change*.

**Block:** Block, Jim. [Professor of Political Theory and Political Culture, DePaul University] “The Legacy and Promise of the Free Speech Movement.” *Popular Resistance,* October 2014. RP

**This past weekend was the 50th reunion of the Free Speech Movement at the University of California at Berkeley. At the beginning of the fall term of 1964, the university administration imposed a series of strict regulations limiting the right of students to engage in political soliciting on campus. Berkeley students had for several years been active in opposing the House Un-American Activities Committee, pro-labor, and anti-racism protests and demonstrations throughout the Bay area**. This picture of the university as a hotbed of political activism was undermining the carefully honed image being disseminated by the state of California as the leader in public higher education: in the conservative post-war period, Berkeley was being touted as not only a world class research university but at the forefront of preparing a modern elite meritocratic student body primed for corporate and governmental leadership. What the university administration failed to consider was the fact that many activist Berkeley students had embraced new levels of commitment to political organizing by participating in Freedom Summer, an initiative by radical civil rights organizations in the South to mobilize black Americans to challenge segregation and demand voting rights. **After resolutely confronting white segregationists and racist – often violent – local public officials as full-fledged democratic activists, a university administration seeking to curtail their political expression and ignoring their insistence on the urgency of social change struck these battle-tested students as demeaning and even infantilizing. Even more decisively, these acts implicated the new model university as the** central **institution in integrating younger generations into the corporate, hierarchical, expansionist values increasingly driving American society**. It suddenly became clear that the degree was being marketed not for any educational value but as a ticket punched to the higher levels of this post-war order and to material success, social status, and a suburban lifestyle widely being identified as the American dream. Once the university intervened, in other words, the political dynamic shifted. **What had begun as an effort to support other movements for social equity and integration quickly shifted before everyone’s eyes to a** demand **for the liberation of students and youth and the democratization of the institutions shaping their lives** as a prelude to broader social transformation**. This is the Free Speech Movement (FSM) whose message spread throughout the U.S. and beyond, catalyzing and exposing generational tensions and revealing the compliance-oriented program of American socialization**. I came to Berkeley as a neophyte, a completely apolitical and uninformed undergraduate, just days before the campus controversies began. And because the events of the next couple of years became the defining experience of my life about which I have written and taught ever since (trying to make sense of it), this reunion gave me an unparalleled opportunity to reflect on and rethink that experience in conversation with this unique community of participants in this defining moment. The weekend of intensive group discussions, panels, and informal interchange helped me to expand on and fine-tune my (always provisional) conclusions. At the time, the heavily politicized students with developed analyses of American political shortcomings, systemic racism, labor inequities, and foreign adventurism appeared to have come from another planet. They were impassioned and determined which contrasted strikingly with my confusion about the issues, uncertainty about what to do, and doubt that big picture issues even mattered. As I worked tirelessly over the next years to overcome the most glaring deficiencies in my political and cultural education and to formulate a beginning social activist agenda and vision of cultural change, I sensed that this journey I took with many other undergraduates led me to a different place than the FSM activists. All these years later, I was able through the reunion weekend to gain new clarity about these differences. Long ago, I had divided the alternative Berkeley students (others of course cared more about the Greek system and football, but they went to Cal and not Berkeley) into three, though somewhat overlapping, groups: the committed politicos, the more theoretically minded intellectuals, and the lifestyle experimenters widely called hippies. I found myself drawn to the intellectuals, and while participating in protest activities (and some lifestyle experimentation) I never got intensively involved enough with political organizing to fully discern their orientation. This weekend, attended overwhelmingly by politicos, was enlightening. The most committed FSM participants were graduate students. Born before or during World War II and coming of age in the late Fifties, their political ideals had been formed not in the just emerging upheavals of the counterculture but in the quiescent era before. Their inspiration, evident in the group sing-a-long late Saturday night of protest folk songs of the Weavers and others and anthems from progressive summer camp and peace school experiences, was anti-McCarthyite and social justice mobilizing extending back to the radical populism of the pre-war social movements. The expectation was that political organizing was a long, hard, rarely successful march against dominant and intransigent institutions, and few of them were prepared for the collapse of the Berkeley administration’s policies and legitimacy in the face of student demands. These participants, true to their early self-definitions, have since then sustained lives of activism in diverse progressive causes, and these made for great and inspiring stories. At the same time, they have returned to the view that progressives rarely win big, though one can retain the joy of principled fighting against the beast on fronts everywhere and in savoring victories when they occur. One can also take heart from movement solidarity for refusing to buckle as others, perhaps even their own families of origin and so many today, often do. And yet, connected with one of the two other groups that only arose with the emerging counterculture after the terrain of controversy shifted to youth politics and the quality of middle class life being portrayed as the universal dream, I could see where the FSM diverged from what came later. The politicos took as their immediate precursors the civil rights and to a lesser degree labor organizing movements, the causes prominent among left activists as they came of age. Occasionally the rhetoric, as with the now deceased FSM leader Mario Savio, identified the particular repressions in the university, yet the tendency was to include students as one dispossessed group demanding a voice with the others. **What I gathered from numerous conversations and group discussions is that they did not really appreciate – or perhaps regard as significant – how the counterculture radically altered the political-cultural landscape**. One reason that the Sixties in its full counterculture profusion broke out first (and more extensively) in Berkeley and the Bay area is that this region of northern California had served for decades as a place of immigration for refugees from mainstream culture, beats and bohemians and idealists and iconoclasts of all kinds. **It had been evolving a new lifestyle and value orientation, affirming more self-actualizing, self-expressive, anti-bureaucratic, libidinally open, artistic and less workaholic and role dependent lives than the places those arriving had come from**. Once the attack on university rigidities and in loco parentis regulations was successful, the way was cleared for students to begin asking questions about and in turn simply reject the repressively conformist American lifestyle.

### Part 4 is the Underview

## FWs

### Phil Preempts

Omitted

### Util Preempts

Omitted

## UVs

### Empirics Underview

#### DAs have no uniqueness: hate speech is GETTING WORSE in the squo, despite the existence of speech codes.

**Long ’17:** Long, Katherine. [Journalist, *Seattle Times*] “UW on Edge Over Perception of Rise in Hate Speech.” *The Seattle Times*,January 27, 2017. RP

**More than a week after a Breitbart News editor’s speech was punctuated by violence on the University of Washington’s Red Square, students and faculty say the campus is on edge because of the perception that hate speech is on the ri**se. Some students and faculty who say they’ve been targeted by online harassment and threats are calling for a more forceful response from the university. The university also is keeping an eye on a possible pro-Donald Trump demonstration on campus Monday. UW spokesman Norm Arkans acknowledged that Trump’s election seems to have resulted in a wave of hate speech, and the university is trying to find ways to support people who are being harassed. “We want them to feel as though we’ve got their backs,” he said. “I think we need to figure out more ways to do that.” **Why does one of the country’s most liberal campuses appear to be suddenly experiencing a rash of prejudice? The switch in people’s willingness to openly express bias and prejudice is real** nationwide, **and it’s wrapped up in the concept of social norms, which changed after Donald Trump was elected[.] to the highest office, an expert on prejudice says. “Literally overnight” after Trump won the election Nov. 8 it became acceptable to disparage Muslims, Mexican immigrants, women and other minority groups**, said Chris Crandall, a University of Kansas psychology professor who grew up in Seattle and received his undergraduate degree at the University of Washington. Crandall said his research shows that President Trump’s election didn’t create new biases. But his win has unleased the expression of those prejudices. People who felt biases against others suddenly decided it was all right to say them out loud, Crandall said. That feeling extended to people on all sides of the political spectrum, including Democrats, who earlier felt it was wrong to express bias, but now believe it’s acceptable, his research shows. In his Jan. 20 speech at the UW, Breitbart editor Milo Yiannopoulos — who’s been banned on Twitter — mocked liberals, Democrats, feminists, gays and lesbians, to his audience’s delight. He concluded by saying that Americans are raising a generation of children who can’t handle words used against them, that cyberbullying is not the same as real bullying, and that people should ignore things they find offensive. “If someone is speaking on campus you don’t like, don’t attend the lecture,” he said. Students who had opposed Yiannopoulos’s appearance on campus argued that the talk should be canceled out of concern for student safety. On the night of the speech, protesters who tried to shut down the event clashed with people standing in line to hear Yiannopoulos, and one man was shot in the stomach. UW President Ana Mari Cauce defended Yiannopoulos’ right to speak, saying to do so meant upholding the public university’s commitment to the free exchange of ideas and expression. But she also condemned the violence. Late this week, a Facebook group calling itself “UW Wall Building Association” advertised a pro-Trump campus demonstration that is to take place Monday on Red Square. The UW College Republicans, who hosted Yiannopoulos, say the event is fake, placed online to bait students and the media. **But the Latinx Student Law Association, which believes UW students are behind the post, called on the university to intervene because the event constitutes harassment, which would violate the UW’s Student** Code of Conduct. “We want the administration to really address this seriously now, especially because of heightened sense of fear and anxiety” among all students, especially undocumented students, said Michelle Saucedo, a member of the Latinx Law Student Association, who helped draft a letter calling on the university to take action. “We’re not trying to limit anyone’s free speech,” Saucedo said. “**We’re calling on the university to stand by the Student Code of Conduct, and investigate” to find out who is behind the post.** The UW Wall group is violating the code, she said, by targeting a specific group based on race, national origin and citizenship. The post also calls for students to bring bricks, which could be used as weapons. The group has created a “hostile and offensive environment in which undocumented and Latinx UW students feel unsafe and unwelcome,” the letter reads. Saucedo said about 1,500 students, faculty, staff and community members have signed it. UW officials say they don’t know if the event is real or fake, but they plan to have security in place on Monday. In response to the rally, Denzil Suite, the UW’s vice president for student life, released a statement Friday saying that anyone who commits criminal acts will be arrested. S**ome online threats in recent weeks have extended to individual students and faculty.** Alan-Michael Weatherford, a graduate student who teaches a queer-studies course, said he was harassed online after the Yiannopoulos event, including posts that have included slurs, threats and the release of his personal information. “Let me just say very clearly that having an entire internet presence solely dedicated to finding, contacting and harassing with the promise of potentially harming you is petrifying,” he wrote in a guest editorial to the UW Daily. In an interview, Weatherford said the university is “barely responding, if at all,” and has told him he needs to take care of it himself. He said he thinks other students have also been targeted with harassment. Chanda Hsu Prescod-Weinstein, a theoretical astrophysicist at the UW, said she, too, has been targeted by hate speech, including hate mail and threats, because of her race and religion. She is African American and Jewish. “I am a firm believer in free speech, but it goes both ways, and I’ve been disappointed that while Milo has been vocal about his views, there’s been relative silence from the administration,” she said. Crandall, the psychology professor, said it’s wrong to pretend that words can’t incite people to violence, even if free speech is protected by the Constitution. In arguing that speech is not the same as physical violence, Yiannopoulos is “making the argument that Hitler’s speeches had no effect, and I think that’s a foolish argument,” Crandall said. “What people say really does matter.” Crandall noted that during his election rallies, Trump told his audience to beat up protesters. And some protesters did get assaulted. He advised people who were upset about the increase in expression of prejudice to be open to what others have to say. “Be open to dissent, and be open to dissenting. And we all need to keep doing our jobs, as a reporter, a researcher, a university teacher, the cop on the beat working with the prosecutors to ensure equal justice, the politicians in town making good policy, the parents of students ensuring that the schools and the school board are open to helping all children.” Said Crandall: “There’s no shortage of activities — and activity is much better than sitting in a dark and quiet room with a computer, being enraged and feeling futile.”

#### Narrow campus codes against Constitutionally unprotected speech solve for hate speech.

**Johnson**: Johnson, Catherine B. [J.D. Candidate, Fordham University School of Law, 2001] “Stopping Hate Without Stifling Speech: Re-examining the Merits of Hate Speech Codes on University Campuses.” *Fordham Urban Law Journal*, Vol. 27, Issue 6, 1999. CH

**In drafting such a code, the goal would be to prohibit severe, intentional, face-to-face verbal assaults that would disrupt a reasonable person's ability to function effectively in the campus setting. 300 This aspect of the code would be race-neutral and drafted** in accordance with **the recognized First Amendment exception of workplace harassment.** 301 **Challenges regarding content-based restrictions on speech as well as viewpoint discrimination hurdles should therefore be avoided because a race-neutral code does not single out certain speech about certain groups. The speaker must intend to cause harm, and the interference with the victim's educational rights must be objectively identifiable to a reasonable person.3** °2 In further narrowing this provision, a university should employ sanctions that are the "least restrictive means available to discourage prejudiced harassment. ' 30 3 In addition, the incident should be "highly likely to produce serious psychological harm and a hostile or intimidating educational environment. '30 4 **Students should be informed as to exactly what could constitute a violation of the code so as to avoid vagueness challenges, and in suspect cases, “a presumption in favor of free speech should prevail.”** **She adds:** A ban on viewpoint discrimination, however, is not as absolute as critics contend. In fact, laws in the past have been upheld though they discriminate on the basis of viewpoint.225 For example, in the areas of commercial speech, the government forbids advertising in favor of cigarette smoking even though it does not forbid advertising against cigarette smoking.226 The same is true regarding alcohol advertising.227 Also, in the area of securities law and the regulating of proxy statements, favorable comments about a company may be banned while unfavorable ones are allowed or even encouraged.228 **A regulation on hate speech could conceivably overcome the presumption of invalidity based on viewpoint if "(a) there is at most a small risk of illegitimate motivation, (b) low value or unprotected speech is at issue, (c) the skewing effect on the system of free expression is minimal, and (d) the government is able to make a powerful showing of harm. 229 In drafting a campus code, a university could arguably prove that hate speech is of low value and that its harm is great.** Although a university's motivation may be less suspect than the city council's in R.A.V., the effect on free expression is still a hurdle a university would have to overcome. Given the ambiguity of First Amendment jurisprudence, proponents of hate speech restrictions ask "why can we not mark off boundaries between prohibited racist and sexist harassment and permissible, though racist or sexist, self-expression or intellectual inquiry? '231 Matsuda succinctly stated, "If the harm of racist hate messages is significant, and the truth value marginal, the doctrinal space for regulation of such speech is a possibility. 2 31 This possibility, however, faces much criticism from First Amendment absolutists.

#### The question isn’t whether all speech is good, but who should regulate it: administrators, or students themselves – empirics show community counter-speech solves.

**Majeed:** Majeed, Azhar. [J.D., University of Michigan] “Defying the Constitution: The Rise, Persistence, and Prevalence Of Campus Speech Codes.” *Georgetown Journal of Law & Public Policy*, 7 Geo. J.L. & Pub. Pol’y 481, 2009. CH

**Moreover, the counterspeech approach can have** significant benefits **for minority students. One commentator writes that “only by pointing out the weaknesses and the moral wrongness of an oppressor’s speech can an oppressed group realize the strength of advocating a morally just outcome.” [250] As is the case whenever one participates in campus dialogue and debate, minority students can expect to bolster their arguments and sharpen their views; “Through the active, engaging, and often relentless debate on issues of social and political concern,” they “learn the strengths of their own arguments and the weaknesses of their opponents’. With this knowledge, these groups are better able to strike at the heart of a bigoted argument with all of the fervor and force necessary to combat hateful ideas.”** Therefore, the experience and knowledge gained through the process of debate and discussion will serve minority students well in the long run. **Minority students also benefit in that engaging in counterspeech, rather than appealing to the authorities for protection, may provide a strong sense of self-autonomy and empowerment. The efforts of minority students will often be met by a** receptive **campus audience, one which is curious to hear how they respond to hateful and prejudicial messages, affording these students the opportunity to meaningfully impact the way many individuals on campus think about important issues. Counterspeech “can serve to define and underscore the community of** support **enjoyed by the targets of the hateful speech, faith in which may have been shaken by the hateful speech.”** Consequently, when minority students respond to hateful speech with counterspeech, successfully engage the campus community, and inform their fellow students’ views, they gain “a sense of self-reliance and constructive activism” as well as “a sense of community support and empowerment.”[254] Nadine Strossen asserts that, for this reason, counterspeech “promotes individual autonomy and dignity.”[255] These are significant benefits that other methods of responding to hateful speech do not offer, and it is difficult to place a value or measure on the positive impact this can have on students’ lives. **He adds**: Charles Calleros provides two illustrative examples of such an opportunity. **The first arose at Arizona State University, where one of a group of female African-American students who found a racist poster in a dormitory convinced one of the students who had put up the poster to voluntarily take it down, then sent a copy of the poster to the campus newspaper along with a letter discussing its racist stereotypes.** Calleros, supra note 216, at 1259. She also requested action from the director of the residence hall, which resulted in a residents’ group meeting to discuss the issues involved. Id. Ultimately, **“the result was a series of opinion letters in the campus newspaper** discussing **the problem of racism, numerous workshops on race relations and free speech, and overwhelming approval in the Faculty Senate of a measure to add a course on American cultural diversity to the undergraduate breadth requirement.” Id. The second episode took place at Stanford University. There, students, faculty, and administrators at the law school responded to a student’s homophobic speech by sending opinion letters to the campus newspaper, writing comments on a poster board at the law school, and signing a published petition disassociating the law school from the speaker’s message.** Id. at 1261. Several students even wrote a letter reporting the incident to a prospective employer of the speaker. Id. **These two experiences, by their very facts and the results achieved, speak volumes about the effectiveness of counterspeech when used to respond to hateful messages.**

#### Silencing speakers turns them into martyrs and boosts their popularity.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**As well as the possibility of backlash, there is a great risk that speech codes will have the ironic effect of publicizing and glorifying the very ideas which the censors would abolish. Professor Nadine Strossen has argued cogently that attempts at suppressing racist speech (and by implication other forms of discriminatory expression) generate** publicity **and attention that the speaker would never have attracted on his or her own. There is some psychological evidence that attempts by government to censor speech makes it more appealing to many,' and may even transform censored speakers into martyrs.** Although I am wary of basing law or policy on psychological theory,8 2 I have personally observed how censorship can glorify the most abominable thoughts. **When I was an undergraduate at the University of North Carolina in the early 1970's, the Student Union issued an invitation to David Duke to participate in a speakers series. At that time Duke was a full-sheet Ku Klux Klan leader who had not yet attained national prominence. He never got the chance to speak.** His presentation was drowned out by the chants of student protesters. Had he been allowed to speak, I am sure that he would have presented a racist, anti-semitic explanation for America's falling star, sanitized for presentation to a university audience. Duke on his own would have attracted modest media attention **and** then have left campus, soon forgotten."3 **As it turned out, he left town a well-publicized martyr in the cause of free speech.** Fortunately, the sympathy for David Duke faded quickly. However, unlike particular speakers, speech codes are a fixture of campus society. Glorification of censored speech is a risk that we endure as long as the censorship continues.

#### Speech codes make hate a “forbidden fruit,” increasing racism.

**Burrus:** Burrus, Trevor. [Contributor, *Forbes*] “Why Offensive Speech is Valuable.” March 2015. RP

Fostering self-expression and self-development is another important reason we have a strong and uncompromising First Amendment. As homosexuals who have “come out” know all too well, expressing something publicly is crucial to defining oneself. Does this apply to those who hate other races, religions, and ethnicities? Yes. They have as much right to define themselves through speech as anyone. And those who abhor the hateful have a right to shun them, expose them, and call them out. Government **prohibitions on hate speech drive the hateful underground, where they can proliferate freely and without pushback from those who dare not enter. Sunlight, not government, is the best disinfectant. I, for one, would like racists and bigots to speak freely. I want to know who not to invite to my parties. Government is not as effective as civil society in properly squelching and shaming hateful speech. If the government defines the parameters of acceptable speech, then many people will break those boundaries just because the government told them not to do it. They will explore the hidden, underground world of hate speech** just because it is a forbidden fruit. **There they will find whole new ways to offend people because offensive people, like water, will always find a way**. In fact, there is no correlation between the strength of a country’s hate speech laws and the eradication of hateful views. **Greece, for example, has passed laws that try to combat “certain forms and expressions of racism and xenophobia by means of criminal law.” Yet according to the Anti-Defamation League, 69 percent of Greeks hold anti-semitic views, compared to just 9 percent of Americans.** Just like drug laws, driving hate speech underground will do little to eliminate the habit, and could make the situation worse. So go forth and offend and be offended. Do it for Lenny Bruce.

### K Underview

Omitted

### Util Underview

### Theory Underview

Omitted

# Case Blocks – Radical Democracy

## Case Blocks

### A2 Counterspeech Racist

#### No link – the Aff doesn’t mandate counterspeech – its you do you – people can speak out in safer areas like a classroom setting, or when surrounded by friends

#### Community counterspeech solves —ASU proves

### A2 Counterspeech Fails

#### Speech codes are comparatively less likely to combat hate than counterspeech – hostile campuses won’t comply with codes – counterspeech empirically works

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal.* Winter 1995. RP

On the other hand, counterspeech by the targets of hate speech could be less empowering on a campus in which the majority of students, faculty, and staff approve of hostile epithets directed toward members of minority groups. One hopes that such campuses are exceedingly rare; although hostile racial stereotyping among college students in the United States increased during the last decade, those students who harbored significant hostilities (as contrasted with more pervasive but less openly hostile, subconscious racism) still represented a modest fraction of all students. **Moreover, even in a pervasively hostile atmosphere, counterspeech might still be more effective than broad restrictions on speech. First, aside from the constitutional constraints of the First Amendment, such a heartless campus community would be exceedingly unlikely to adopt strong policies prohibiting hateful speech. Instead, the campus likely would maintain minimum policies necessary to avoid legal action enforcing guarantees of equal educational opportunities under the Fourteenth Amendment** n75 or federal antidiscrimination statutes such as Title VI n76 or Title IX. **Second, counterspeech even from a minority of members of the campus community might be effective to gradually build support by winning converts from those straddling the fence or from broader regional or national audiences. Such counterspeech might be particularly effective if coupled with threats from diverse faculty, staff, and students to leave the university for more hospitable environments**; even a campus with high levels of hostility likely would feel pressures to maintain its status as a minimally integrated institution. n78 **The A.S.U. and Stanford examples illustrating the efficacy of counterspeech also lend support to the argument that "free speech has been minorities' best friend . . . [as] a principal instrument of social reform." n79 In both cases, demonstrations, opinion letters, and other forms of counterspeech dramatically defined the predominant atmosphere on each campus as one that demanded respect and freedom from bigotry for all members of the community;** it is doubtful that passage of a speech-restrictive policy could have sent a similar message of consensus any more strongly. Moreover, in the A.S.U. case, the reasoned counterspeech, coupled with the decision to refrain from disciplining the hateful speaker, persuaded the Faculty Senate to pass a multicultural education proposal whose chances for passage were seriously in doubt in the previous weeks and months. n80 The racist poster at A.S.U. may have been a blessing in disguise, albeit an initially painful one, because it sparked counterspeech and community action that strengthened the campus support for diversity.

#### Empirically, counterspeech works, changing minds AND deterring racial violence – social science proves.

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**A study that was done by a professor at Smith College in Massachusetts demonstrated the effectiveness of this kind of counterspeech in combating bias and prejudice. It showed that when a student who hears a statement conveying discriminatory attitudes also promptly hears a rebuttal to that statement-especially from someone in a leadership position-then the student will probably not be persuaded by the initial statement. Dr. Fletcher Blanchard, a psychologist at the college who conducted the experiment, concluded that "A few outspoken people who are vigorously anti-racist can establish the kind of social climate that discourages racist acts.' "'2 Thus, this study provides empirical social scientific support for the free speech maxim, discussed above, that the appropriate response to any speech with which one disagrees is not suppression but rather counterspeech.**

#### Prefer this evidence because it’s empirical – the neg has to show empirics of speech codes WORKING to access offense.

### A2 DNY – No Reverse Enforcement

#### Delgado and Yun are wrong – hate crime statutes are designed to be enforced against black people – outweighs their predictive FBI reports

**Jacobs:** Jacobs, James B. [Contributor, Time Magazine] “Hate Crime Laws Are a Form of Discrimination.” Time Magazine. August 2016. RP

-If they get hate crime evidence, we also get evidence that hate crime prosecution is bad

-Disproves Delgado and Yun – enforcement is never consistent with commission of offense

**Louisiana recently enacted a law defining attacking a police officer as a hate crime. Texas Governor Greg Abbott proposes a similar amendment to Texas’ hate crime statute**. Some critics oppose these laws as watering down the meaning of hate crime, which they say should be reserved for especially powerless or vulnerable persons who are victimized because of their minority group status. While I have been a persistent critic of the hate crime law movement, if there are going to be hate crime laws, anti-police bias should certainly be covered. While hate crime law comes in various shapes and sizes, depending on the particular state or federal version, they generally enhance punishment for crimes motivated at all by widely condemnable biases—the same ones targeted in laws aiming to rectify discrimination in housing, education and employment. **However, unlike in these other contexts, the perpetrators of this criminal discrimination are not members of the power structure. Indeed, they are mostly young men with confused mindsets.** Moreover, the remedy that hate crime laws offer is also different. The victims do not obtain benefits for which they were wrongly denied; rather, their victimizers receive especially severe punishment, usually in jails and prisons that are cauldrons of intergroup, especially inter-racial, conflict and intolerance. **The hate crime law movement re-criminalizes conduct that is already criminal. In effect, it creates a hierarchy of victims—one based upon the group identities of perpetrators and victims, as long as prosecutors can prove a bias motive.** Thus, from the beginning, hate crime laws have simply given us something else to argue about: whose victimization should be punished more severely. They further politicize a law-enforcement and criminal-justice process that does best when it is perceived as being apolitical and even-handed—not a tool of identity politics. Arguments about the kinds of crime victimization that should be defined as hate crime date back to the mid-1980s, when the concept of hate crime was invented. The early hate crime laws focused on criminals with anti-Semitic and anti-black motivation. But they did not initially cover male violence against females. Those who drafted and lobbied for the hate crime laws argued that most male violence against women is motivated by interpersonal conflict, not misogyny, and that to make such crime eligible for hate crime coverage would water down (indeed swamp) the hate crime category. Eventually, politicians rightly rejected that position and added gender bias to the list of those that transform ordinary crime into hate crime. Hate crime law proponents also opposed recognizing racist attacks on whites as hate crime. They argued that when, for example, blacks attack whites it is invariably for economic, not bias reasons. They lost that argument in the courts. **Today, the hate crime laws are often used against African-American perpetrators, perhaps in a small way adding to racial disparities.** Next the battle to hold the line against expansion of the definition of hate crime shifted to sexual orientation bias. **Despite the sordid history of gay-bashing, there was much resistance to treating anti-gay and lesbian bias as a hate crime trigger because, according to the opponents, it would lead to recognition of discrimination against gays and lesbians as worthy of inclusion** in anti-discrimination law generally—in housing, education and the like. Eventually, that twisted thinking was also rejected. **Meanwhile, many other biases were absorbed into various state-level hate crime laws: those based on age, handicap, veteran’s status, political party and family status**. Those who oppose extending hate crime coverage to anti-police crimes of violence will be no more successful than the previous hold-the-line arguments. Politicians will see no advantage in opposing the amendment, especially in light of the recent cold-blooded assassinations of law enforcement officers. Such opposition will be viewed as “anti-police.” (Louisiana's hate crime statute already defined hate crime as an assault "because of [the victim's] actual or perceived membership or service in, or employment with, an organization." The term organization would include anti-police bias. The new amendment just makes this more explicit.) Hate crime laws should be understood as symbolic expressions rather than necessary criminal justice fixes. First they "send a message" in support of victims and the advocacy groups that speak on their behalf that "we stand with you and deplore your victimization." Second, they tell the general public: “Your elected representatives deplore criminals, especially biased criminals.” Third, they say to would-be criminals: “Society regards selecting victims on the basis of some biases as even more deplorable than selecting victims at random or for idiosyncratic reasons.” As Governor Abbott put it last week, “At a time when law enforcement officers increasingly come under assault simply because of the job they hold, Texas must send a resolute message that the State will stand by the men and women who serve and protect our communities.” Hate crime laws are all about expressive politics and not at all necessary for effective and fair law enforcement. Proof is often not easy to come by because offenders usually have mixed and confused motives, and if the crime is committed without epithets or a confession, motivation is difficult to establish beyond a reasonable doubt. (Though adding a hate crime count to an indictment for assault or other crime strengthens the prosecutor’s hand in plea bargaining.) And clearly the U.S. does not suffer, at neither the federal nor state level, from insufficiently punitive law. This is especially true when it comes to serious crimes of violence, where long—even life—sentences are routinely available. For cold-blooded murder, Louisiana and Texas already prescribe the death penalty. Even low-level crimes are almost always punishable much more severely than is necessary or justifiable. That is why mass incarceration today is viewed as a national pathology. Assaulting, much less killing, a police officer has always, in every jurisdiction, been treated extremely seriously. In states with the death penalty, like Louisiana and Texas, murdering a police officer can already be prosecuted as a capital offense. The move to conceptualize attacks on police as hate crime is a rhetorical ploy, but that is true of the whole hate crime law movement. Soon, if not already, so many crimes will be eligible for hate crime treatment that those victims who are not covered will, perhaps rightly, feel discriminated against

### A2 Education

#### Turn – this comes from white administrators who themselves often commit microaggressions – they shouldn’t be the ones who do the educating but Black people themselves

#### Protests also achieve this

#### No tradeoff – they haven’t won that speech codes are the only way

### A2 Solves Underground

#### Speech codes can’t catch covert racism – they won’t detect people saying microaggressive things – they’ve assumed speech codes can do something

### A2 No Legal Precedents

#### Empirics confirm legal precedents are set from free speech

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**Let me cite another story that makes this point. It involves an African- American schoolteacher in Florida named Bill Maxwell. He wrote a newspaper column about this incident, with this telling title:** "ACLU is Quintessential American Group." Bill Maxwell's column refers to the ACLU case that, above all others, epitomizes not only the ACLU's commitment to viewpoint-neutrality, but also our Constitution's commitment. **This case comes from right here in Illinois. I am talking about the famous-or infamous-"Skokie case," in which we defended the free speech rights of neo- Nazis to march in Skokie, Illinois**.36 As you may know, that city has a large Jewish population; even more poignantly, at the time of the case, it had a large population of Holocaust survivors. While the Skokie case was-and still is-very controversial among the general public, it was very straightforward as a legal matter, involving a classic application of the "viewpoint-neutrality" principle. Still, Bill Maxwell's experience confirms that these principles are hard to accept as such-namely, as abstract principles-and that they make far more sense to most people when they bring about some concrete, practical, personal benefit for them, or for people whose ideas they share. Here is what he wrote: Like millions of other Americans, I have a love/hate relationship with the ACLU. I donate money to it because I support its absolutist positions on civil liberties. Often, though, I curse this high-minded group and swear I'll never give it another dime. The last time I fell out of love and canceled my membership was in 1977, when the ACLU defended the right of the American Nazi Party to demonstrate in Skokie, Illinois. **Ironically, I needed the ACLU a year later when three [other] black teachers and I tried to distribute a handbill critical of our university's hiring policies. No other teachers or administrators supported us. In fact, placards produced by our colleagues labeled us as "racists," "niggers" and "educated monkeys." But the ACLU took our case and won. Our attorney explained that although the university community saw us as "obnoxious subversives," we had a constitutional right to speak**. Suddenly, I recalled the SkokieNazis. The next day I mailed a check to the ACLU."'

## Extensions – Critical Framework

### Part 1: Framework

#### Extend that the Role of the Judge with Giroux 1 is to Promote Critical Education, meaning enhancing our power to fight social oppression. Trump’s election has ushered in new neoliberal violence against minorities, and in schools a politics of resistance starts with education.

#### Extend the Role of the Ballot with Giroux 2 to endorse the better method for critically empowering students, meaning giving people the skills to attack the status quo. Educators can’t get rid of the problem unless they understand that consciousness and critical thinking are the best forms of resistance and solidarity.

#### Flynn – critical empowerment means exposing covert racism. People wrap up racist views to disguise them, so the only way to both combat and convert them is to expose their beliefs. That’s a first move towards any empowerment.

*This comes before generic oppression frameworks, since the worst form of oppression is the one that’s hidden. If they don’t link to covert oppression, they don’t access the Role of the Ballot.*

### Part 2: Covering Up

#### Extend Boatright. Covert racism is high in the squo on white college campuses. 50 percent of white students say they dislike racial minorities. White privilege isn’t visible to white students, so POC are labeled paranoid and face hostility when they address the harm.

*1. Speech codes led by white administrators can’t solve, because they can’t identify the racist conduct. If the racism itself is something white people take for granted, they won’t be able to stop it.*

#### Extend Wise – speech codes view racism only on the individual level, not the institutional. Old boys networks keep POC locked out, and focusing on overt racism only distracts us from the real problems.

#### Extend Strossen – speech codes globally worsen hate and target minorities. HRW shows neither correlation nor causation between speech codes and equality. 4 different continents had failed speech codes. In the US, 100% of punished speech was by or on behalf of black students. Negating hands over the enforcement tools against oppression to the oppressors.

#### Extend Glasser – the type of speech censored doesn’t matter – the question isn’t whether all speech is good but who gets to define what speech is bad. If speech codes had been in place in the 60s, they would have targeted Malcolm X. They’re like a poison gas that blows right back on people who want them most.

#### Extend White – all speech codes are arbitrary – even if one type of speech is bad, the legal system looks to process over product. Adding new exceptions to the First Amendment willy nilly cuts the principled method we use to decide what speech gets limited. Abandoning that gives free reign to oppressive states to enforce what they want or not

*1. This turns PICs – those aren’t based on a principled restriction of speech, and those come from the institutions that are creating the problem, as per Wise*

*2. This takes out radical Ks because those only perpetuate the problem of trying to function outside the institution while leaving covert racism in place*

*3. This outweighs PICs and speech related disads – even if there are disadvantages to the Aff, every speech code worsens the problem as per Strossen*

### Part 3: Unmasking the University

#### Extend Calleros – speech codes drive oppression underground, creating more virulent forms of oppression. When a student hung a nude poster outside his door, it was a sign that this student was dangerous, and taking it down made his criminal tendencies unknown.

#### Extend Johnston – affirming breaks from the squo and promotes radical protests. Campus free speech brought sexual harassment to light at San Diego State. The point wasn’t to engage in discussion but to have norm shaping and stop issues from being swept under the rug. Sometimes we need fire and not light.

#### Extend Block – free speech means students reclaim public spaces and create cultural change. At Berkeley, it was a part of anti-racist protests that administrators tried to shut down. The more the movement spread, the more it became a prelude to broader social change, radically altering the political landscape.

#### Extend Sachs – even if the Aff doesn’t result in change, it’s worse to trust white liberals to regulate. When POC challenge macroaggressions, white administrators get defensive instead of taking action.

#### Extend Bon – the Aff makes it possible for minorities to respond themselves to offensive speech, which is key for more radical alts. Minorities need free speech to get anything else, since they build power and coalitions through speaking out. Relying on others to fight their fight means they never get critical empowerment.

*1. This means the Aff precludes any PIC or any type of neg argument – they have to show how their radical alt would happen in a world without free speech*

*2. This and the rest of the Aff impact turn nihilism – that’s the strategy people have already used. Giving up and saying that nothing will happen is a problem that perpetuates the squo*

*3. This takes out big stick impact disads – the only way to stop those from happening or to criticize whatever is happening within the disad is to let free speech movements begin.*

## Extensions – Normal Framework

### Part 1: Framework

#### Extend Young 1 – since no one is worth more than others, everyone deserves opportunities to live a good life. It’s impossible to only look to intent, since one, effects of actions are often unexpected and two, people often distance their actions from structural outcomes, so only looking to intentions misses the structural problem.

*1. This takes out intent based frameworks, since those make it impossible to actually resolve material oppression. We never actually provide the good or pursue justice if we ignore those harms*

#### Extend Young 2 – people inevitably reify existing inequities, since they act based on their knowledge of structures, rather than reality. Historical injustices perpetuate themselves when people don’t recognize them (e.g., historical homelessness or racial discrimination)

*1. This justifies consequentialism – if we only look to intent, these harms remain invisible because nobody actually intends to perpetuate racism or homelessness*

*2. Other stock deontological frameworks or virtue frameworks make virtue inaccessible because some people are always shut out of the equation – failing to recognize these people is proactively unvirtuous*

#### Extend the standard of Promoting Social Inequality, meaning that people have a role in addressing structural harm. This is consequentialist; we look to outcomes with regard to equality, not util.

*1. This precludes util frameworks because the harm isn’t based on sheer number of people, but their status as valuable. Instead of viewing people as numbers or dehumanizing them, we recognize them as having worth, just in a non-deontological way*

*2. This subsumes deontological standards, because those standards are premised on people having equal worth to begin with. This is a mechanism for realizing people’s worth.*

*3. My standard creates the conditions under which others can occur. Frameworks about virtue or some other ethical good can only happen when all people have access to that good.*

### Part 2: Covering Up

#### Extend Boatright. Covert racism is high in the squo on white college campuses. 50 percent of white students say they dislike racial minorities. White privilege isn’t visible to white students, so POC are labeled paranoid and face hostility when they address the harm.

*1. Speech codes led by white administrators can’t solve, because they can’t identify the racist conduct. If the racism itself is something white people take for granted, they won’t be able to stop it.*

#### Extend Wise – speech codes view racism only on the individual level, not the institutional. Old boys networks keep POC locked out, and focusing on overt racism only distracts us from the real problems.

#### Extend Strossen – speech codes globally worsen hate and target minorities. HRW shows neither correlation nor causation between speech codes and equality. 4 different continents had failed speech codes. In the US, 100% of punished speech was by or on behalf of black students. Negating hands over the enforcement tools against oppression to the oppressors.

#### Extend Glasser – the type of speech censored doesn’t matter – the question isn’t whether all speech is good but who gets to define what speech is bad. If speech codes had been in place in the 60s, they would have targeted Malcolm X. They’re like a poison gas that blows right back on people who want them most.

#### Extend White – all speech codes are arbitrary – even if one type of speech is bad, the legal system looks to process over product. Adding new exceptions to the First Amendment willy nilly cuts the principled method we use to decide what speech gets limited. Abandoning that gives free reign to oppressive states to enforce what they want or not

*1. This turns PICs – those aren’t based on a principled restriction of speech, and those come from the institutions that are creating the problem, as per Wise*

*2. This takes out radical Ks because those only perpetuate the problem of trying to function outside the institution while leaving covert racism in place*

*3. This outweighs PICs and speech related disads – even if there are disadvantages to the Aff, every speech code worsens the problem as per Strossen*

### Part 3: Unmasking the University

#### Extend Calleros – speech codes drive oppression underground, creating more virulent forms of oppression. When a student hung a nude poster outside his door, it was a sign that this student was dangerous, and taking it down made his criminal tendencies unknown.

#### Extend Johnston – affirming breaks from the squo and promotes radical protests. Campus free speech brought sexual harassment to light at San Diego State. The point wasn’t to engage in discussion but to have norm shaping and stop issues from being swept under the rug. Sometimes we need fire and not light.

#### Extend Block – free speech means students reclaim public spaces and create cultural change. At Berkeley, it was a part of anti-racist protests that administrators tried to shut down. The more the movement spread, the more it became a prelude to broader social change, radically altering the political landscape.

#### Extend Sachs – even if the Aff doesn’t result in change, it’s worse to trust white liberals to regulate. When POC challenge macroaggressions, white administrators get defensive instead of taking action.

#### Extend Bon – the Aff makes it possible for minorities to respond themselves to offensive speech, which is key for more radical alts. Minorities need free speech to get anything else, since they build power and coalitions through speaking out. Relying on others to fight their fight means they never get critical empowerment.

*1. This means the Aff precludes any PIC or any type of neg argument – they have to show how their radical alt would happen in a world without free speech*

*2. This and the rest of the Aff impact turn nihilism – that’s the strategy people have already used. Giving up and saying that nothing will happen is a problem that perpetuates the squo*

*3. This takes out big stick impact disads – the only way to stop those from happening or to criticize whatever is happening within the disad is to let free speech movements begin.*

# T/Theory Blocks – Radical Democracy

## Normative Ethic Spec

### C/I

Omitted

## ConPro Spec

### C/I

#### Counterinterp – the Aff doesn’t have to specify what speech is Constitutionally protected

#### 1] Ground – if I specify, it lets them have an easy T out – for example, if I say guns are included, they can read T – same with things like hate speech not being included – they can read bidirectional shells

#### 2] Clash – if I specify a list in the Aff, that makes me a sitting duck to PICs or process counterplans that do all of those types of speech except for one

#### 

### CX C/I

#### Counterinterp – the Aff doesn’t have to specify what speech is Constitutionally protected unless asked in cx or before the round

#### 1] Qualitative ground – I have to pick some interp in the Aff regardless – if I spec, they’d have read T on that, but if they don’t they just read this shell

#### 2] Substantive engagement – asking me to change it in CX or before the round takes 5 seconds – avoids 45 minutes of theory that crowds out substance.

### A2 Strat Skew – Different Implications

#### Turn – if the Aff specs they’ll be incentivized to choose an interp that heavily favors them which would skew neg strategy more

#### Turn – you can define it for yourself in the 1nc and give yourself a favorable definition – judges won’t be receptive to 1ar reconceptualization

## Multi Actor Fiat Theory

### C/I

#### Counterinterp – the Aff can defend that public colleges and universities take the resolutional action.

#### 1] Real World – colleges act themselves to regulate speech policy – other actors have no jurisdiction

**Denniston:** Denniston, Lyle [Contributor, Constitution Daily] “Constitution Check: Does Congress have the authority to require universities to monitor campus crimes?” *Constitution Daily.* July 2012. RP

In a continuing series of posts, Lyle Denniston provides responses based on the Constitution and its history to public statements about its meaning and what duties it imposes or rights it protects. Campus crimes are, of course, matters of primary concern to state and local government, under their broad “police powers” that are protected under the 10th Amendment. **Although Congress for decades has been expanding the federal role in criminal law enforcement, there are constitutional limits on its authority to do so, and the Supreme Court recently has been doing a good deal more to enforce those limitations**. It has been clear for more than a generation that the Supreme Court has been quite skeptical about Congress’ power to reach deeper into local activity, including local crime. **In the 1995 decision in *U.S. v. Lopez*, it ruled that Congress could not regulate the carrying of guns near schools**. In the 2000 decision in *U.S. v. Morrison*, it ruled that Congress had gone too far in the Violence Against Women Act in regulating domestic violence, a local crime. Both of those laws had been based explicitly upon Congress’s power over interstate commerce. But the court concluded that it was a stretch to treat the carrying of guns and acts of domestic violence as commercial activity or as interstate in impact. The court’s decision in the health care case this June went further than the court has gone in decades to restrict Commerce Clause legislation that does not involve actual voluntary activity in the stream of commerce. That decision, as reader “Bill” said, might raise new problems for the Clery Act. The health care decision also embraced—for the first time in history—the constitutional argument that Congress may act unconstitutionally in the use of its spending power if it imposes too heavy a burden on states as the price of receiving federal funds. States, the court said, cannot be coerced into a program, and must be given the choice of opting out rather than satisfying such conditions. **There is another potential constitutional argument that universities might think about advancing should one or more of them take on the Clery Act in court. That is the argument that running a campus, and controlling student life, is protected by concepts of academic freedom under the First Amendment**. That might not be a very strong argument against law enforcement by local police, but it might have more to it as a challenge to federal management of campus life. Examining the possible constitutional vulnerability of the Clery Act, though, may not have much to do with the real world of campus life in the wake of the Penn State scandal. **Governing boards and academic leaders of universities may well find—in the current atmosphere—that it would be very politically risky to try to fend off a law as popular as this legislation is.**

#### 2] Effects T – the resolution says that colleges ought not restrict speech, so their interp only RESULTS in there not being speech restrictions, but it wouldn’t be a mandate of the plan

### A2 Fiat Abuse

#### Turn – they’re utopian fiat since they’re assuming something that’s never happened before will magically occur

#### No impact – fiat abuse inevitable – the plan won’t happen anyways

### A2 Ground

#### Turn – the neg gets more PICs if I defend multiple actors

#### No impact – they still get every core generic

#### Turn – I lose all plan ground, and the ability to specify down to particular colleges

## Legal Ought T

### C/I

Omitted

### I/M

Omitted

### A2 Wittgenstein

Omitted

### A2 Reciprocity

Omitted

### A2 Neg Ground

Omitted

### A2 Resolvability

Omitted

### A2 Aff Ground

Omitted

### A2 Education

Omitted

### A2 Text

Omitted

## T Bad – 1AR

### New Off

Omitted

### C/I – Directionally Topical

Omitted

### C/I - Perm

Omitted

### Overview

Omitted

### A2 Limits

Omitted

### A2 Semantics

Omitted

## Stupid “And” Shell

### C/I

#### Counterinterp – the Aff can defend just public colleges and just public universities in the United States

#### “And” is used to connect similar clauses – namely, that public and United States refers to both colleges and universities.

**Dictionary.com:** Dictionary.com “And.” RP

(**used to connect grammatically coordinate words, phrases, or clauses) along or together with**; as well as; in addition to; besides; also; moreover:

#### 1] Common Usage – dictionary.com is one of the most common dictionaries, and it’s the first definition listed.

#### 2] Debateability – this is a joke – their interp would make the topic include colleges in ANY PART of the world, or private schools – that’s literally millions of Affs.

**Debateabiltiy outweighs**

**a. The reason we care about semantics is because we want to debate**

**b. Coopts their reasons why accessibility matters -- their esoteric view of the topic isnt shared by most.**

### A2 Logic

#### Turn – trust your intuition here – you probably thought the topic meant my interp

#### Turn – most people when speaking don’t repeat every single clause – they just use “and” when communicating similar ideas

#### Turn – the topic wouldn’t have said public colleges then if that wasn’t relevant to the statement.

### A2 Framers Intent

#### Unverifiable

#### Turn – they wouldn’t have said United States then if that wasn’t supposed to be the topic

### O/V to Standards

#### They should probably learn what T is -- their standards are just reasons why debating the topic is key, but they have no reasons why THEIR INTERP of the topic is right

# K Blocks – Radical Democracy

## Framework

### Reps Focus Bad

Omitted

### Cap

Omitted

### Race

Omitted

### Topic Edu

#### Framework: Question the desirability of the plan and post fiat implications

#### With Trump in office undermining rights, a commitment to free speech and accountability are key.

Kurt **Strazdins**: [Miami herald editorial board], “Freedom of speech is our constitutional right, Mr. Trump”, Miami Herald, 3 Dec 2016, BE

Americans honor the nation’s public institutions and the men and women they elect to office, but they — we — reserve the right to examine, scrutinize and criticize their performance. Harry Truman’s advice for politicians who didn’t like it has become legend: “If you can’t stand the heat, get out of the kitchen.” Regrettably, **Donald Trump doesn’t seem to understand this tradition or the wider issue concerning free speech.** Last week, **he suggested that those who engage in flag-burning should be stripped of citizenship**. Coming from a president-elect, **his comment raises alarm, deepening legitimate fears that Mr. Trump has little or no regard for either freedom of expression or the law, and that he is prepared to use the power of the presidency to** stifle criticism. Regarding flag-burning, Mr. Trump, frankly, seems utterly clueless. In the first place, the Supreme Court ruled in 1958 that the government cannot revoke the citizenship of a U.S. citizen as a form of punishment. This is settled law. In subsequent cases years later, the court declared that the government cannot prosecute a person for burning a U.S. flag, because to do so would be inconsistent with the First Amendment. This, too, is settled law, although some justices have made it clear that they believe the act itself is reprehensible. Even the late Justice Antonin Scalia — a conservative stalwart whom Mr. Trump professes to admire — supported the idea, albeit reluctantly. It is a form of protected speech, he said in an interview, although he also said he personally would prohibit it — “if I were king.” **Mr. Trump may not realize that he is an elected president in a democracy that cherishes the right of free speech. He is not a king**. His behavior during the campaign featured daily assaults on the media when the coverage was not to his liking. “Lowlifes,” “scum,” “enemies,” became some his favorite epithets to hurl at reporters covering his speeches and at those news media outlets against which he held a grudge. Such name-calling should be beneath the dignity of a president, or a president-to-be. Reporters are used to being called names; that’s not the issue. But when the president resorts to that level of speech, it diminishes the institution of the presidency and the individual in office. Mr. **Trump** has also threatened to “open up our libel laws” to punish his critics. If he’s serious, he **risks undermining a fundamental American right.** And if he’s not serious, it’s still wrong: Idle threats encourage the nation’s enemies to vilify, as he has, the responsible media. There is every sign that Mr. Trump intends to bring his war against the press to the White House. **The challenge calls for** added vigilance by the news media **and a renewed commitment to the job of ensuring that public officials are held accountable.** John Peter Zenger won his case by establishing that truth is a defense against charges of libel. Even in the “post-factual” era, a reliance on the principle of truth will prevail against the man who would be king.

### Zanotti

Omitted

### F + Reps Bad

Omitted

### Colonialism/Legalism

Omitted

### Bryant

Omitted

### Ableism

Omitted

### Psychoanalysis

Omitted

## Link

### State Bad

Omitted

### Radicalism

#### Speech codes chill black radical activism – even if enforced fairly, black voices are chilled.

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal.* Winter 1995. RP

The second "paternalistic objection," that "antiracism rules will end up hurting minorities," n81 also has more substance in recent experience than Delgado's and Yun's analysis suggests. **Although they may be correct that prosecutions of minority group members for violating a campus hate-speech code "seem rare," n82 two examples serve to illustrate the importance of allowing members of the campus community, including members of minority groups, to engage in speech that may be offensive to others. The first example shows how several outspoken African-American students benefitted from the atmosphere of free speech and counterspeech at A.S.U. after the racist poster incident described in part A above. Vernard Bonner, the African-American leader of Students Against Racism, vented his [\*1264] outrage over the racist poster with an opinion letter that some complained reflected racist stereotyping of whites. n83 Although his own speech was offensive to some and sparked criticism, he was secure in his right to speak his mind without fear of censorship or discipline**. Similarly, one year after he led the counterspeech to the racist poster and a year before being elected student body president, Rossie Turman reaffirmed his support for A.S.U.'s policies supporting free speech, precisely because those policies protected his right to strongly express his own views. n84 **In the same year, a militant African-American student, Ashahed Triche, expressed his more radical views on race relations in a regular column of the campus newspaper, regularly offending white readers**. Though some of the offended readers engaged in their own counterspeech and even recommended that the newspaper drop his column, n85 he continued to express his provocative views free from censorship. **A campus policy that prohibited offensive, racially hostile speech presumably would have bottled up these emerging African-American speakers along with their white counterparts. Perhaps the result of such a policy would be a kinder, gentler campus, but these African-American students were willing to sacrifice subtlety in their speech to draw attention to their perspectives.**

### Generic Rights Arg

#### The aff is uniquely key to minority rights

**Zimmerman:** Zimmerman, Jonathan. [Contributor, *The Chronicle of Higher Education*] “Racism Was Served by Silence. Justice Requires Free Speech for All.” *The Chronicle for Higher Education*, December 2016. RP

In 1986, the Senate Judiciary Committee turned down Jeff Sessions for a federal judgeship after reports surfaced that he had called the NAACP "un-American" and "Communist-inspired." That decision is back in the news now that President-elect Donald Trump has nominated Sessions to be U.S. attorney general. His remark recalls the long history of racist hostility against the NAACP, which was harassed and persecuted across the South. Law-enforcement **[O]fficials spied on its members, and at least three states — including Sessions’s native Alabama — prohibited the group from organizing within their borders. But Sessions’s comment should also make us look anew at campaigns to restrict speech on campus, which have been stepped up since Trump’s victory.** A few days after the election, for example, students at my own institution asked for an "anonymous system" for reporting faculty members who made people of color feel "unsafe." Who will collect this information, and how will they know if it’s credible? What will happen to the professors it cites? And how long will it take before white students complain that faculty of color have made them feel unsafe? Actually, it’s already happened. **In 2013, three white students at Minneapolis Community and Technical College said an African-American professor had made them feel uncomfortable by teaching them about structural racism. The college later reprimanded her for creating a "hostile learning environment." When Americans restrict speech, in fact, it’s usually** minorities **who lose out. That’s why just about every great fighter for racial equality in our history was also a warrior for free speech. Start with Frederick Douglass, who railed against efforts to silence his fellow abolitionists.** Southern states outlawed the publication of antislavery tracts and even their delivery by mail. In Congress, meanwhile, Southern representatives and their Northern allies pushed through a "gag rule" that automatically tabled antislavery petitions. "To chain the slave, these parties have said we must fetter the free!" Douglass told an 1852 audience in Ithaca, N.Y. "To make tyranny safe, we must endanger the liberties of the nation, by destroying the palladium of all liberty and progress — the freedom of speech." Eight years later, after a mob broke up an antislavery meeting in Boston’s Music Hall, Douglass returned to the same location to deliver his most famous testament to free speech. Boston had been the fount of the American Revolution, which established freedom of speech as "the great moral renovator of society and government," he noted. If Americans turned their backs on this tradition, he warned, they would also close themselves off to collective growth and improvement. "To suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker," Douglass thundered. "It is just as criminal to rob a man of his right to speak and hear as it would be to rob him of his money." **1n 1905, when W.E.B. Du Bois** and 28 others met at Niagara Falls, Ontario — because hotels on the American side wouldn’t serve blacks — they demanded not just equal access to public facilities and the ballot box but also freedom of speech. And when Du Bois helped launch the NAACP, four years after that, he **insisted that African-Americans could never gain civil rights so long as they were prevented from speaking their minds**. After World War II, Du Bois was indicted for failing to register as a member of an antinuclear organization that the government deemed "subversive." Although he was acquitted, he continued to campaign for the freedom of others who were persecuted or muzzled during the Cold War. "It is clear still today that freedom of speech and of thinking can be attacked in the United States without the intellectual and moral leaders of this land raising a hand or saying a word in protest or defense," he wrote in 1952. "Than this fateful silence there is on earth no greater menace to present civilization." The NAACP was listed as a subversive organization in several states, too, which helps explain why Jeff Sessions thought it was Communist-inspired. Therefore members had to either keep their affiliation hidden — in violation of the law — or register with the government, which subjected them to still further harassment. And when students at South Carolina State College for Negroes protested the interrogation of NAACP members on campus, the students were investigated themselves. **In short, if you didn’t have freedom of speech,** you couldn’t counter any other injustice. **That’s a lesson that some of today’s student activists — and some college administrators — seem to have** forgotten. Although courts have consistently found campus speech codes unconstitutional, hundreds of colleges continue to discipline students for saying the wrong thing. Faculty members, too, have come under fire. During the wave of protests that swept campuses last fall, students at Duke University called for the dismissal of professors who "perpetuate hate speech that threatens the safety of students of color." At Emory University, students demanded "repercussions or sanctions for racist actions performed by professors." Let me be clear: If students think a faculty member is racist, they have every right to say so. **But nobody has a right to limit someone else’s speech, via institutional prohibitions or star chambers or anything else. That’s precisely what white America tried to do to the NAACP and other African-Americans. We insult their memories when we silence one another in the name of racial justice, which will never be served by the restriction of free speech.**

### Eurocentrism

#### The Aff is a recognition of the voice of the subaltern – this dismantles Eurocentric politics

**Grosfoguel:** “Decolonizing Post-Colonial Studies and Paradigms of Political-Economy: Transmodernity,¶ Decolonial Thinking, and Global Coloniality,” TRANSMODERNITY: Journal of Peripheral Cultural Production of the Luso-Hispanic World, 1(1), Grosfoguel, Ramón, University of California, Berkeley, 2011.

The perspective articulated here is not a defense of “identity politics.”¶ **Subaltern identities could serve as an epistemic point of departure for a radical¶ critique of Eurocentric paradigms and ways of thinking.** However, “identity politics”¶ is not equivalent to epistemological alterity. The scope of “identity politics” is limited¶ and cannot achieve a radical transformation of the system and its colonial power¶ matrix. Since all modern identities are a construction of the coloniality of power in¶ the modern/colonial world, their defense is not as subversive as it might seem at¶ first sight. “Black,” “Indian,” “African,” or national identities such as “Colombian,”¶ “Kenyan,” or “French” are colonial constructions. Defending these identities could¶ serve some progressive purposes depending on what is at stake in certain contexts.¶ For example, in the struggles against an imperialist invasion or in anti-racist¶ struggles against white supremacy these identities can serve to unify the oppressed¶ people against a common enemy. But identity politics only addresses the goals of a¶ single group and demands equality within the system rather than developing a¶ radical anti-systemic struggle against the systemic and planetary Western-centric¶ civilization. The system of exploitation is a crucial space of intervention that requires¶ broader alliances along not only racial and gender lines but also along class lines and¶ among a diversity of oppressed groups around the radicalization of the notion of¶ social equality. **But instead of Eurocentric modernity’s limited, abstract and formal¶ notion of equality, the idea here is to extend the notion of equality to every relation¶ of oppression such as racial, class, sexual, or gender. The new pluriverse of meaning¶ or new imaginary of liberation needs a common language despite the diversity of¶ cultures and forms of oppression. This common language could be provided by¶ radicalizing the liberatory notions arising from the old modern/colonial pattern of¶ power, such as freedom (press, religion, or speech), individual liberties or social ¶ equality and linking these to the radical democratization of the political, epistemic,¶ gender, sexual, spiritual and economic power hierarchies at a global scale.¶ Quijano’s (2000) proposal for a “socialization of power” as opposed to a¶ “statist nationalization of production” is crucial here**. Instead of “state socialist” or¶ “state capitalist” projects centered in the administration of the state and in¶ hierarchical power structures, the strategy of “socialization of power” in all spheres¶ of social existence privileges global and local struggles for collective forms of public¶ authority.¶ **Communities, enterprises, schools, hospitals and all of the institutions that¶ currently regulate social life would be self-managed by people under the goal of¶ extending social equality and democracy to all spaces of social existence. This is a¶ process of empowerment and radical democratization from below that does not¶ exclude the formation of global public institutions to democratize and socialize¶ production, wealth and resources at a world-scale.** The socialization of power would¶ also imply the formation of global institutions beyond national or state boundaries to¶ guarantee social equality and justice in production, reproduction and distribution of¶ world resources. This would imply some form of self-managed, democratic global¶ organization that would work as a collective global authority to guarantee social¶ justice and social equality at a world-scale. **Socialization of power at a local and¶ global level would imply the formation of a public authority that is outside and¶ against state structures.**

### Protests Good – Generic

#### Student movements can create counter-hegemony with radical anti-capitalist organization on a broad scale.

**Delgado & Ross:** Delgado, Sandra [Doctoral Student in Curriculum Studies, University of British Columbia], and E. Wayne Ross [Professor in the Faculty of Education, University of British Columbia] “Students in Revolt: The Pedagogical Potential of Student Collective Action in the Age of the Corporate University.” 2016. RP

As students’ collective actions keep gaining more political relevance, student and university movements also establish themselves as spaces of counter-hegemony (Sotiris, 2014). **Students are constantly opening new possibilities to displace and** resist **the commodification of education offered by mainstream educational institutions. As Sotiris (2014) convincingly argues, movements** within **the university have not only the potential to subvert educational reforms but in addition, they have become “strategic nodes” for the transformation of the processes and practices in higher education, and most importantly for the constant re-imagination and the recreation of “new forms of subaltern counter-hegemo**ny” (p. 1). The strategic importance of university and college based moments lays precisely in the role that higher education plays in contemporary societies, namely their role in “the development of new technologies, new forms of production and for the articulation of discourses and theories on contemporary issues and their role in the reproduction of state and business personnel.” (p.8) Universities and colleges therefore, have a crucial contribution in “the development of class strategies (both dominant and subaltern), in the production of subjectivities, (and) in the transformation of collective practices” (p.8) The main objective of this paper is to examine how contemporary student movements are disrupting, opposing and displacing entrenched oppressive and dehumanizing reforms, practices and frames in today’s corporate academia. This work is divided in four sections. The first is an introduction to student movements and an overview of how student political action has been approached and researched. The second and third sections take a closer look at the repertoires of contention used by contemporary student movements and propose a framework based on radical praxis that allows us to better understand the pedagogical potential of student disruptive action. The last section contains a series of examples of students’ repertoires or tactics of contention that exemplifies the pedagogical potential of student social and political action. An Overview of Student Movements Generally speaking, students are well positioned as political actors. They have been actively involved in the politics of education since the beginnings of the university, but more broadly, students have played a significant role in defining social, cultural and political environments around the world (Altbach, 1966; Boren, 2001). **The contributions and influences of students and student movements to revolutionary efforts and political movements beyond the university context are undeniable.** **One example is the role that students have played in the leadership and membership of the political left** (e.g. students’ role in the Movimiento 26 de Julio - M-26-7 in Cuba during the 50’s and in the formation of The New Left in the United States, among others). Similarly, several political and social movements have either established alliances with student organizations or created their own chapters on campuses to recruit new members, mobilize their agendas in education and foster earlier student’s involvement in politics2 (Altbach, 1966; Lipset, 1969). Students are often considered to be “catalysts” of political and social action or “barometers” of the social unrest and political tension accumulated in society (Barker, 2008). Throughout history student movements have had a diverse and sometimes contradictory range of political commitments. Usually, student organizations and movements find grounding and inspiration in Anarchism and Marxism, however it is also common to see movements leaning towards liberal and conservative approaches. Hence, student political action has not always been aligned with social movements or organizations from the political left. In various moments in history students have joined or been linked to rightist movements, reactionary organizations and conservative parties (Altbach, 1966; Barker, 2008). Students, unlike workers, come from different social classes and seemly different cultural backgrounds. As a particularly diverse social group, students are distinguished for being heterogeneous and pluralists in their values, interests and commitments (Boren, 2001). Such diversity has been a constant challenge for maintaining unity, which has been particularly problematic in cases of national or transnational student organizations (Prusinowska, Kowzan, & Zielińska, 2012; Somma, 2012). To clarify, social classes are defined by the specific relationship that people have with the means of production. In the case of students, they are not a social class by themselves, but a social layer or social group that is identifiable by their common function in society (Stedman, 1969). The main or central aspect that unites student is the transitory social condition of being a student. In other words, students are a social group who have a common function, role in society or social objective, which is “to study” something (Lewis, 2013; Simons & Masschelein, 2009). Student movements can be understood as a form of social movement (LuesherMamashela, 2015). They have an internal organization that varies from traditionally hierarchical structures, organizational schemes based on representative democracy with charismatic leadership, to horizontal forms of decision-making (Altbach, 1966; Lipset, 1969). **As many other movements, student movements have standing claims, organize different type of actions, tactics or repertoires of contention, 3 and they advocate for political, social or/and educational agendas, programs or pleas.**

#### Actually *achieving* radical change requires the freedom to protest – protests empirically achieved civil rights, military reform, economic justice, and more.

**Gay:** Gay, Roxanne. [Contributor, *New Republic*] “Student Activism Is Serious Business.” *New Republic*,November 2015. RP

Of late, there has been a lot of talk about college students and their curious ways, about how they are intensely politically correct, overly sensitive, and unduly coddled. Some have suggested that students are frivolous activists, that they no longer have senses of humor, and that liberalism has run amok on college campuses, ruining them in the process. This is a reductive and rather lazy understanding of student activism. In the protests at Mizzou and Yale and elsewhere, students have made it clear that the status quo is unbearable. **Whether we agree with these student protesters or not, we should be listening: They are articulating a vision for a better future, one that cannot be reached with complacency.** Late Saturday night, word spread that Mizzou’s black football players were planning to strike and refusing to participate in team activities, including games. They were the latest to join graduate student Jonathan Butler—who had been on a hunger strike since the prior Monday—and the activist group Concerned Student 1950, in order to force the ouster of University of Missouri system president Timothy Wolfe. The protests ignited because of Wolfe’s inaction and perceived indifference in the face of several racial incidents on the Mizzou campus, including a swastika drawn on a wall in human feces. The students circulated a list of [demands](http://www.alternet.org/news-amp-politics/read-university-missouri-protesters-list-impressive-demands-led-presidents): They wanted a handwritten apology from Wolfe, his resignation, the development of a racial awareness curriculum, and the creation of a strategic plan for the retention of marginalized students. Things moved quickly after the players joined the cause. More graduate students began protesting. Head football coach Gary Pinkel offered his support of the protest with a [post on Twitter](https://twitter.com/GaryPinkel/status/663410502370856960). On Monday morning, faculty said they were going to participate in a two-day walkout in solidarity with the protesters. Later that day, both Wolfe and R. Bowen Loftin, the chancellor of Mizzou’s flagship campus in Columbia, resigned. Administrators announced a series of [initiatives](http://www.umsystem.edu/ums/news/leadership_news/news_110915) designed to promote a stronger racial climate on campus. In truth, the tipping point was the black football players denying the university their black labor. They created a financial imperative for the university to enact change: If the Tigers didn’t play their next scheduled game against Brigham Young on November 14, Mizzou would have to pay a $1 million cancellation fee. SNCC showed that young people are an integral part of a participatory democracy and that they deserved to have a seat at the civil rights table. At Yale, [the Intercultural Affairs Committee,](http://yalecollege.yale.edu/intercultural-affairs-council-iac) composed of diversity administrators from across the university, sent students [an email](https://www.thefire.org/email-from-intercultural-affairs/) before Halloween, imploring them to be more thoughtful about their costume choices—to avoid offensive cultural appropriation or misrepresentation. “Halloween is also unfortunately a time when the normal thoughtfulness and sensitivity of most Yale students can sometimes be forgotten and some poor decisions can be made including wearing feathered headdresses, turbans, wearing ‘war paint’ or modifying skin tone or wearing blackface or redface,” the letter read, in part. The counsel in this letter may have felt paternalistic, but given how many college students have historically chosen to paint themselves in blackface and otherwise tread upon cultures and common sense, the email was certainly well-intended and not out of the ordinary. Some students complained nonetheless. Lecturer Erika Christakis, associate master of Yale’s Silliman College (an administrative role essentially equivalent to a dean of student life), wrote an email responding to the students troubled by the IAC’s letter. With willfully detached intellectual curiosity, she argued that it’s fine for students to be students and to make mistakes—for children, in a word, to be children. I wonder and I am not trying to be provocative: Is there no room anymore for a child or young person to be a little bit obnoxious … a little bit inappropriate or provocative, or yes offensive? American universities were once a safe space not only for maturation but also for a certain regressive, or even transgressive, experience; increasingly, it seems, they have become places of censure and prohibition. It is seductive in theory: Why not let people indulge their basest whims? Why not encourage unchecked curiosity? Christakis did, however, intentionally misread the letter the Intercultural Affairs Committee sent; the committee did not prohibit anything, nor did it suggest that it wanted to. The organization simply offered suggestions to create for Yale students a better world than the one we live in. Christakis, on the other hand, suggests we take our arguments out of their real-world context—eliding real people in the process—and instead move them into the realm of the theoretical, where no one can feel hurt. In the real world, though, we have to question the cost of the transgression Christakis argues for so eloquently, and who will pay the price. For some, these matters are engaging intellectual exercises. For others, they are matters of dignity, emotional wellbeing, and safety. Hundreds of Yale students have not taken kindly to Christakis’s suggestions, protesting her words and calling for the resignations of both her and her husband Nicholas, Silliman College’s master—the principal faculty member [“responsible for the physical well being and safety”](http://yalecollege.yale.edu/campus-life/residential-colleges) of students in his residence hall. Neither faculty member should resign or even apologize, but the students are well within their rights to protest the troubling spirit of Christakis’s email. In [The Atlantic](http://www.theatlantic.com/politics/archive/2015/11/the-new-intolerance-of-student-activism-at-yale/414810/), Conor Friedersdorf took offense to some of the people involved in the protest, labeling them intolerant. “They’re behaving more like Reddit parodies of ‘social-justice warriors’ than coherent activists, and I suspect they will look back on their behavior with chagrin,” he wrote, espousing the curious notion that protest should be a polite and demure endeavor that pleases everyone. I attended Yale from 1992 to 1994. While I was there, I understood that, as a black woman, I was regarded as a usurper on hallowed Ivy grounds. Either I was a scholarship student or a New Haven local—no one could believe that I was there, like the others, simply to learn. It was not uncommon to be the target of racial slurs, to be the subject of whispered discussions about affirmative action, and to tolerate microaggressions on a daily basis. Campus police made a sport of asking me and other black students, to show our student identification cards. My experience was in no way unique. The currents protests are symbolic of a far more complex problem: a troubled racial climate on Yale’s campus that has persisted for many years. In truth, most predominantly white campuses across the country are similarly plagued. I have spent most of my adult life on college campuses in one role or another, as both student and instructor; regardless of campus, the racial climates were always tense, at best. I am not surprised by what is happening at Yale. I am not surprised by the Mizzou protesters, or by the fervor of their commitment. We cannot ignore what is truly being said by both groups of protesters: That not all students experience Yale equally, and not all students experience Mizzou equally. These conversations were happening well before these protests, and they will continue to happen until students are guaranteed equality of experience. They are still being forced, however, to first prove that it is worth opening a conversation about either. While I was at Yale, I understood that, as a black woman, I was regarded as a usurper on hallowed Ivy grounds. At Mizzou, the banal and predictable backlash has begun. The students have been painted as [cowardly babies](http://mediamatters.org/blog/2015/11/09/redstate-contributor-calls-mizzou-student-prote/206714), [bigots](https://www.rawstory.com/2015/11/conservatives-having-white-hot-emotional-meltdown-over-resignation-of-university-of-missouris-president/), or [outright liar](http://www.nationalreview.com/corner/426879/hey-mizzou-wheres-poop-andrew-c-mccarthy)s by the conservative media. They are ingrates, irresponsible, and, [in the case of the football players](http://www.nytimes.com/2015/11/09/us/missouri-football-players-boycott-in-protest-of-university-president.html?_r=0), men unwilling to meet their obligations. The students’ concerns have been roundly diminished or dismissed. It seems that when it comes to racism, people of color are expected to endure without complaint. We are expected to be grateful for opportunities, like a college education, while ignoring racial aggressions both great and small. We are supposed to be noble in the face of staggering humiliations. As a student, I was expected to show my ID every single time it was demanded of me and I was expected to pretend it did not hurt. As a faculty member, I am expected to show my campus ID every time it is demanded of me. I may be expected to pretend it doesn’t hurt, but now I refuse to participate in the charade. There is often condescension in examinations of these supposedly fragile young people who don’t understand the real world. College students do, however, understand the real world, because they aren’t just students: They do not abandon their class background or sexuality or race or ethnicity when they matriculate, and their issues do not vanish when they register for courses. We should not dismiss their valid concerns. To do so, to invalidate their experiences, would be to invalidate their diversity and ignore their hurt. American colleges and universities have always been incubators for the privileged, and the only people who continue to operate there with some guarantee of physical and emotional safety are white, heterosexual men. Is it any wonder, then, that students are demanding a basic guarantee of safety? The story we cannot forget is that black students at both Mizzou and Yale reached a breaking point. These are students who could no longer endure what had become unbearable. They said, “Enough.” In Cultivating Humanity: A Classical Defense of Reform in Liberal Education, **Martha Nussbaum suggests that a liberal education, one designed to “produce free citizens,” should help students connect with their humanity and understand their place in the world. “It would be catastrophic,” she writes, “to become a nation of technically competent people who have lost the ability to think critically, to examine themselves, and to respect the humanity and diversity of others.” Activism is one way students can learn to become the free citizens Nussbaum describes. These are students who could no longer endure what had become unbearable. They said, “Enough.” Students have protested hikes in tuition, university policies on undocumented students, graduate student stipends and health insurance, predatory professors, sexual violence** on campus, and many other *issues*. Sometimes, students protest provocative speakers, inept athletic directors, and toxic social media sites. They have directed their activism toward both national and global concerns including war **and other military interventions, exclusionary legislation, reproductive freedom, racial inequality**, and economic inequality. During the height of Occupy Wall Street, smaller [Occupy](http://www.nytimes.com/2012/01/22/education/edlife/the-new-student-activism.html?_r=0) sites began appearing at colleges and universities across the country.  Student activism is widespread, because some students are making the most of their college experience. **They understand that this may very well be the last moment in their lives when they can confront real issues in an environment where they are forced to encounter people who don’t look like them, who don’t think like them, environments where change is still possible**. The Student Nonviolent Coordinating Committee and protestors at campuses across the country including Yale and Mizzou are part of a robust, vital tradition that we should not overlook. **Today’s student activists are doing the necessary work to ensure that the next generation that participates in the tradition of student activism will be fighting different battles.** Or, perhaps, they are doing the necessary work to ensure that students, of all identities, might have a fighting chance to experience college and life beyond more equally than those who came before them.

#### Protests are a means of grassroots reform that can spillover to broader social change.

**Barnhardt:** Barnhardt, Cassie. [Assistant Professor, College of Education, University of Iowa] “Embracing Student Activism.” *Higher Education Today*,March 2, 2016. MZ

This past November, the country witnessed a watershed for American student activism at the University of Missouri, now known across the country by its familiar name, Mizzou. In response to a series of racial incidents on campus, protests coordinated by the student activist group ConcernedStudent1950, including a powerful boycott from the university’s Black football players, ended in the resignation of both the president and the chancellor. **While multiple matters drove the Mizzou students’ calls for change, concerns regarding the racial climate were certainly at the top of their list, motivating them to mobilize.** The racial turbulence and injustice surrounding the events in Ferguson, MO the previous year also had left an imprint on the Mizzou student community, a campus comprised of upwards of 60 percent Missouri residents. **Links between the broader social context of what is happening off campus and students’ on-campus activism have long been a means for students to personalize,** contextualize **and make sense of what it means to pursue social change. The events at Mizzou helped galvanize nascent efforts at other universities and brought urgency to an ongoing national conversation about improving postsecondary access and success for underrepresented students, dismantling racial oppression and undoing routines of inequity.** Campus leaders and the public may perceive the high-profile activism at Mizzou, University of Michigan, UCLA, or the lesser-known petitions and protests on campuses as a signal that U.S. universities have become unduly entrenched by identity politics or oversensitivity, or that these patterns of protest present obstacles to the tasks of student learning and employability. However, campuses derive their legitimacy in part on their commitment to developing excellence, integrity and a sense of community among their students. Student activism provides a space for institutions to be thoughtful about enacting those very commitments. **The campus-based movements of the 1960s are often the** reference point **for the connection between student activism and social change.** However, a pre-1960s perspective shows that each period of structural and cultural transition from the nation’s founding to today has a corresponding story of campus protest and dissent (see “Student Activism and Social Change on Campus Before the 1960s**”). From the earliest historical accounts, campus-based activism has reflected grievances based in the political dynamics of the nation. In the process of student protest, those broad social grievances were projected and** transferred **into more precise, localized calls for transformation** on campus. This pattern continued with the campus-based movements of the 1960s. In particular, the activism surrounding area **and** ethnic studies curricular offerings (depicted in books by Robert Rhoads, Fabio Rojas, and Mikaila Mariel Lemonik Arthur) were uniquely tied to **larger social movements** aimed at marginalized social identity groups, and represented a discrete effort to achieve structural changes in the academy (i.e., adopting new programs and majors). **Recent campus unrest, then, may be a signal that universities remain deeply connected to social change, even at a time when society is renegotiating predominant understandings of social status, with race and ethnicity in the foreground.** Perhaps as a result of the turbulence that characterized the anti-war and racial justice campus movements of the 1960s, there is a logic in higher education practice that characterizes student activism merely as a short-lived product of students’ identities, rather than emphasizing the role of the academy as a site of activism and social change. But as a society that values higher education, we must not lose sight that student activism is an opportunity to scrutinize the campus contexts, conditions and social realities that speak to students’ underlying claims or grievances.

#### Free speech means students reclaim public spaces from racist institutions and create *a cultural change*.

**Block:** Block, Jim. [Professor of Political Theory and Political Culture, DePaul University] “The Legacy and Promise of the Free Speech Movement.” *Popular Resistance,* October 2014. RP

**This past weekend was the 50th reunion of the Free Speech Movement at the University of California at Berkeley. At the beginning of the fall term of 1964, the university administration imposed a series of strict regulations limiting the right of students to engage in political soliciting on campus. Berkeley students had for several years been active in opposing the House Un-American Activities Committee, pro-labor, and anti-racism protests and demonstrations throughout the Bay area**. This picture of the university as a hotbed of political activism was undermining the carefully honed image being disseminated by the state of California as the leader in public higher education: in the conservative post-war period, Berkeley was being touted as not only a world class research university but at the forefront of preparing a modern elite meritocratic student body primed for corporate and governmental leadership. What the university administration failed to consider was the fact that many activist Berkeley students had embraced new levels of commitment to political organizing by participating in Freedom Summer, an initiative by radical civil rights organizations in the South to mobilize black Americans to challenge segregation and demand voting rights. **After resolutely confronting white segregationists and racist – often violent – local public officials as full-fledged democratic activists, a university administration seeking to curtail their political expression and ignoring their insistence on the urgency of social change struck these battle-tested students as demeaning and even infantilizing. Even more decisively, these acts implicated the new model university as the** central **institution in integrating younger generations into the corporate, hierarchical, expansionist values increasingly driving American society**. It suddenly became clear that the degree was being marketed not for any educational value but as a ticket punched to the higher levels of this post-war order and to material success, social status, and a suburban lifestyle widely being identified as the American dream. Once the university intervened, in other words, the political dynamic shifted. **What had begun as an effort to support other movements for social equity and integration quickly shifted before everyone’s eyes to a** demand **for the liberation of students and youth and the democratization of the institutions shaping their lives** as a prelude to broader social transformation**. This is the Free Speech Movement (FSM) whose message spread throughout the U.S. and beyond, catalyzing and exposing generational tensions and revealing the compliance-oriented program of American socialization**. I came to Berkeley as a neophyte, a completely apolitical and uninformed undergraduate, just days before the campus controversies began. And because the events of the next couple of years became the defining experience of my life about which I have written and taught ever since (trying to make sense of it), this reunion gave me an unparalleled opportunity to reflect on and rethink that experience in conversation with this unique community of participants in this defining moment. The weekend of intensive group discussions, panels, and informal interchange helped me to expand on and fine-tune my (always provisional) conclusions. At the time, the heavily politicized students with developed analyses of American political shortcomings, systemic racism, labor inequities, and foreign adventurism appeared to have come from another planet. They were impassioned and determined which contrasted strikingly with my confusion about the issues, uncertainty about what to do, and doubt that big picture issues even mattered. As I worked tirelessly over the next years to overcome the most glaring deficiencies in my political and cultural education and to formulate a beginning social activist agenda and vision of cultural change, I sensed that this journey I took with many other undergraduates led me to a different place than the FSM activists. All these years later, I was able through the reunion weekend to gain new clarity about these differences. Long ago, I had divided the alternative Berkeley students (others of course cared more about the Greek system and football, but they went to Cal and not Berkeley) into three, though somewhat overlapping, groups: the committed politicos, the more theoretically minded intellectuals, and the lifestyle experimenters widely called hippies. I found myself drawn to the intellectuals, and while participating in protest activities (and some lifestyle experimentation) I never got intensively involved enough with political organizing to fully discern their orientation. This weekend, attended overwhelmingly by politicos, was enlightening. The most committed FSM participants were graduate students. Born before or during World War II and coming of age in the late Fifties, their political ideals had been formed not in the just emerging upheavals of the counterculture but in the quiescent era before. Their inspiration, evident in the group sing-a-long late Saturday night of protest folk songs of the Weavers and others and anthems from progressive summer camp and peace school experiences, was anti-McCarthyite and social justice mobilizing extending back to the radical populism of the pre-war social movements. The expectation was that political organizing was a long, hard, rarely successful march against dominant and intransigent institutions, and few of them were prepared for the collapse of the Berkeley administration’s policies and legitimacy in the face of student demands. These participants, true to their early self-definitions, have since then sustained lives of activism in diverse progressive causes, and these made for great and inspiring stories. At the same time, they have returned to the view that progressives rarely win big, though one can retain the joy of principled fighting against the beast on fronts everywhere and in savoring victories when they occur. One can also take heart from movement solidarity for refusing to buckle as others, perhaps even their own families of origin and so many today, often do. And yet, connected with one of the two other groups that only arose with the emerging counterculture after the terrain of controversy shifted to youth politics and the quality of middle class life being portrayed as the universal dream, I could see where the FSM diverged from what came later. The politicos took as their immediate precursors the civil rights and to a lesser degree labor organizing movements, the causes prominent among left activists as they came of age. Occasionally the rhetoric, as with the now deceased FSM leader Mario Savio, identified the particular repressions in the university, yet the tendency was to include students as one dispossessed group demanding a voice with the others. **What I gathered from numerous conversations and group discussions is that they did not really appreciate – or perhaps regard as significant – how the counterculture radically altered the political-cultural landscape**. One reason that the Sixties in its full counterculture profusion broke out first (and more extensively) in Berkeley and the Bay area is that this region of northern California had served for decades as a place of immigration for refugees from mainstream culture, beats and bohemians and idealists and iconoclasts of all kinds. **It had been evolving a new lifestyle and value orientation, affirming more self-actualizing, self-expressive, anti-bureaucratic, libidinally open, artistic and less workaholic and role dependent lives than the places those arriving had come from**. Once the attack on university rigidities and in loco parentis regulations was successful, the way was cleared for students to begin asking questions about and in turn simply reject the repressively conformist American lifestyle.

#### Historical analysis confirms that protests spill over and change state policy – they’re the *only* method of grassroots reformism.

**Rothman:** Rothman, Lily [Contributor, TIME Magazine] “History Has Good News for Today's Student Protesters.” *Time.* November 2015. RP

**In recent days, as protests over racial issues at the University of Missouri have resulted in the resignation of university president Tim Wolfe, and as thousands of Yale students organized a march in response to racial divisions on their own campus, it's been easy compare this latest wave of campus activism with previous such moments in American history. The anti-war demonstrations that swept the nation during the late 1960s and '70s remain perhaps the most famous moment of American student activism—and, if the comparison holds, they provide at least one reason for today's activists to be optimistic about the larger implications of their visibility.** In 1970, TIME featured the student protests in a cover story at one of the most volatile moments of the anti-war movement. had only just occurred, sparking a national outcry among students, and there could no longer be any doubt that something noteworthy was happening on America's campuses. By TIME's count, 441 colleges and universities across the country were affected by post-Kent State protests, and some of them shut down entirely. At the largely conservative University of Nebraska, students occupied the school's ROTC headquarters. At Duke Law School, Nixon's portrait was removed from the wall and put in storage. At Yale, students wore suits and ties to their commencement so they could donate their cap-and-gown fees to benefit anti-war political candidates. One student group advocated that America's collegians stop drinking soda until the war ends, figuring that anti-war advocacy from Pepsi and Coke would speak louder than they could alone. But, as TIME noted, it wasn't just a matter of the protests being widespread. "All through the restive winter and early spring, the campus atmosphere had been heavy with intimations of bomb plots, and sometimes with actual whiffs of black powder," the story observed. "Last week's actions suddenly changed much of that mood." When the protests became a national cause, especially with the galvanizing incident at Kent State, more moderate students began to participate. The more radical fringes were "simply overwhelmed" by the other protesters, TIME noted, and a new strategy emerged. It may sound simplistic to say that protests with more people are more likely to be heard, but this moment in history shows that the converse is true too: it had been very hard to attract those who didn't identify as activists to a movement that was seen as radical or hopeless. The participation by moderate protesters came after opposition to war no longer seemed like an extreme position, and when it seemed like that opposition had a chance to be heard. The University of Missouri's football team is a perfect example from today's world: whether they identify as activists or not, the football players aren't typically on the extreme fringes of campus culture, and yet they joined the protests by refusing to play until the school's president resigned. As a result, more—and more visible—protests on college campuses can be read as evidence that the protesters are increasingly hopeful that they can have an effect, and that the system in which they live, no matter what they think of it at the moment, is capable of progress in the direction they desire. **When the 1970 protests hit their peak, the students illustrated that shift. When 1,000 of them visited Capitol Hill, they cheered when Indiana Senator Birch Bayh summed up their request: "We can make this system responsive from within instead of trying to destroy it from without**." **Though the Vietnam War wouldn't officially end for another five years—and though the protests would not ultimately be the factor that doomed Nixon's presidency—the new tactic did pay off**. By the end of that week, several students who had gone to Washington to speak with their Congressmen ended up with an invitation to the oval office. **While Nixon defended his recent decision to involve the U.S. military in Cambodia in addition to Vietnam, he used a conciliatory tone in in discussing the protests. It was no longer possible for the students to be ignored and, 45 years later, their impact on American history remains clear.**

#### Protests on campus galvanize society to change and spark dialogue on racism

**Curwen:** Curwen, Thomas [Contributor, LA Times] “What’s Different About The Latest Wave of College Activism?” *LA Times.* November 2015. RP

**If the University of Missouri was the spark, then the fire didn't take long to spread. Since the resignation of its president and chancellor Nov. 9, protesters have organized at more than 100 colleges and universities nationwide**. Social media sites have lighted up with voices of dissent, and what began as a grievance has evolved into a movement. **Inspired by the marches in Ferguson, Mo., and Black Lives Matter, students are taking to social media to question the institutions they once approached for answers**. Calling for racial and social reforms on their campuses, they are borrowing tactics of the past — hunger strikes, sit-ins and lists of demands — and have found a collective voice to address their frustrations, hurt and rage. Their actions seem to have hit the mark. Last week, the dean of students at Claremont McKenna College left the university after students protested her comments to a Latina student with the offer to work for those who "don't fit our CMC mold." **Tuesday night, Jonathan Veitch, the president of Occidental College, said he and other administrators were open to considering a list of 14 reforms,** including the creation of a black studies major and more diversity training, that student protesters had drawn up. Students at USC have similarly proposed a campuswide action plan, which includes the appointment of a top administrator to promote diversity, equity and inclusion. Nationwide, complaints of racism and microaggression are feeding Facebook pages and websites at Harvard, Brown, Columbia and Willamette universities, as well as at Oberlin, Dartmouth and Swarthmore colleges. Protesters at Ithaca College staged a walkout to demand the president's resignation, and Peter Salovey, president of Yale University, announced a number of steps, including the appointment of a deputy dean of diversity, to work toward "a better, more diverse, and more inclusive Yale." **For decades, students have helped drive social change in America, if not the world**. Campuses, said University of California President Janet Napolitano, have "historically been places where social issues in the United States are raised and where many voices are heard." **Over the decades, student protests have shifted attitudes in the country on civil rights and the Vietnam War, nuclear proliferation and apartheid, and some of today's actions are borrowing from tactics of the past.** Although some of the strategies may seem familiar, it is the speed and the urgency of today's protests that are different. "What is unique about these issues is how social media has changed the way protests take place on college campuses," said Tyrone Howard, associate dean of equity, diversity and inclusion at UCLA. "A protest goes viral in no time flat. With Instagram and Twitter, you're in an immediate news cycle. This was not how it was 20 or 30 years ago." Howard also believes that the effectiveness of the actions at the University of Missouri has encouraged students on other campuses to raise their voices. "A president stepping down is a huge step," he said. "Students elsewhere have to wonder, 'Wow, if that can happen there, why can't we bring out our issues to the forefront as well?'" Shaun R. Harper, executive director of the University of Pennsylvania's Center for the Study of Race and Equity in Education, agrees. The resignation of two top Missouri administrators, Harper said, showed students and athletes around the country that they have power they may not have realized before. The protests show "we're all together and we have the power to make the change we deserve," said Lindsay Opoku-Acheampong, a senior studying biology at Occidental. "It's affirming," said Dalin Celamy, also a senior at the college. "It lets us know we're not crazy; it's happening to people who are just like you all over the country." Celamy, along with other students, not only watched the unfolding protests across the country, but also looked to earlier protests, including an occupation of an administrative building at Occidental in 1968. Echoes of the 1960s in today's actions are clear, said Robert Cohen, a history professor at New York University and author of "Freedom's Orator," a biography of Mario Savio, who led the Free Speech Movement at UC Berkeley in the 1960s. "The tactical dynamism of these nonviolent protests and the public criticism of them are in important ways reminiscent of the 1960s," Cohen said. "Today's protests, like those in the '60s, are memorable because they have been effective in pushing for change and sparking dialogue as well as polarization." Although the targets of these protests are the blatant and subtle forms of racism and inequity that affect the students' lives, the message of the protests resonates with the recent incidents of intolerance and racial inequity on the streets of America. There is a reason for this, Howard said. Campuses are microcosms of society, he said, and are often comparable in terms of representation and opportunity. "So there is a similar fight for more representation, acceptance and inclusion." The dynamic can create a complicated and sensitive social order for students of color to negotiate. "Latino and African American students are often under the belief if they leave their community and go to colleges, that it will be better," Howard said. "They believe it will be an upgrade over the challenges that they saw in underserved and understaffed schools. But if the colleges and universities are the same as those schools, then there is disappointment and frustration." In addition, Howard said, when these students leave their community to go to a university, they often feel conflicted. "So when injustice comes up," he said, "they are quick to respond because it is what they saw in their community. On some level, it is their chance to let their parents and peers know that they have not forgotten the struggle in the community." On campuses and off, Harper, of the University of Pennsylvania center, finds a rising sense of impatience among African Americans about social change. "As a black person, I think black people are just fed up. It's time out for ignoring these issues," he said. While protests in the 1960s helped create specific safeguards for universities today, such as Title IX, guaranteeing equal access for all students to any educational program or activity receiving federal financial assistance, a gap has widened over the years between students and administrators over perceptions of bias. **Institutions often valued for their support of free speech find themselves wrestling with the prospect of limiting free speech, but to focus on what is or isn't politically correct avoids the more important issue,** Cohen said: whether campuses are diverse enough or how to reduce racism. Occidental student Raihana Haynes-Venerable has heard criticism that modern students are too sensitive, but she argues that subtle forms of discrimination still have a profound effect. She pointed to women making less than men and fewer minorities getting jobs as examples. "This is the new form of racism," she said.

## Alt Sucks

### Radical

Omitted

### Anti-Politics—Giroux

Omitted

### A2 Individual Ethics

Omitted

### A2 Rejection

Omitted

### A2 State Rejection

Omitted

## Generic Race K

#### Speech codes chill black radical activism – even if enforced fairly, black voices are chilled.

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal.* Winter 1995. RP

The second "paternalistic objection," that "antiracism rules will end up hurting minorities," n81 also has more substance in recent experience than Delgado's and Yun's analysis suggests. **Although they may be correct that prosecutions of minority group members for violating a campus hate-speech code "seem rare," n82 two examples serve to illustrate the importance of allowing members of the campus community, including members of minority groups, to engage in speech that may be offensive to others. The first example shows how several outspoken African-American students benefitted from the atmosphere of free speech and counterspeech at A.S.U. after the racist poster incident described in part A above. Vernard Bonner, the African-American leader of Students Against Racism, vented his [\*1264] outrage over the racist poster with an opinion letter that some complained reflected racist stereotyping of whites. n83 Although his own speech was offensive to some and sparked criticism, he was secure in his right to speak his mind without fear of censorship or discipline**. Similarly, one year after he led the counterspeech to the racist poster and a year before being elected student body president, Rossie Turman reaffirmed his support for A.S.U.'s policies supporting free speech, precisely because those policies protected his right to strongly express his own views. n84 **In the same year, a militant African-American student, Ashahed Triche, expressed his more radical views on race relations in a regular column of the campus newspaper, regularly offending white readers**. Though some of the offended readers engaged in their own counterspeech and even recommended that the newspaper drop his column, n85 he continued to express his provocative views free from censorship. **A campus policy that prohibited offensive, racially hostile speech presumably would have bottled up these emerging African-American speakers along with their white counterparts. Perhaps the result of such a policy would be a kinder, gentler campus, but these African-American students were willing to sacrifice subtlety in their speech to draw attention to their perspectives.**

#### The naivete of speech codes is that they rest their faith in institutions that are inherently anti-black

Henry Louis **Gates 94**, [Professor and Director of the Hutchins Center for African and African American Research at Harvard University], “War of Words: Critical Race Theory and the First Amendment”, in Speaking of Race, Speaking of Sex: Hate Speech, Civil Rights, and Civil Liberties, New York University Press, 1994. RFK

One other paradox fissures the hate speech movement. Because these scholars wish to show that substantial restrictions on racist speech are consistent with the Constitution, they must make the case that racist speech is sui generis among offensive or injurious utterances; otherwise the domain of unprotected speech would mushroom beyond the point of constitutional and political plausibility. "Words That Wound," the title of Delgado's pioneering essay, designates a category that includes racist speech but is scarcely exhausted by it. Nor could we maintain that racist insults, which tend to be generic, are necessarily more wounding than an insult tailor-made to hurt someone: being jeered at for your acne or your obesity may be far more hurtful than being jeered at for your race or your religion. Alert to this consideration, scholars like Matsuda, Lawrence and Delgado argue that racist speech is peculiarly deserving of curtailment precisely because it participates in (and is at least partly constitutive of) the larger structures of racism that are "hegemonic" in our society. "Black folks know that no racial incident is `isolated' in the United States," writes Lawrence: That is what makes the incidents so horrible, so scary. It is the knowledge that they are not the isolated unpopular speech of a dissident few that makes them so frightening. These incidents are manifestations of a ubiquitous and deeply ingrained cultural belief system, an American way of life. To this consideration Matsuda annexes the further argument that what distinguishes racist speech from other forms of unpopular speech is "the universal acceptance of the wrongness of the doctrine of racial supremacy." Unlike Marxist speech, say, racist speech is "universally condemned." At first blush, this is a surprising claim. After all, **if racist speech really were universally rejected, ordinances against it would be an exercise in antiquarianism. And yet there is something in what Matsuda says: a shared assumption about the weight of the anti-racist consensus, a conviction that at least overt racists are an unpopular minority, that authority is likely to side with us against them.** This hopeful conviction about the magnitude of racist expression in America provides the hidden and rather unexpected foundation for the hate speech movement. **Why would you entrust authority with enlarged powers of regulating the speech of unpopular minorities, unless you were confident that the unpopular minorities would be racists, not blacks?** Lawrence may know that racial incidents are never "isolated," but he must also believe them to be less than wholly systemic. You don't go to the teacher to complain about the school bully unless you know that the teacher is on your side. **The tacit confidence of critical race theory in the anti-racist consensus also enables its criticism of neutral principles**. This becomes clear when one considers the best arguments in favor of such principles. Thus David Coles, a law professor at Georgetown University, suggests that in a democratic society the only speech government is likely to succeed in regulating will be that of the politically marginalized. If an idea is sufficiently popular, a representative government will lack the political wherewithal to suppress it, irrespective of the First Amendment. But if an idea is unpopular, the only thing that may protect it from the majority is a strong constitutional norm of content-neutrality. Reverse his assumptions about whose speech is marginalized and you stand the argument on its head. If blatantly racist speech is unpopular and stigmatized, a strong constitutional norm of content- neutrality may be its best hope for protection. For these critics, however, that is a damning argument against content-neutrality. **This, then, is the political ambiguity that haunts the new academic activism. "Our colleagues of color, struggling to carry the multiple burdens of token representative, role model and change agent in increasingly hostile environments, needed to know that the institutions in which they worked stood behind them**," declare our critical race theorists in their joint manifesto. Needed to know that the institutions in which they worked stood behind them: **I have difficulty imagining this sentiment expressed by activists in the '60s, who defined themselves in a proudly adversarial relation to authority and its institutions. Here is the crucial difference this time around. The contemporary aim is not to resist power, but to enlist power.**

#### The aff is uniquely key to minority rights

**Zimmerman:** Zimmerman, Jonathan. [Contributor, *The Chronicle of Higher Education*] “Racism Was Served by Silence. Justice Requires Free Speech for All.” *The Chronicle for Higher Education*, December 2016. RP

In 1986, the Senate Judiciary Committee turned down Jeff Sessions for a federal judgeship after reports surfaced that he had called the NAACP "un-American" and "Communist-inspired." That decision is back in the news now that President-elect Donald Trump has nominated Sessions to be U.S. attorney general. His remark recalls the long history of racist hostility against the NAACP, which was harassed and persecuted across the South. Law-enforcement **[O]fficials spied on its members, and at least three states — including Sessions’s native Alabama — prohibited the group from organizing within their borders. But Sessions’s comment should also make us look anew at campaigns to restrict speech on campus, which have been stepped up since Trump’s victory.** A few days after the election, for example, students at my own institution asked for an "anonymous system" for reporting faculty members who made people of color feel "unsafe." Who will collect this information, and how will they know if it’s credible? What will happen to the professors it cites? And how long will it take before white students complain that faculty of color have made them feel unsafe? Actually, it’s already happened. **In 2013, three white students at Minneapolis Community and Technical College said an African-American professor had made them feel uncomfortable by teaching them about structural racism. The college later reprimanded her for creating a "hostile learning environment." When Americans restrict speech, in fact, it’s usually** minorities **who lose out. That’s why just about every great fighter for racial equality in our history was also a warrior for free speech. Start with Frederick Douglass, who railed against efforts to silence his fellow abolitionists.** Southern states outlawed the publication of antislavery tracts and even their delivery by mail. In Congress, meanwhile, Southern representatives and their Northern allies pushed through a "gag rule" that automatically tabled antislavery petitions. "To chain the slave, these parties have said we must fetter the free!" Douglass told an 1852 audience in Ithaca, N.Y. "To make tyranny safe, we must endanger the liberties of the nation, by destroying the palladium of all liberty and progress — the freedom of speech." Eight years later, after a mob broke up an antislavery meeting in Boston’s Music Hall, Douglass returned to the same location to deliver his most famous testament to free speech. Boston had been the fount of the American Revolution, which established freedom of speech as "the great moral renovator of society and government," he noted. If Americans turned their backs on this tradition, he warned, they would also close themselves off to collective growth and improvement. "To suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker," Douglass thundered. "It is just as criminal to rob a man of his right to speak and hear as it would be to rob him of his money." **1n 1905, when W.E.B. Du Bois** and 28 others met at Niagara Falls, Ontario — because hotels on the American side wouldn’t serve blacks — they demanded not just equal access to public facilities and the ballot box but also freedom of speech. And when Du Bois helped launch the NAACP, four years after that, he **insisted that African-Americans could never gain civil rights so long as they were prevented from speaking their minds**. After World War II, Du Bois was indicted for failing to register as a member of an antinuclear organization that the government deemed "subversive." Although he was acquitted, he continued to campaign for the freedom of others who were persecuted or muzzled during the Cold War. "It is clear still today that freedom of speech and of thinking can be attacked in the United States without the intellectual and moral leaders of this land raising a hand or saying a word in protest or defense," he wrote in 1952. "Than this fateful silence there is on earth no greater menace to present civilization." The NAACP was listed as a subversive organization in several states, too, which helps explain why Jeff Sessions thought it was Communist-inspired. Therefore members had to either keep their affiliation hidden — in violation of the law — or register with the government, which subjected them to still further harassment. And when students at South Carolina State College for Negroes protested the interrogation of NAACP members on campus, the students were investigated themselves. **In short, if you didn’t have freedom of speech,** you couldn’t counter any other injustice. **That’s a lesson that some of today’s student activists — and some college administrators — seem to have** forgotten. Although courts have consistently found campus speech codes unconstitutional, hundreds of colleges continue to discipline students for saying the wrong thing. Faculty members, too, have come under fire. During the wave of protests that swept campuses last fall, students at Duke University called for the dismissal of professors who "perpetuate hate speech that threatens the safety of students of color." At Emory University, students demanded "repercussions or sanctions for racist actions performed by professors." Let me be clear: If students think a faculty member is racist, they have every right to say so. **But nobody has a right to limit someone else’s speech, via institutional prohibitions or star chambers or anything else. That’s precisely what white America tried to do to the NAACP and other African-Americans. We insult their memories when we silence one another in the name of racial justice, which will never be served by the restriction of free speech.**

#### Turn – the First Amendment has historically helped Blacks – it was the basis for Malcom X and MLK and helped reclaim black culture.

**McGregor:** McGregor, Michael “Issue Brief: African Americans and First Amendment Rights (Free Speech and Religion).” 2009. RP

**The First Amendment to the Constitution states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble,** and to petition the Government for a redress of grievances.” **Therefore, as this amendment not only allows for but also protects individual freedom of religion, freedom of speech, and, innovatively, freedom to petition the government, it is not surprising that this amendment was the basis for the Civil Rights Movement. Interestingly, this movement relied heavily on the first two aspects of the First Amendment in the vein of strong vocal leaders, such as Martin Luther King Jr. and Malcolm X, and the usage of religion in the form of not only the “black church” but also in the greater sense of African American spirituality in order to effectively petition the government’s racist policies in the mid‐20th century.**

## Cap/Neolib

### Link – Generic

#### It’s try or die for free speech – there’s no other method of change – we shouldn’t just give up and get steamrolled by elites

#### Speech limits stifle alternative viewpoints that are key to a criticism of cap

**Workers’ Liberty:** Workers’ Liberty [Blog that writes about capitalism and perspectives about addressing it] “Universities, capitalism and free speech.” *Workers’ Liberty.* March 2015. RP

**For centuries, university campuses have been, relatively speaking,** a haven within capitalist society for free debate **and criticism**. A high point, for much of the 20th century, was the right which universities in Latin America won to keep the police off their campuses and have university officials elected by staff and students. That began with the University Reform Movement in Córdoba, in northern Argentina, which opposed a focus on learning by rote, inadequate libraries, poor instruction, and restrictive admission criteria, and spread across the subcontinent. **The student radicalism which spread across much of the world in 1968 started, in 1964-5, with a Free Speech Movement at the University of California, Berkeley**. The central avenues through campus had become a lively scene, with street stalls and political gatherings; the university authorities tried to clamp down, and were eventually defeated. **Today free debate and criticism on campus is under threat from several angles. The government wants universities to ban speakers from their campuses who would be quite legal elsewhere. University administrations ban meetings, even without government prompting, when they think they might cause trouble or uproar. Campus space is increasingly commercialised and franchised-out, and university bosses try to stop student postering, leafleting, and campaigning affecting the “commercial space”.** Student unions are increasingly run by people who think that a spell as student union president will look good on their CV when they apply for a managerial job. University lecturers’ careers depend on how many articles they get published in “leading” (i.e., in almost all fields, orthodox) journals. **Over generations of academic turnover, this produces university departments filled with staff who have been selected by capacity to get wordage into those journals, and who in turn will go on to run those journals, oblivious to critiques or alternative approaches.** This narrows the range of teaching and debate on courses. Finally, and paradoxically, the shutting-down of debate is sometimes promoted by student activists who consider themselves left-wing. A chief example is the bans on the Socialist Workers Party imposed by Goldsmiths and Edinburgh University student unions, and attempted elsewhere.

#### Campus free speech is key to fight capitalism – restrictions create internal strife that make movements impossible

Halberstam Jack Halberstam, You Are Triggering me! The Neo-Liberal Rhetoric of Harm, Danger and Trauma, Bully Bloggers, 5/7/16.

**What does it mean when younger people who are benefitting from several generations now of queer social activism** by people in their 40s and 50s (who in their childhoods had no recourse to anti-bullying campaigns or social services or multiple representations of other queer people building lives) **feel abused, traumatized, abandoned, misrecognized, beaten, bashed and damaged?** These **younger folks**, with their gay-straight alliances, their supportive parents and their new right to marry regularly **issue calls for “safe space**.” However, as Christina Hanhardt’s Lambda Literary award winning book, Safe Space: Neighborhood History and the Politics of Violence, shows, **the safe space agenda has worked in tandem with urban initiatives to increase the policing of poor neighborhoods and the gentrification of others.** Safe Space: Gay Neighborhood History and the Politics of Violence traces the development of LGBT politics in the US from 1965-2005 and explains how **LGBT activism was transformed from a multi-racial coalitional grassroots movement with strong ties to anti-poverty groups and anti-racism organizations to a mainstream, anti-violence movement with aspirations for state recognition. And, as LGBT communities make “safety” into a top priority** (and that during an era of militaristic investment in security regimes) **and ground their quest for safety in competitive narratives about trauma, the fight against aggressive new forms of exploitation, global capitalism and corrupt political systems falls by the way side. Is this the way the world ends? When groups that share common cause, utopian dreams and a joined mission find fault with each other instead of tearing down the banks and the bankers, the politicians and the parliaments, the university presidents and the CEOs? Instead of realizing**, as Moten and Hearny put it in The Undercommons, **that “we owe each other everything,” we** enact punishments on one another and stalk away from projects that should unite us, and **huddle in small groups feeling** erotically **bonded through our self-righteousness**. I want to call for a time of accountability and specificity: not all LGBT youth are suicidal, not all LGBT people are subject to violence and bullying, and indeed class and race remain much more vital factors in accounting for vulnerability to violence, police brutality, social baiting and reduced access to education and career opportunities. **Let’s call an end to the finger snapping moralism, let’s question contemporary desires for immediately consumable messages of progress, development and access; let’s all take a hard long look at the privileges that often prop up public performances of grie**f and outrage; let’s acknowledge that being queer no longer automatically means being brutalized and let’s argue for much more situated claims to marginalization, trauma and violence. **Let’s not fiddle while Rome** (or Paris) **burns,** trigger while the water rises, weep while trash piles up; **let’s recognize these internal wars for the distraction they have become. Once upon a time, the appellation “queer” named an opposition to identity politics, a commitment to coalition, a vision of alternative worlds. Now it has become a weak umbrella term for a confederation of identitarian concerns. It is time to move on, to confuse the enemy, to become illegible, invisible, anonymous** (see Preciado’s Bully Bloggers post on anonymity in relation to the Zapatistas). In the words of José Muñoz, “we have never been queer.” In the words of a great knight from Monty Python and the Holy Grail, “we are now no longer the Knights who say Ni, we are now the Knights who say “Ekki-ekki-ekki-ekki-PTANG. Zoom-Boing, z’nourrwringmm.”

#### Free speech is key to a capitalist struggle – restrictions on speech result in the suppression of radical speakers.

**Farber:** Farber, Samuel [Samuel Farber has been involved in left and socialist politics for well over fifty years. His most recent book is [The Politics of Che Guevara: Theory and Practice](http://www.haymarketbooks.org/pb/The-Politics-of-Che-Guevara).] “A Socialist Approach to Free Speech.” Jacobin Magazine. February 2017. RP

**When grappling with the question of free speech, socialists should look not to Isaiah Berlin, the model of courage in defense of free speech evoked by Garton Ash, but to Rosa Luxemburg, who insisted that free expression was designed for those who disagree**. The view presented here differs not only from liberalism but also from left currents that adhere to authoritarian-from-above visions of socialism. **Among these are the longstanding notions explicitly or implicitly advocating for an “educational dictatorship” of enlightened intellectuals, as found in Herbert Marcuse’s work. In A Critique of Pure Tolerance, he argues that we should suppress the powerful’s right to free speech because they aim to brainwash the minds of the people. His argument rests on the implicit claim that intellectuals like him should decide what ideas the people should be exposed to.** Like Garton Ash, Marcuse bases his analysis of free speech on tolerance and similarly cannot produce a solid defense of the right to free expression. **This seems ironic since Marcuse and those who agreed with him were a small minority — their ideas were more likely to be suppressed than the rulers’**. Luxemburg’s position also differs from Stalinist and neo-Stalinist politics in all its expressions, which wrongly maintain that Marx was not interested in defending “bourgeois” individual rights and political democracy. In fact, Marx’s politics were deeply rooted in his time’s radical democratic movements. In his first article, he sharply criticizes the government decree that established censorship, arguing: The writer is thus subjected to the most frightful terrorism, the jurisdiction of suspicion. Laws about tendency, laws that do not provide objective norms, are laws of terrorism, such as were conceived by the state’s exigencies under Robespierre and the state’s rottenness under the Roman emperors. For some left currents, free speech and other democratic freedoms serve as an ideological cover for the bourgeoisie’s defense of private property**. In fact, the capitalist bourgeoisie has never been deeply committed to free speech and other civil liberties, happily coexisting with a wide variety of antidemocratic political regimes, South African apartheid and fascism included**. In the last analysis, private ownership of the means of production allows capitalists to maintain social and economic power independent of the political system. Indeed, breaking the ruling class control over socioeconomic power and establishing collective ownership depends on democracy: “the first step in the revolution by the working class,” proclaimed The Communist Manifesto, “is to raise the proletariat to the position of ruling class, to win the battle of democracy.” **For the most part, struggles for democratic rights — such as free speech, the abolition of slavery, universal suffrage, workers’, and women’s rights — came after the bourgeois revolution. They were democratic conquests won through popular struggle. Free speech, free association, and other democratic freedoms allowed workers to fight for their interests.** Some proponents of socialism from above tend to defend democratic freedoms only for the working class, but this perspective has a narrow and parochial view of a class that should be, as Lenin argued, “the tribune of the people,” the representative of the interests of the great social majority, and runs contrary to the socialist tradition’s strong emphasis on demanding universal political rights such as suffrage. In a more cynical vein, this political current has demanded free speech and other democratic rights only when they belong to the persecuted opposition. In contrast to this view, as Hal Draper argued in his 1968 article “Free Speech and Political Struggle”: “There can be no contradiction, no gulf in principle between what is demanded of the existing state, and what we propose for the society we want to replace it, a free society.” **Consistent with this approach, we must defend free speech on its own terms**, not merely because it helps to organize and fight for a new society. In this, free speech does not differ from the economic advances the working class and its allies have won. They are valuable both in their own right and because they strengthen the working class and its allies in their struggle for their emancipation.

#### The Aff’s stance towards campus freedom is key to activism that alters overarching structures like cap

**Curwen:** Curwen, Thomas [Contributor, LA Times] “What’s Different About The Latest Wave of College Activism?” *LA Times.* November 2015. RP

**If the University of Missouri was the spark, then the fire didn't take long to spread. Since the resignation of its president and chancellor Nov. 9, protesters have organized at more than 100 colleges and universities nationwide**. Social media sites have lighted up with voices of dissent, and what began as a grievance has evolved into a movement. **Inspired by the marches in Ferguson, Mo., and Black Lives Matter, students are taking to social media to question the institutions they once approached for answers**. Calling for racial and social reforms on their campuses, they are borrowing tactics of the past — hunger strikes, sit-ins and lists of demands — and have found a collective voice to address their frustrations, hurt and rage. Their actions seem to have hit the mark. Last week, the dean of students at Claremont McKenna College left the university after students protested her comments to a Latina student with the offer to work for those who "don't fit our CMC mold." **Tuesday night, Jonathan Veitch, the president of Occidental College, said he and other administrators were open to considering a list of 14 reforms,** including the creation of a black studies major and more diversity training, that student protesters had drawn up. Students at USC have similarly proposed a campuswide action plan, which includes the appointment of a top administrator to promote diversity, equity and inclusion. Nationwide, complaints of racism and microaggression are feeding Facebook pages and websites at Harvard, Brown, Columbia and Willamette universities, as well as at Oberlin, Dartmouth and Swarthmore colleges. Protesters at Ithaca College staged a walkout to demand the president's resignation, and Peter Salovey, president of Yale University, announced a number of steps, including the appointment of a deputy dean of diversity, to work toward "a better, more diverse, and more inclusive Yale." **For decades, students have helped drive social change in America, if not the world**. Campuses, said University of California President Janet Napolitano, have "historically been places where social issues in the United States are raised and where many voices are heard." **Over the decades, student protests have shifted attitudes in the country on civil rights and the Vietnam War, nuclear proliferation and apartheid, and some of today's actions are borrowing from tactics of the past.** Although some of the strategies may seem familiar, it is the speed and the urgency of today's protests that are different. "What is unique about these issues is how social media has changed the way protests take place on college campuses," said Tyrone Howard, associate dean of equity, diversity and inclusion at UCLA. "A protest goes viral in no time flat. With Instagram and Twitter, you're in an immediate news cycle. This was not how it was 20 or 30 years ago." Howard also believes that the effectiveness of the actions at the University of Missouri has encouraged students on other campuses to raise their voices. "A president stepping down is a huge step," he said. "Students elsewhere have to wonder, 'Wow, if that can happen there, why can't we bring out our issues to the forefront as well?'" Shaun R. Harper, executive director of the University of Pennsylvania's Center for the Study of Race and Equity in Education, agrees. The resignation of two top Missouri administrators, Harper said, showed students and athletes around the country that they have power they may not have realized before. The protests show "we're all together and we have the power to make the change we deserve," said Lindsay Opoku-Acheampong, a senior studying biology at Occidental. "It's affirming," said Dalin Celamy, also a senior at the college. "It lets us know we're not crazy; it's happening to people who are just like you all over the country." Celamy, along with other students, not only watched the unfolding protests across the country, but also looked to earlier protests, including an occupation of an administrative building at Occidental in 1968. Echoes of the 1960s in today's actions are clear, said Robert Cohen, a history professor at New York University and author of "Freedom's Orator," a biography of Mario Savio, who led the Free Speech Movement at UC Berkeley in the 1960s. "The tactical dynamism of these nonviolent protests and the public criticism of them are in important ways reminiscent of the 1960s," Cohen said. "Today's protests, like those in the '60s, are memorable because they have been effective in pushing for change and sparking dialogue as well as polarization." Although the targets of these protests are the blatant and subtle forms of racism and inequity that affect the students' lives, the message of the protests resonates with the recent incidents of intolerance and racial inequity on the streets of America. There is a reason for this, Howard said. Campuses are microcosms of society, he said, and are often comparable in terms of representation and opportunity. "So there is a similar fight for more representation, acceptance and inclusion." The dynamic can create a complicated and sensitive social order for students of color to negotiate. "Latino and African American students are often under the belief if they leave their community and go to colleges, that it will be better," Howard said. "They believe it will be an upgrade over the challenges that they saw in underserved and understaffed schools. But if the colleges and universities are the same as those schools, then there is disappointment and frustration." In addition, Howard said, when these students leave their community to go to a university, they often feel conflicted. "So when injustice comes up," he said, "they are quick to respond because it is what they saw in their community. On some level, it is their chance to let their parents and peers know that they have not forgotten the struggle in the community." On campuses and off, Harper, of the University of Pennsylvania center, finds a rising sense of impatience among African Americans about social change. "As a black person, I think black people are just fed up. It's time out for ignoring these issues," he said. While protests in the 1960s helped create specific safeguards for universities today, such as Title IX, guaranteeing equal access for all students to any educational program or activity receiving federal financial assistance, a gap has widened over the years between students and administrators over perceptions of bias. **Institutions often valued for their support of free speech find themselves wrestling with the prospect of limiting free speech, but to focus on what is or isn't politically correct avoids the more important issue,** Cohen said: whether campuses are diverse enough or how to reduce racism. Occidental student Raihana Haynes-Venerable has heard criticism that modern students are too sensitive, but she argues that subtle forms of discrimination still have a profound effect. She pointed to women making less than men and fewer minorities getting jobs as examples. "This is the new form of racism," she said.

#### Restrictions on campus free speech such as safe spaces depoliticize oppression and make neolib worse.

Chowsky, Aviva, "Students vs. Neoliberals: The Unreported Conflict at the Heart of Our Campus Culture War”, Salon, 5/25/16.

The Neoliberal University University administrators have been particularly amenable to student demands that fit with current trends in higher education. Today’s neoliberal university is increasingly facing market pressures like loss of state funding, privatization, rising tuition, and student debt, while promoting a business model that emphasizes the managerial control of faculty through constant “assessment,” emphasis on “accountability,” and rewards for “efficiency.” Meanwhile, in a society in which labor unions are constantly being weakened, the higher education labor force is similarly being — in the term of the moment — “[flexibilized](http://www.amazon.com/dp/0823228606/ref=nosim/?tag=tomdispatch-20)” through the weakening of tenure, that once ironclad guarantee of professorial lifetime employment, and the increased use of temporary adjunct faculty. In this context, universities are scrambling to accommodate student activism for racial justice by incorporating the more individualized and personal side of it into increasingly depoliticized cultural studies programs and business-friendly, market-oriented academic ways of thinking. Not surprisingly, how today’s students frame their demands often reflects the environment in which they are being raised and educated. Postmodern theory, an approach which still reigns in so many liberal arts programs, encourages textual analysis that reveals hidden assumptions encoded in words; psychology has popularized the importance of individual trauma**; and the** [**neoliberal ideology**](http://eepat.net/doku.php?id=neoliberalism) **that has come to permeate so many schools emphasizes individual behavior as the most important agent for social change. Add together these three strands of thought, now deeply embedded in a college education, and injustice becomes a matter of the wrongs individuals inflict on others at a deeply personal level. Deemphasized are the policies and structures that are built into how society (and the university) works. For this reason, while schools have downplayed or ignored student demands for changes in admissions, tuition, union rights, pay scales, and management prerogatives, they have jumped into the heated debate the student movement has launched over “**[**microaggressions**](http://www.nytimes.com/2014/03/22/us/as-diversity-increases-slights-get-subtler-but-still-sting.html?_r=0)**” — pervasive, stereotypical remarks that assume whiteness as a norm and exoticize people of color, while taking for granted the white nature of institutions of higher learning. As part of the present wave of protest, students of color have, for instance, highlighted their daily experiences of casual and everyday racism — statements** or questions like “where are you from?” (when the answer is: the same place you’re from) or “as a [fill in the blank], how do you feel about…” Student protests against such comments, especially when they are made by professors or school administrators, and the mindsets that go with them are precisely what the right is apt to dismiss as political correctness run wild and university administrations are embracing as the essence of the present on-campus movement. At Yale, the Intercultural Affairs Committee [advised students](https://www.thefire.org/email-from-intercultural-affairs/) to avoid racially offensive Halloween costumes. When a faculty member and resident house adviser circulated an [email](https://www.thefire.org/email-from-erika-christakis-dressing-yourselves-email-to-silliman-college-yale-students-on-halloween-costumes/) critiquing the paternalism of such an administrative mandate, student protests erupted calling for her removal. While Yale declined to remove her from her post as a house adviser, she stepped down from her teaching position. At Emory, students [protested](https://www.washingtonpost.com/news/grade-point/wp/2016/03/24/someone-wrote-trump-2016-on-emorys-campus-in-chalk-some-students-said-they-no-longer-feel-safe/) the “pain” they experienced at seeing “Trump 2016” graffiti on campus, and the university president assured them that he “heard [their] message… about values regarding diversity and respect that clash with Emory’s own.” Administrators are scrambling to implement new diversity initiatives and on-campus training programs — and hiring expensive private consulting firms to help them do so. At the University of Missouri, the president and chancellor both [resigned](https://www.washingtonpost.com/news/grade-point/wp/2015/11/09/missouris-student-government-calls-for-university-presidents-removal/) in the face of student protests including a hunger strike and a football team game boycott in the wake of racial incidents on campus including public racist slurs and symbols. So did the dean of students at Claremont McKenna College (CMC), when protest erupted over her reference to students (implicitly of color) who “[don’t fit our CMC mold](http://www.latimes.com/local/lanow/la-me-ln-claremont-marches-20151112-story.html).” Historian and activist Robin Kelley [suggests](https://bostonreview.net/forum/robin-d-g-kelley-black-study-black-struggle) that today’s protests, even as they “push for measures that would make campuses more hospitable to students of color: greater diversity, inclusion, safety, and affordability,” operate under a contradictory logic that is seldom articulated. To what extent, he wonders, does the student goal of “[leaning in](http://www.amazon.com/Lean-Women-Work-Will-Lead/dp/0385349947)” **and creating more spaces for people of color at the top of an unequal and unjust social order clash with the urge of the same protesters to challenge that unjust social order? Kelley** [**argues**](https://bostonreview.net/forum/robin-d-g-kelley-black-study-black-struggle) **that the language of “trauma” and mental health that has come to dominate campuses also works to individualize and depoliticize the very idea of racial oppression. The words “trauma, PTSD, micro-aggression, and triggers,” he points out, “have virtually replaced oppression**, repression, and subjugation.” He explains that, “while trauma can be an entrance into activism, it is not in itself a destination and may even trick activists into adopting the language of the neoliberal institutions they are at pains to reject.” This is why, he adds, for university administrators, diversity and cultural competency initiatives have become go-to solutions that “shift race from the public sphere into the psyche” and strip the present round of demonstrations of some of their power. Cultural Politics and Inequality In recent years, cultural, or identity, politics has certainly challenged the ways that Marxist and other old and new left organizations of the past managed to ignore, or even help reproduce, racial and gender inequalities. It has questioned the value of class-only or class-first analysis on subjects as wide-ranging as the Cuban Revolution — did it successfully address racial inequality as it redistributed resources to the poor, or did it repress black identity by privileging class analysis? — and the Bernie Sanders campaign — will his social programs aimed at reducing economic inequality alleviate racial inequality by helping the poor, or will his class-based project leave the issue of racial inequality in the lurch? In other words, the question of whether a political project aimed at attacking the structures of economic inequality can also advance racial and gender equality is crucial to today’s campus politics. Put another way, the question is: How political is the personal? Political scientist Adolph Reed [argues](http://www.commondreams.org/views/2015/06/15/jenner-dolezal-one-trans-good-other-not-so-much) that if class is left out, race politics on campus becomes “the politics of the left-wing of neoliberalism.” As he puts it, race-first politics of the sort being pushed today by university administrators promotes a “moral economy… in which 1% of the population controlled 90% of the resources could be just, provided that roughly 12% of the 1% were black, 12% were Latino, 50% were women, and whatever the appropriate proportions were LGBT people.” The student movement that has swept across the nation has challenged colleges and universities on the basics of their way of (quite literally) doing business. The question for these institutions now is: Can student demands largely be tamed and embedded inside an administration-sanctioned agenda that in no way undermines how schools now operate in the world? Feminist theorist Nancy Fraser has [shown](http://www.theguardian.com/commentisfree/2013/oct/14/feminism-capitalist-handmaiden-neoliberal) how feminist ideas of a previous generation were successfully “recuperated by neoliberalism” — that is, how they were repurposed as rationales for greater inequality. “Feminist ideas that once formed part of a radical worldview,” she argues, are now “increasingly expressed in individualist terms.” Feminist demands for workplace access and equal pay have, for example, been used to undermine worker gains for a “family wage,” while a feminist emphasis on gender equality has similarly been used on campus to divert attention from growing class inequality.  Student demands for racial justice risk being absorbed into a comparable framework. University administrators have found many ways to use student demands for racial justice to strengthen their business model and so the micro-management of faculty. In one case seized upon by free-speech libertarians, the Brandeis administration [placed](https://www.insidehighered.com/news/2007/11/09/brandeis) an assistant provost in a classroom to monitor a professor after students accused him of using the word “wetback” in a Latin American politics class. More commonly, universities employ a plethora of consulting firms and create new administrative positions to manage “diversity” and “inclusion.” **Workshops and training sessions proliferate, as do “safe spaces” and “trigger warnings.” Such a vision of “diversity” is then promoted as a means to prepare students to compete in the “global marketplace.**” There are even deeper ways in which a diversity agenda aligns with neoliberal politics. Literary theorist Walter Benn Michaels [argues](http://inthesetimes.com/article/2848), for example, that diversity can give a veneer of social justice to ideas about market competition and meritocracy that in reality promote inequality. “The rule in neoliberal economies is that the difference between the rich and the poor gets wider rather than shrinks — but that no culture should be treated invidiously,” he [explains](https://www.jacobinmag.com/2011/01/let-them-eat-diversity/). “It’s basically OK if economic differences widen as long as the increasingly successful elites come to look like the increasingly unsuccessful non-elites. So the model of social justice is not that the rich don’t make as much and the poor make more, the model of social justice is that the rich make whatever they make, but an appropriate percentage of them are minorities or women.” Or as Forbes Magazine [put it](http://www.forbes.com/sites/glennllopis/2011/02/21/why-most-corporate-diversity-programs-are-wrong-headed/#35d3b7c9588a), “Businesses need to vastly increase their ability to sense new opportunities, develop creative solutions, and move **on them with much greater speed. The only way to accomplish these changes is through a revamped workplace culture that embraces diversity so that sensing, creativity, and speed are all vastly improved.” Clearly, university administrators prefer student demands that can be coopted or absorbed into their current business model**. Allowing the prevailing culture to define the parameters of their protest has left the burgeoning Millennial Movement in a precarious position. The more that students — with the support of college and university administrations — accept the individualized cultural path to social change while forgoing the possibility of anything greater than cosmetic changes to prevailing hierarchies, on campus and beyond, the more they face ridicule from those on the right who present them as fragile, coddled, privileged whiners.

### Link – University Capitalistic

#### Turn – THIS IS AN ADVANTAGE FOR THE AFF – colleges use speech restrictions to structure knowledge and crush dissent

**Chatterjee and Maira:** Godrej, Farah. [Professor of Political Science, UC Riverdale] “Neoliberalism, Militarization, and the Price of Dissent.” Published in Piya Chatterjee and Sunaina Maira (eds.), *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

**The language of cost and price here, of course, reminds us of the ongoing hegemony—and perhaps victory—of the conceptual frameworks of neoliberalism and its theoretical accompaniments**, such as rational choice theory, predominantly featured in neoclassical economics. These strategies of criminalization and militarization **rest** on **s**ending signals to adversaries, encoded precisely in these languages, wherein value and worth are measured in terms of indicators such as price or cost, and rational actors are assumed to be guided by a universally comprehensible incentive structure. **Thus the strategies of criminalization and militarization rest** on de-incentivizing dissent, **so to speak, assuming that dissenters will measure the costs inherent in their actions and choose rationally to cease from engaging in such dissent. The continued insistence on dissent is therefore resistance to the logic of neoliberal privatization on multiple levels: it not only calls out the complicity of the university with the neoliberal state and the forces of private capital but also continues to dissent despite the “incentives” offered in exchange for desisting from dissent. And in so doing, it should be signaling its rejection not simply of privatization but of the entire conceptual baggage of neoliberalism, including its logics of rational choice, cost, price, and incentive, as well as its logic of structural violence. In other words**, **the ongoing struggle against the logic of neoliberal privatization requires that dissent continue, despite its high “price.”**

### Alt - Generic

Omitted

### Alternative – Violent Revolution

Omitted

## Subaltern Voices

### Link

#### Some notion of speech is necessary – blocking out the voices of the subaltern ignores those who are not quite human

**Weheliye:** Weheliye, Alexander G. [Alexander G. Weheliye is Professor of African American Studies and English at Northwestern University. He is the author of Phonographies: Grooves in Sonic Afro-Modernity, also published by Duke University Press.] “Habeas Viscus.” *Duke University Press.* 2014. RP

In this closing chapter I would like to continue taking up Hortense Spillers's challenge and ask what it might mean to claim the monstrosity of the flesh as a site for freedom beyond the world of Man in order to heed Baby Suggs's words in Toni Morrison's Beloved about loving the flesh: “In this here place, we flesh; flesh that weeps, laughs; flesh that dances on bare feet in grass. Love it. Love it hard. Yonder they do not love your flesh. They despise it**.” In order to improperly inhabit and understand the politics and poetics of habeas viscus, we must return to some of the voices from the previous two chapters. Revisit them we should, however, not to authenticate them as acoustic mirrors of the oppressed or to grant them juridical humanity but in order to listen more closely to prophetic traces of the hieroglyphics of the flesh in these echoes of the future anterior tense**. Many critics assume that political violence is somehow outside the grasp of linguistic structures. In her now classic account of the body in pain, Scarry argues that pain in general and torture in particular causes a regression to the “pre-language of cries and groans,” which becomes indicative of the annihilation of the tortured's world. In making this argument, Scarry assumes that world and language preexist and are unmade by the act of torture, which imagines political violence as exterior to the normal order rather than as an instrument in the creation of the world and language of Man. **Agamben's point about language and witnessing vis-à-vis Auschwitz, although not quite in the same register**, skirts fairly close to making a similar argument: “It is thus necessary that the impossibility of bearing witness, the ‘lacuna,’ that constitutes human language, collapses, giving way to a different impossibility of bearing witness— that which does not have language” (Remnants, 39). **Perhaps it might be more useful to construe “cries and groans,” “heart-rending shrieks,” “the mechanical murmurs without content” as language that does not rely on linguistic structures, at least not primarily, to convey meaning, sense, or expression. For language, especially in the space-ways of the flesh, comes in many varieties, and functions not only—or even primarily—to create words in the service of conforming to linguistic structures transparent in the world of Man**. This approach also cannot imagine that for many of those held captive by Man it is always already “after the end of the world.... Don't you know that yet?” long before the actual acts of torture have begun. Roman Grzyb, a former concentration camp prisoner, for instance, gives the following account of the Muselmann's idiolect: “The Muselmann used his very own jargon by constantly repeating what came to his completely confused mind. The sentences were often incomplete and were illogical, stopping abruptly at random points.” As can be gleaned from the testimonies of Muselmänner, slaves, or Ellis Island detainees, what is at stake is not so much the lack of language per se, since we have known for a while now that the subaltern cannot speak, but the kinds of dialects available to the subjected and how these are seen and heard by those who bear witness to their plight. Nevertheless, the suffering voices exemplified by James and the Muselmänner should not be understood as fountains of authenticity but rather as instantiations of a radically different political imaginary that steers clear of reducing the subjectivity of the oppressed to bare life. In R. Radhakrishnan's thinking, this political domain produces “critical knowledge, which in turn empowers the voice of suffering to make its own cognitive- epistemological intervention by envisioning its own utopia, rather than accepting an assigned position within the ameliotary schemes proposed by the dominant discourse.” Thus, suffering appears as utopian erudition—or is expressed through hieroglyphics of the flesh to echo Spillers and Zora Neale Hurston—and not as an end unto itself or as a precritical sphere of truth, as the liberal humanist Weltanschauung would have it; rather, “**liberalism is tolerant of abundant speech as long as it does not have to take into account voices it does not understand.” Where dominant discourse seeks to develop upgrades of the current notions of humanity as Man, improvements are not the aim or product of the imaginaries borne of racializing assemblages and political violence**; instead they summon forms of human emancipation that can be imagined but not (yet) described. While this form of communication does not necessarily conform to the standard definition of linguistic utterance, to hear Aunt Hester's howls or the Muselmann's repetition merely as pre- or nonlanguage absolves the world of Man from any and all responsibility for bearing witness to the flesh. Hardly anterior to language and therefore the human, these rumblings vocalize the humming relay of the world that makes linguistic structures possible, directly corresponding to how the not-quite- and nonhuman give rise to the universe of Man. That is to say, the flesh engulfs not only Man's visually marked others via instruments of torture and the intergenerational transmission of hieroglyphics but emanates rays of potential enfleshment throughout the far-flung corners of Being in the world of Man.

#### Speech codes are used to shut out voices – that’s the entirety of the Aff – they’d be used against the subaltern

#### No link – the Aff doesn’t FORCE people to speak, or evey say speech is good – it just gives people the option

### Alternative

Omitted

## Ableism

### Link

#### No link – the Aff doesn’t claim anywhere that free speech is some monolithic good all people can use – it just says that it’s a good idea to fight bac injustice when we see it

#### Turn – it’s not just spoken word that’s shut down by codes, but actions too – people aren’t allowed to have posters or march on campus – that’s ableist because it shuts down alternate forms of communication

#### Turn -- speech codes are enforced in ableist ways – best studies go Aff

**Hudson:** Hudson, David [Contributor, Huffington Post] “How Campus Policies Limit Free Speech.” *Huffington Post.* June 2016. RP

**Colleges and universities are supposed to be places where freedom of expression flourishes. Sadly, that is not the case. At a recent debate on the Yale University campus, 66 percent of the attendees supported a proposition that “free speech is threatened.”** Places of higher learning seem more interested in “safe spaces” rather than in freedom of expression. Several incidents across campuses illustrate this. **Recently, at Emory, students complained after they found chalk messages scrawled around campus voicing support for Donald J. Trump. Last year at the University of Ottawa, a yoga class designed for handicapped people was suspended because the student federation thought it was a form of “cultural appropriation.**” And at Smith College a student sit-in blocked media from entering unless reporters agreed to explicitly state support for the movement in their coverage. Illustrating how contentious the debates have become, two of the most respected American comedians, Chris Rock and Jerry Seinfeld, said that colleges are eager “not to offend anybody.” Some students at a private Ivy League school even signed a petition to repeal the First Amendment. **Ideally, colleges and universities would foster an exchange of competing and controversial ideas. The reality is much different. Some colleges and universities limit discourse by silencing speech that might offend others through so-called speech codes and free speech zones. In studying free expression issues for** more than 20 years**, I strongly believe such polices have led to a chilling effect on speech**. They also have led to a mentality where students do not wish or want to face an opposing viewpoint. So, what are these policies?

#### Turn – speech codes on campus and safe spaces create internal battles among the left that worsen ableism

**Kaminer:** Kaminer, Wendy [Contributor, Washington Post] “The progressive ideas behind the lack of free speech on campus.” *Washington Post.* February 2015. RP

**Is an academic discussion of free speech potentially traumatic? A recent panel for Smith College alumnae aimed at “challenging the ideological echo chamber” elicited this ominous “trigger/content warning” when** [**a transcript**](http://www.thesmithsophian.com/2014/10/13/transcription-of-challenging-the-ideological-echo-chamber-free-speech-civil-discourse-and-the-liberal-arts/) **appeared in the campus newspaper: “Racism/racial slurs, ableist slurs, antisemitic language, anti-Muslim/Islamophobic language, anti-immigrant language, sexist/misogynistic slurs, references to race-based violence**, references to antisemitic violence.” No one on this panel, in which I participated, trafficked in slurs. So what prompted the warning? [Smith President Kathleen McCartney had joked](https://soundcloud.com/sydney-sadur/challenging-the-ideological-echo-chamber-free-speech-civil-discourse-and-the-liberal-arts), “We’re just wild and crazy, aren’t we?” **In the transcript, “crazy” was replaced by the notation: “[ableist slur].”** One of my fellow panelists mentioned that the State Department had for a time banned the words “jihad,” “Islamist” and “caliphate” — which the transcript flagged as “anti-Muslim/Islamophobic language.” I described the case of a Brandeis professor disciplined for saying “wetback” while explaining its use as a pejorative. The word was replaced in the transcript by “[anti-Latin@/anti-immigrant slur].” Discussing the teaching of “Huckleberry Finn,” I questioned the use of euphemisms such as “the n-word” and, in doing so, uttered that forbidden word. I described what I thought was the obvious difference between quoting a word in the context of discussing language, literature or prejudice and hurling it as an epithet. Two of the panelists challenged me. The audience of 300 to 400 people listened to our spirited, friendly debate — and didn’t appear angry or shocked. But back on campus, **I was quickly branded a racist,** and I was charged in the Huffington Post with committing “[an explicit act of racial violence](http://www.huffingtonpost.com/jordan-houston/5-ways-to-use-white-privi_b_5991622.html).” McCartney [subsequently apologized](http://www.smith.edu/president/speeches-writings/new-york-alumnae-panel) that “some students and faculty were hurt” and made to “feel unsafe” by my remarks. Unsafe? **These days, when students talk about threats to their safety and demand access to “safe spaces,” they’re often talking about the threat of unwelcome speech** and demanding protection from the emotional disturbances sparked by unsettling ideas. It’s not just rape that some women on campus fear: It’s discussions of rape. At Brown University, a scheduled debate between two feminists about rape culture was [criticized](http://www.browndailyherald.com/2014/11/17/janus-forum-sexual-assault-event-sparks-controversy/) for, as the Brown Daily Herald put it, undermining “the University’s mission to create a safe and supportive environment for survivors.” In a school-wide e-mail, Brown President Christina Paxon emphasized her belief in the existence of rape culture and invited students to an alternative lecture, to be given at the same time as the debate. And the Daily Herald reported that students who feared being “attacked by the viewpoints” offered at the debate could instead “find a safe space” among “sexual assault peer educators, women peer counselors and staff” during the same time slot. Presumably they all shared the same viewpoints and could be trusted not to “attack” anyone with their ideas. How did we get here? **How did a verbal defense of free speech become tantamount to a hate crime and offensive words become the equivalent of physical assaults? You can credit — or blame — progressives for this enthusiastic embrace of censorship**. It reflects, in part, the influence of three popular movements dating back decades: the feminist anti-porn crusades, the pop-psychology recovery movement and the emergence of multiculturalism on college campuses. In the 1980s, law professor Catharine MacKinnon and writer Andrea Dworkin showed the way, popularizing a view of free speech as a barrier to equality. These two impassioned feminists framed pornography — its production, distribution and consumption — as an assault on women. They devised a novel definition of pornography as a violation of women’s civil rights, and championed a model anti-porn ordinance that would authorize civil actions by any woman “aggrieved” by pornography. In 1984, the city of Indianapolis adopted the measure, defining pornography as a “discriminatory practice,” but it was quickly struck down in federal court as unconstitutional. “Indianapolis justifies the ordinance on the ground that pornography affects thoughts,” [the court noted](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/hudnut.html). “This is thought control.” So MacKinnnon and Dworkin lost that battle, but their successors are winning the war. **Their view of allegedly offensive or demeaning speech as a civil rights violation, and their conflation of words and actions, have helped shape campus speech and harassment codes and nurtured progressive hostility toward free speech**. The recovery movement, which flourished in the late ’80s and early ’90s, adopted a similarly dire view of unwelcome speech. Words wound, anti-porn feminists and recovering co-dependents agreed. Self-appointed recovery experts, such as the best-selling author [John Bradshaw](http://www.amazon.com/Bradshaw-Family-Creating-Solid-Self-Esteem/dp/1558744274/ref=asap_bc?ie=UTF8), promoted the belief that most of us are victims of abuse, in one form or another. They broadened the definition of abuse to include a range of common, normal childhood experiences, including being chastised or ignored by your parents on occasion. From this perspective, we are all fragile and easily damaged by presumptively hurtful speech, and censorship looks like a moral necessity. These ideas were readily absorbed on college campuses embarking on a commendable drive for diversity. Multiculturalists sought to protect historically disadvantaged students from speech considered racist, sexist, homophobic or otherwise discriminatory. Like abuse, oppression was defined broadly. I remember the first time, in the early ’90s, that I heard a Harvard student describe herself as oppressed, as a woman of color. She hadn’t been systematically deprived of fundamental rights and liberties. After all, she’d been admitted to Harvard. But she had been offended and unsettled by certain attitudes and remarks. Did she have good reason to take offense? That was an irrelevant question. Popular therapeutic culture defined verbal “assaults” and other forms of discrimination by the subjective, emotional responses of self-proclaimed victims. This reliance on subjectivity, in the interest of equality, is a recipe for arbitrary, discriminatory enforcement practices, with far-reaching effects on individual liberty. The tendency to take subjective allegations of victimization at face value — instrumental in contemporary censorship campaigns — also leads to the presumption of guilt and disregard for due process in the progressive approach to alleged sexual assaults on campus. **This is a dangerously misguided approach to justice. “Feeling realities” belong in a therapist’s office. Incorporated into laws and regulations, they lead to the soft authoritarianism that now governs many American campuses. Instead of advancing equality, it’s teaching future generations of leaders the “virtues” of autocracy.**

## Eurocentrism K

#### Free speech isn’t Eurocentric – numerous African countries respect an unfettered right to FS.

**SALC:** Southern Africa Litigation Centre. [Advances human right and the rule of law in southern Africa] “The Importance of Freedom of Expression.” *Freedom of Expression: Litigating Cases of Limitations to the Exercise of Freedom of Speech and Opinion,* MZ.

There is an intrinsic link between freedom of expression and democracy; a link which was recognised by **[T]he Ugandan Supreme Court in Charles Onyango-Obbo [said that] and Another v Attorney General: 33 “Protection of the fundamental human rights therefore, is a primary objective of every democratic constitution, and as such is an essential characteristic of democracy. In particular, [“p]rotection of the right to freedom of expression is of great significance to democracy.[“]** It is the bedrock of democratic governance. Meaningful participation of the governed in their governance, which is the of expression.”34 **In Constitutional Rights Project and others v Nigeria, 35 [T]he African Commission recognised the importance of the right when it held that “freedom of expression is a basic human right[.], vital to an individual’s personal development and political consciousness, and participation in the conduct of the public affairs of his country.”**36 In addition, in Ghazi Suleiman v Sudan37 the Commission said that it was “a cornerstone of democracy and … a means of ensuring respect for all human rights and freedoms.”38 **The South African High Court commented that freedom of expression “is the freedom upon which all others depend[.] it is the freedom without which the others would not long endure”**.39 These quotes hint at the varied reasons why freedom of expression is so important. **A Zimbabwean Supreme Court decision provided more detail to the different roles free expression has in a democracy: “Furthermore, what has been emphasized is that freedom of expression has four broad special objectives to serve: (i) It helps an individual to obtain self-fulfilment, (ii) It assists in the discovery of truth and in promoting political and social participation, (iii) It strengthens the capacity of an individual to participate in decision making, and (iv) It provides a mechanism by which it would be possible to establish a reasonable balance between stability and change.”40**

## FIRE K

#### The link isn’t reverse causal – FIRE defends more conservative professors because they’re under attack more often in academia than liberals – they defend both proportionally.

**The RW:** The Rational Wiki [Online encyclopedia] “Foundation for Individual Rights in Education.” January 2017. RP

**FIRE has been accused of having a conservative bias. While they do defend many conservative causes, it is difficult to determine whether this is because conservatives are more likely to actually have their individual rights violated at schools, or because FIRE is more likely to defend an individual that is conservative. Since**[**professors tend to be liberal**](http://rationalwiki.org/wiki/Political_beliefs_of_academics)**, it doesn't take too much to imagine that these professors would be less likely to attempt to censor views they personally agree with.** The argument for FIRE being conservative, or at least conservative-leaning, is bolstered by the number of conservative and/or Koch-funded organizations that fund FIRE such as the Bradley Foundation, the Sarah Scaife Foundation and the Castle Rock Foundation.

#### Greg Lukianoff is a liberal! Lol.

**Page:** Page, Peter. [Henry Hitchcock Professor of Law at Washington University Law] “Washington University Law Club Feud is Resolved.” *The National Law Journal,* 2002. MZ

**The Washington University School of Law in St. Louis has sanctioned, among other groups, a Jewish Law Society and a club for students enthused about golf.** But a group of law students with antiabortion sentiments was twice denied official recognition. The Student Bar Association (SBA) -- which acts as the student government of the law school -- relented last week and granted recognition to Law Students ProLife after the group's plight became a cause célèbre for civil rights advocates. **"We thought this would be easily resolved," said Greg Lukianoff, director of legal and public advocacy for the Foundation for Individual Rights in Education (FIRE[,]) in Philadelphia, which became involved in the dispute. "It didn't seem possible the Student Bar Association would stand by its decision, as absurd and unprincipled as it was," said Lukianoff, a self-described "prochoice liberal."**

## Counterspeech K

#### No link – the Aff never mandatds free speech – it’s a choice that people have

#### No paternalism or victim-blaming – counterspeech is brought about by the community and not just the student

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal.* Winter 1995. RP

One of the more interesting elements of the Delgado and Yun response to moderate liberals' objections to hate- speech regulations is their characterization of those objections as "paternalistic," which they define as: "a justification for curtailing someone's liberty that invokes the well-being of the person concerned, that is, that requires him or her to do or refrain from doing something for his or her own good." n108 In addition, they suggest that proponents of these arguments are disingenuous, because the proponents advance these arguments "ostensibly in minorities' best interest" at least in part "to discourage reform." This underlying theme raises an intriguing question: Which approach to campus hate speech best advances the cause of civil rights and best serves the interests of the targets of the speech -- the aggressive regulation of speech apparently espoused by Delgado and Yun, or the combination of regulation, counterspeech, education, and other community action described in part II above and part IV below? Delgado and Yun may not be unreasonable in characterizing "18-year old black undergraduates at predominantly white campuses" as "some of the most defenseless members of society," n110 but the question remains how best to empower them. **Carla Washington and Rossie Turman, the African-American students at predominantly nonminority A.S.U., certainly didn't remain defenseless in confronting the racist poster in the manner described in part II.A above. They displayed the courage and initiative to use their own speech to take control of the event**. Moreover, during his undergraduate years, Mr. Turman rose from a supposedly "defenseless black student" to student body president. To be sure, these students received support from the university in shedding the reality or image of their vulnerability. Carla Washington told me after the event that she was prepared to challenge the poster directly and constructively partly because of her prior training in a university program [\*1273] known as "Leadership 2000." In addition, she and Rossie Turman received administrative support in their counterspeech from faculty, staff, and administrators ranging from the dormitory's residence hall advisor to the university president. n111 Moreover, both in this case and in the Stanford incident described as well in part II.A above, all potential targets of such hate speech received a tremendous vote of support from the campus communities whose collective voices morally defeated the messages of hate in a way that no disciplinary proceeding could have. **By demonstrating that the hateful speakers had few allies and that the targets of their speech were part of a much larger, loving, and supportive community, minorities were welcomed to campus in a way that controversial discipline of the hateful speakers would not have guaranteed. Of course, some targets of offensive speech will not be as ready as were Ms. Washington and Mr. Turman to assume the mantles of leadership and empowerment. But that simply means that the university community must be prepared to provide them a greater level of support, in some cases by assuming a greater share of the burden of engaging in the counterspeech. For example, in the Stanford incident described in part II.A above, the target of the hateful speech bore little, if any, of the burden of the community's mammoth campaign of counterspeech**. Indeed, he wrote a magnanimous opinion letter to the campus newspaper in which he called for careful analysis of the incident rather than simplistic condemnation of the speaker as homophobic. n112 **In other cases, a target of hateful speech may need to secure support services to deal with the pain or anxiety caused by the speech**, as well as receive advice about how best to confront or avoid the speech. Partly in response to such a need, A.S.U. has created a Campus Environment Team ("CET"). As described more fully in part IV below, the CET promotes both free speech and diversity through educational measures designed to combat hate and encourage civil discourse, through monitoring of harassment on campus, and through its referral services. In exercising its referral function, the CET quickly can direct a student in need of support services to any one or more of dozens of offices on campus for anything from filing a police report to receiving counseling. Victims of hateful speech know that they can gain a supportive audience before the CET to convey their sense of injury or outrage and to receive support. The response to the racist poster incident at [\*1274] A.S.U. is an example of such support by the CET: as Chair of the CET that year, I helped to organize the initial meeting at the dormitory, helped convince other student groups to support Mr. Turman in his counterspeech rather than demand discipline, joined others in speaking out against the poster in Mr. Turman's press conference and public rally, and addressed the Faculty Senate in the aftermath of the incident, carrying the message of the need for multicultural education. n113

#### Counterspeech is empowering and activates agency

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**This counterspeech strategy is better than censorship not only in principle, but also from a practical perspective. That is because of the potentially empowering experience of responding to hate speech with counterspeech**. I say "potentially," since I realize that the pain, anger and other negative emotions provoked by being the target of hate speech could well have an incapacitating effect on some targeted individuals, preventing them from engaging in counterspeech. Even in such a situation, though, other members of the community who are outraged by the hate speech could engage in counterspeech, and that is likely to have a more positive impact than a censorial response. **Furthermore, once other community members denounce the hate speech, it should be easier for the target to join them in doing so**. I will illustrate these practical benefits of a non-censorial, counterspeech response to hate speech in the campus context. **Far from being paternalistic, counterspeech is empowering to students; it transforms students who would otherwise be seen-and see themselves-largely as victims into activists and reformers.** It underscores their dignity, rather than undermines it. One excellent example of the effective use of counterspeech comes from Arizona State University (ASU) in Tempe, Arizona. Under the leadership of a law professor on that campus, Charles Calleros, the faculty and administration rejected any code that outlawed hate speech or punished students who expressed it. Instead, they endorsed an educational or counterspeech response to any hate speech. Significantly, as a Latino, Charles Calleros is himself a member of a minority group. As such, though, he believes that stifling or punishing hate speech is no better for advancing non- discrimination and equality than it is for free speech. And, based on his university's actual experience with the non-censorial, more-speech response to hate speech, Professor Calleros' original speech-protective views have been reinforced. Professor Calleros has written articles about the positive impact of the non-censorial approach to hate speech at ASU, explaining how it has been empowering and supportive for the would-be "victims" of the hate speech, and also educational and promotive of tolerance and anti-discrimination values for the university community as awhole.39 Because it is so instructive, I would like to quote at some length Professor Calleros' description ofthe first hate speech incident under ASU's pro-educational, non-censorial campus policy: [F]our black women students... were understandably outraged when they noticed a racially degrading poster near the residence of a friend they were visiting in Cholla, a campus dormitory. Rather than simply complain to their friends ... they took positive action. First, they spoke with a Resident Assistant who told them that they could express their feelings to the owners of the poster and encourage them to remove it .... The students knocked on the door that displayed the racist poster and expressed their outrage in the strongest terms to the occupant who answered the door .... He agreed that the poster was inappropriate, removed it, and allowed the women to make a photocopy of it. [T]he four students then met with the staff director of Cholla. That director set up a [meeting] for all members of Cholla .... [A] capacity crowd showed up .... All seemed to accept the challenging conclusion that the poster was protected by the First Amendment, and I regard what followed as a model example of constructive response. First, the black women who discovered the poster explained as perhaps only they could why the poster hurt them deeply .... The Anglo-American students assured the black women that they did not share the stereotypes reflected in the poster, yet all agreed that they would benefit from learning more about other cultures. The group reached a consensus that they would support ASU's Black History events and would work toward developing multicultural programming at Cholla. The four women who led the discussion expressed their desire to meet with the residents of the offending dormitory room to exchange views and to educate them about their feelings and about the danger of stereotyping. I understand that the owner of the poster is planning to publish an apology in this newspaper today and a personal communication with the four women would be an excellent follow- up.... The entire University community then poured its energy into the kind of constructive action and dialogue that took place in the Cholla meeting. Students organized an open forum. The message was this: at most, a few individuals on a campus think that the racist poster is humorous; in contrast, a great number of demonstrators represent the more prevalent campus view that degrading racial stereotypes are destructive. Such a message is infinitely more effective than disciplining the students who displayed the racist poster.40 In addition to empowering the students who encountered the racist poster and educating the students who had displayed it, the non-censorial response to this hate speech incident also galvanized constructive steps to counter bias campus-wide. One of the student leaders of this constructive college-wide response was Rossie Turman, who was then Chairman of the African- American Coalition at Arizona State University. Turman's leadership in supporting both free speech and non-discrimination earned him much recognition, including an award from the Anti-Defamation League. As one press account stated: Turman and other campus minority group leaders handled their anger by calling a press conference and rally to voice their concerns and allow students and administrators to speak .... Within days, the ASU Faculty Senate passed a previously-proposed domestic diversity course requirement. Turman said: "When you get a chance to swing at racism, and you do, you feel more confident about doing it the next time. It was a personal feeling of empowerment, that I don't have to take that kind of stupidity .... **The sickest thing would have been if the racists had been kicked out, the university sued, and people were forced to defend these folks. It would have been a momentary victory, but we would have lost the war." After this incident, Rossie Turman went on to be elected student body President at ASU, the first African-American to hold that position** on a campus that had an African-American student population ofonly 2.3%. Upon his graduation from college, he went to Columbia Law School. **Therefore, for him, what could have been a disempowering, victimizing experience with hate speech became instead an empowering, leadership-development experience-not despite the absence of censorship-but precisely because of it. In contrast with the more-speech response to hate speech adopted by Arizona State University, a censorial response does not empower the maligned students. To the contrary, it may well perpetuate their victimization**. Worse yet, ironically, censoring hate speech may well empower verbal abusers, by making them into free speech martyrs. This point was captured by the Progressivemagazine: the attempt to ban or punish hateful speech does nothing at all to empower the presumed victims of bigotry. Instead, it compels them to seek the protection of authorities whose own commitment to justice is often, to put it mildly, less than vigorous. Restraining speech increases the dependency of minorities and other victims ofhate and oppression. Instead of empowering them, it enfeebles them.4

#### Speech codes are comparatively less likely to combat hate than counterspeech – hostile campuses won’t comply with codes – counterspeech empirically works

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal.* Winter 1995. RP

On the other hand, counterspeech by the targets of hate speech could be less empowering on a campus in which the majority of students, faculty, and staff approve of hostile epithets directed toward members of minority groups. One hopes that such campuses are exceedingly rare; although hostile racial stereotyping among college students in the United States increased during the last decade, those students who harbored significant hostilities (as contrasted with more pervasive but less openly hostile, subconscious racism) still represented a modest fraction of all students. **Moreover, even in a pervasively hostile atmosphere, counterspeech might still be more effective than broad restrictions on speech. First, aside from the constitutional constraints of the First Amendment, such a heartless campus community would be exceedingly unlikely to adopt strong policies prohibiting hateful speech. Instead, the campus likely would maintain minimum policies necessary to avoid legal action enforcing guarantees of equal educational opportunities under the Fourteenth Amendment** n75 or federal antidiscrimination statutes such as Title VI n76 or Title IX. **Second, counterspeech even from a minority of members of the campus community might be effective to gradually build support by winning converts from those straddling the fence or from broader regional or national audiences. Such counterspeech might be particularly effective if coupled with threats from diverse faculty, staff, and students to leave the university for more hospitable environments**; even a campus with high levels of hostility likely would feel pressures to maintain its status as a minimally integrated institution. n78 **The A.S.U. and Stanford examples illustrating the efficacy of counterspeech also lend support to the argument that "free speech has been minorities' best friend . . . [as] a principal instrument of social reform." n79 In both cases, demonstrations, opinion letters, and other forms of counterspeech dramatically defined the predominant atmosphere on each campus as one that demanded respect and freedom from bigotry for all members of the community;** it is doubtful that passage of a speech-restrictive policy could have sent a similar message of consensus any more strongly. Moreover, in the A.S.U. case, the reasoned counterspeech, coupled with the decision to refrain from disciplining the hateful speaker, persuaded the Faculty Senate to pass a multicultural education proposal whose chances for passage were seriously in doubt in the previous weeks and months. n80 The racist poster at A.S.U. may have been a blessing in disguise, albeit an initially painful one, because it sparked counterspeech and community action that strengthened the campus support for diversity.

## Queerness K

#### The Aff’s stance towards open dialogue is key to queer progress.

**Rauch:** Rauch, Jonathan [Contributors, The Atlantic] “The Case for Hate Speech.” *The Atlantic.* November 2013. RP

ENDER’S GAME COMES OUT November 1. If you live in a cave, you may not be aware that this likely blockbuster is based on a classic 1985 sci-fi novel by Orson Scott Card. The movie version features Harrison Ford, copious digital effects, and a boycott. Recently, a group of gay activists launched a Web site urging anyone who cares about same-sex marriage or gay equality to stay out of theaters. “By pledging to Skip Ender’s Game,” the group said, “we can send a clear and serious message to Card and those that do business with his brand of anti-gay activism—whatever he’s selling, we’re not buying.” **I have been advocating gay marriage and gay equality for more than 20 years, fighting many of the same stereotypes and slurs that have figured in Orson Scott Card’s nonfiction writing. So I understand why some equality advocates want to make a statement against Card. What I would like them to understand is why I hope they fail. In a roundabout but important way, bigoted ideas and hateful speech play an essential part in advancing minority rights. Even if we have every right to boycott Ender’s Game, gays are better served by answering people like Card than by trying to squelch or punish them**. Lately, people have been asking me why so much has happened in America, seemingly so suddenly, to advance gay equality generally and gay marriage specifically. It’s a good question, with some obvious answers. Demographics are one: younger people who are more relaxed about homosexuality are replacing older people who harbor long-standing prejudices. Also, as more gay people come out of the closet and live and love openly, we are no longer an alien presence, a sinister underground, a threat to children; we are the family down the block. Those are important factors. But they don’t tell the whole story. **Generational replacement doesn’t explain why people in all age groups, even the elderly, have grown more gay-friendly.** Gay people have been coming out for years, but that has been a gradual process, while recent changes in public attitude have been dizzyingly fast. **Something else, I believe, was decisive: we won in the realm of ideas**. And our antagonists—people who spouted speech we believed was deeply offensive, from Anita Bryant to Jerry Falwell to, yes, Orson Scott Card—helped us win. In 2004, when I was making the talk-show rounds for my new book on gay marriage, **I found myself on a Seattle radio station, debating a prominent gay- marriage opponent. After she made her case and I made mine, a caller rang in to complain to the host. “Your guest,” he said, meaning me, “is the most dangerous man in America.” Why? “Because,” said the caller, “he sounds so reasonable.”** In hindsight, this may be the greatest compliment I have ever been paid. It is certainly among the most sincere. **Despite the caller’s best efforts to shut out what I was saying, the debate he was hearing—and the contrast between me and my adversary—was working on him. I doubt he changed his mind that day, but I could tell he was thinking, almost against his will**. Hannah Arendt once wrote, “**Truth carries within itself an element of coercion.” The caller felt that he was in some sense being forced to see merit in what I was saying.**

#### The alt reifies anti-queer violence as the explanation for everything which makes it analytically meaningless

**Ritchie 15** Jason, “Pinkwashing, Homonationalism, and Israel–Palestine: The Conceits of Queer Theory and the Politics of the Ordinary” Antipode Special Issue: Symposium: World, City, Queer Volume 47, Issue 3, pages 616–634, June 2015 //

**Implicit in Puar and Mikdashi's wholesale dismissal of pinkwatching**—a dismissal that lumps activists like Queers Against Israeli Apartheid into the same broad category as “marriage equality” activists—is the assumption that these activists simply do not understand the theory of homonationalism or their complicity with the objective reality it aims to describe, ie neoliberal sovereignty's incorporation of white citizen queers (under the rubric of “tolerance” and “gay rights”) and the parallel exclusion of racial others, who are “castigate[d] … as homophobic and perverse” (Puar 2007:xii). Although Puar and Mikdashi (2012) note their confusion over “the difference between how pinkwashing operates … and [its] supposed counter-narratives”, the object of their critique is perfectly clear. “[M]any of the same assumptions that animate the discourses of pinkwashing”, they write, “are unwittingly and sometimes intentionally reproduced in the pinkwatching efforts to challenge the basis of pinkwashing” (emphasis added). This is a somewhat odd critique, given Puar's endorsement of pinkwatching—a year before she dismissed it—as a “broad” transnational movement that “involves many activists and scholars in the United States, Canada, Palestine, Israel … and spans from queer of colour communities, to Palestinian activists, both in and out of Palestine, to diasporic, as well as Israeli Jews, and Palestinians … [who] cannot be summarily dismissed through the reductive accusations of being racist, homophobic, or anti-Semitic” (2011:139). **Setting aside the irony in Puar and Mikdashi's dismissal of pinkwatching activists, whom they subject to the reductive accusation of being unwitting—or worse, intentional—homonationalists, their argument suffers from two more serious flaws**. First, as I argued earlier, debates over pinkwashing in Western gay metropolises have less to do with actual instances of pinkwashing than with struggles over the nature of queerness in the context of neoliberalism and the War on Terror. Such debates, moreover, have been instigated primarily by the ostensible victims of homonationalism—queers of color, trans people, working class queers, and so on—in their efforts to stake a claim on spaces traditionally dominated by the likes of Michael Lucas. Second, the problem with pinkwatching lies not in the inability of queer activists to understand homonationalism but in the conceptual limits of the theory, which they have taken up enthusiastically and which now means so many things that it no longer means much of anything.¶ The importance of Terrorist Assemblages (2007) and Puar's original articulation of homonationalism cannot be overstated. Puar extended the already well developed critique of assimilationist gay politics, crystallized most elegantly in Lisa Duggan's “homonormativity”, to chart the connections between sexuality and race in neoliberal North American and European states. As a result, homonationalism opened up a multitude of new possibilities both for queer activism and for queer theory. **But in elevating homonationalism to a kind of master narrative that explains all things in all places—in suggesting, for example, that homonationalism in Israel “is exactly what [has been] theorized, within the context of the United States, as well as some European states” (Puar 2011:136)—homonationalism's critics have removed the theory from the concrete socio-historical context it so lucidly described and released it into the ether of empty signifiers that can take on ideological value for any purpose, from a fight over who belongs in New York City's LGBT Community Center to an effort by two American academics to dismiss anti-homonationalism queer activists for engaging in homonationalism**. It would seem, in fact, that—at least in the limited realms of queer thought and activism—homonationalism has eclipsed homonormativity “as a homogeneous, global external entity that exists outside all of us and exerts its terrifying, normative power on gay [sic] lives everywhere” (Brown 2012:1066).¶ **To be sure, homonationalism is a useful heuristic device for understanding the discursive utility of “gay rights” and “tolerance” in “gay capitals” around the world—how and why, for example, representations of gay-friendly Israel are marketed by the Israeli government to European and North American queers and passionately contested by queer anti-occupation activists—but it is severely limited in its capacity to shed light on the everyday experiences of queers for whom the language of pinkwashing and homonationalism does not have the same currency it has accrued in places like New York City. Paisley Currah (2013) criticized the ways in which this lack of attention to “the local, micro, particular sites where public authority is being exercised” often translates into a fetishization of the state as “a totalizing logic,** an ordered hierarchy, a comprehensive rationality, a unity of purpose and execution”. And in a terse but powerful review of an application of homonationalism to a very different context—settler colonialism in North America (Morgensen 2011)—Natalie Oswin asks whether “Native queers [are] necessarily resistant? Are they outside homonationalism, in relation to either settler or Native nations, or are Two-Spirit and Native queers also caught up in the web of complicity” (Oswin 2012:692)? Oswin's question hints at one of the fundamental flaws with the theory of homonationalism, a flaw that is perfectly—if more than a little ironically—demonstrated in a recent effort by Puar to advocate the post-humanist Deleuzian notion of “assemblage” as an alternative to the theory of intersectionality, which—in opposition to Puar's dismissal of it—I offer here as a more productive framework for understanding the actual operations of power in diverse socio-historical contexts.¶ “[W]hat the method of intersectionality is most predominantly used to qualify”, Puar writes, “is the specific difference of ‘women of color,’ a category that has now become … simultaneously emptied of specific meaning in its ubiquitous application and yet overdetermined in its deployment” (2012:52). Assemblages, however, “are interesting because they de-privilege the human body as a discrete organic thing” and do not rely on stale “identitarian frameworks” (57, 63). While I find some value in the notion of assemblage, in which “categories [like race, gender, and sexuality] … are considered events, actions, and encounters between bodies, rather than simply entities and attributes of subjects”, the theory of homonationalism has, as Puar suggests of intersectionality, constructed its own category—queers of color—that has been applied so ubiquitously and deployed in such an overdetermined way that it, too, has been “emptied of specific meaning”. Homonationalism has morphed from an argument about the tentative and incomplete incorporation of some (white/citizen) queers by the neoliberal nation-state in a specific time and place (post-9/11 North America and Europe)—and the parallel and interconnected “targeting of queerly raced bodies for dying” (Puar 2007:xii)—into a totalizing framework that depends on a dangerously simplistic construction of reality. With “a unity of purpose and execution” (Currah 2013), the state entices privileged white queers with the illusion of equality as it relegates queers of color to a space of death and dying so complete—and completely inescapable—that even their critiques (lodged under the banner of pinkwatching, for example) are unintelligible except as a confirmation of the explanatory power of the theory of homonationalism. Indeed, one might ask—following Brown's critique of theories of homonormativity—to what extent Puar and Mikdashi's castigation of pinkwatching activists “ends up performatively (re)constituting those tendencies”, against which both the activists and the theorists are ostensibly united, “as particularly one-dimensional and hegemonic” (Brown 2009:1497).¶ In the pages that follow, I draw on ethnographic fieldwork in Israel–Palestine with queer Palestinians to suggest that, whatever homonationalism tells us about how and why images of gay-friendly Israel—or, their inverse, images of Palestinian homophobia—circulate with such frequency in urban gay centers in Europe and North America, it tells us very little about the everyday realities of queerness in Israel–Palestine—and even less about the actual experiences of queer Palestinians. Cognizant of the fact that “social differences are the effects of how bodies inhabit spaces with others” (Ahmed 2006:5), I employ an intersectional approach that is less concerned with deconstructing identity categories than understanding how “particular values [are] attached to them and the way those values foster and create social hierarchies” (Crenshaw 1991:1297). Focusing on a few concrete moments in a particular time and place, I argue that queer inquiry—especially those lines of inquiry informed by ethnic and cultural studies paradigms—might learn something from ethnography's stubborn insistence on the primacy of the quotidian. **There are, after all, still some queers who cannot afford to “de-privilege the human body as a discrete organic thing” (Puar 2012:57), and they are constrained in their movements by overlapping structures and practices of power, which are best understood—and critiqued—not with recourse to totalizing theoretical catchwords but by understanding the circumstances of their emeargence.** In much the same way, for example, that the controversy over pinkwashing and the NYC LGBT Community Center can be understood only by situating it in its socio-historical context—a context characterized by the emergence of neoliberal homonormativity in the US and intense struggles over the meanings of queerness and queer space—the ways in which queer Palestinians navigate the space of Israel–Palestine cannot be understood outside of the specific context of Israeli sovereignty and its horrifyingly sophisticated techniques for regulating space and the flow of bodies through it (Weizman 2007).

## Academia K

#### The Aff is key to transform the academy and make radical demands on it

**Oparah:** Oparah, Julia C. [Professor, Mills College] “Challenging Complicity.” Published in Piya Chatterjee and Sunaina Maira (eds.), *The Imperial University: Academic Repression and Scholarly Dissent*. University of Minnesota Press, 2014. RP

Andrea Smith, in her discussion of native studies, has argued that politically progressive educators often adopt normative, colonial practices in the classroom, using pedagogical strategies and grading practices that reinscribe the racialized and gendered regulation, policing, and disciplining that PIC abolitionists seek to end.53 In this sense, there could be no “postcarceral” academy. Certainly, sanctions for undergraduate and graduate students and faculty who challenge the university’s regular practices—from failing grades and expulsions to tenure denials and deportation—are systemically distributed, along with rewards for those who can be usefully incorporated. **Yet universities and colleges also hold the seeds of a very different possible future,** evoked, for example, by the universal admissions movement or by student strikes in Britain and Canada that demand higher education as a right, not a privilege of the wealthy. **Rather than seeking to eradicate or replace higher educational institutions altogether, I suggest that we demand the popular and antiracist democratization of higher education. The** first step **toward this radical transformation is the liberation of academia from the machinery of empire: prisons, militarism, and corporations.** Speaking of abolishing the white race, Noel Ignatiev argues that it is necessary for white people to make whiteness impossible by refusing the invisible benefits of membership in the “white club.”54 Progressive academics are also members of a privileged “club,” one that confers benefits in the form of a paycheck, health care, and other fringe benefits; social status; and the freedom to pursue intellectual work that we are passionate about. **But we can also put our privilege to work by unmasking and then unsettling the invisible, symbiotic, and toxic relationships that constitute the academic-MPIC. Decoupling academia from its velvet-gloved master would begin the process of fundamental transformation.** Without unfettered streams of income from corporations, wealthy philanthropists, and the military, universities and colleges would be forced to develop alternative fund-raising strategies, relationships, and accountabilities. **Can we imagine a college administration aligned with local Occupy organizers to protest the state’s massive spending on prisons and policing and demand more tax money for housing, education, and health care?** Can we imagine a massive investment of time and resources by university personnel to solve the problem of how to decarcerate the nation’s prisons or end the detention of undocumented immigrants in order to fund universal access to higher education? **Can we imagine a university run by and for its constituents, including students, kitchen and garden staff, and tenure-track and adjunct faculty? These are the possibilities opened up by academic-MPIC [military prison industrial complex] abolition.**

#### Student movements can create counter-hegemony with radical anti-capitalist organization on a broad scale.

Delgado & Ross: [Sandra Delgado (doctoral student in Curriculum Studies at the University oritish Columbia) and E. Wayne Ross (Professor in the Faculty of Education at the University of British Columbia), "Students in Revolt: The Pedagogical Potential of Student Collective Action in the Age of the Corporate University", 2016].

As students’ collective actions keep gaining more political relevance, student and university movements also establish themselves as spaces of counter-hegemony (Sotiris, 2014). **Students are constantly opening new possibilities to displace and resist the commodification of education offered by mainstream educational institutions. As Sotiris (2014) convincingly argues, movements within the university have not only the potential to subvert educational reforms, but in addition, they have become “strategic nodes” for the transformation of the processes and practices in higher education, and most importantly for the constant re-imagination and the recreation of “new forms of subaltern counter-hegemony**” (p. 1). The strategic importance of university and college based moments lays precisely in the role that higher education plays in contemporary societies, namely their role in “the development of new technologies, new forms of production and for the articulation of discourses and theories on contemporary issues and their role in the reproduction of state and business personnel.” (p.8) **Universities and colleges therefore, have a crucial contribution in “the development of class strategies** (both dominant and subaltern), in the production of subjectivities, (and) in the transformation of collective practices” (p.8) The main objective of this paper is to examine how contemporary student movements are disrupting, opposing and displacing entrenched oppressive and dehumanizing reforms, practices and frames in today’s corporate academia. This work is divided in four sections. The first is an introduction to student movements and an overview of how student political action has been approached and researched. The second and third sections take a closer look at the repertoires of contention used by contemporary student movements and propose a framework based on radical praxis that allows us to better understand the pedagogical potential of student disruptive action. The last section contains a series of examples of students’ repertoires or tactics of contention that exemplifies the pedagogical potential of student social and political action. An Overview of Student Movements Generally speaking, students are well positioned as political actors. They have been actively involved in the politics of education since the beginnings of the university, but more broadly, students have played a significant role in defining social, cultural and political environments around the world (Altbach, 1966; Boren, 2001). **The contributions and influences of students and student movements to revolutionary efforts and political movements beyond the university context are undeniable.** **One example is the role that students have played in the leadership and membership of the political left** (e.g. students’ role in the Movimiento 26 de Julio - M-26-7 in Cuba during the 50’s and in the formation of The New Left in the United States, among others). Similarly, several political and social movements have either established alliances with student organizations or created their own chapters on campuses to recruit new members, mobilize their agendas in education and foster earlier student’s involvement in politics2 (Altbach, 1966; Lipset, 1969). Students are often considered to be “catalysts” of political and social action or “barometers” of the social unrest and political tension accumulated in society (Barker, 2008). **Throughout history student movements have had a diverse and sometimes contradictory range of political commitments. Usually, student organizations and movements find grounding and inspiration in Anarchism and Marxism, however it is also common to see movements leaning towards liberal and conservative approaches**. Hence, student political action has not always been aligned with social movements or organizations from the political left. In various moments in history students have joined or been linked to rightist movements, reactionary organizations and conservative parties (Altbach, 1966; Barker, 2008). Students, unlike workers, come from different social classes and seemly different cultural backgrounds. As a particularly diverse social group, students are distinguished for being heterogeneous and pluralists in their values, interests and commitments (Boren, 2001). Such diversity has been a constant challenge for maintaining unity, which has been particularly problematic in cases of national or transnational student organizations (Prusinowska, Kowzan, & Zielińska, 2012; Somma, 2012). To clarify, social classes are defined by the specific relationship that people have with the means of production. In the case of students, they are not a social class by themselves, but a social layer or social group that is identifiable by their common function in society (Stedman, 1969). The main or central aspect that unites student is the transitory social condition of being a student. In other words, students are a social group who have a common function, role in society or social objective, which is “to study” something (Lewis, 2013; Simons & Masschelein, 2009). Student movements can be understood as a form of social movement (LuesherMamashela, 2015). They have an internal organization that varies from traditionally hierarchical structures, organizational schemes based on representative democracy with charismatic leadership, to horizontal forms of decision-making (Altbach, 1966; Lipset, 1969). **As many other movements, student movements have standing claims, organize different type of actions, tactics or repertoires of contention, 3 and they advocate for political, social or/and educational agendas, programs or pleas.**

## Agamben

### Link

Omitted

### Alternative

Omitted

## First Amendment Racist

#### Turn – the First Amendment has historically helped Blacks – it was the basis for Malcom X and MLK and helped reclaim black culture.

**McGregor:** McGregor, Michael “Issue Brief: African Americans and First Amendment Rights (Free Speech and Religion).” 2009. RP

**The First Amendment to the Constitution states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble,** and to petition the Government for a redress of grievances.” **Therefore, as this amendment not only allows for but also protects individual freedom of religion, freedom of speech, and, innovatively, freedom to petition the government, it is not surprising that this amendment was the basis for the Civil Rights Movement. Interestingly, this movement relied heavily on the first two aspects of the First Amendment in the vein of strong vocal leaders, such as Martin Luther King Jr. and Malcolm X, and the usage of religion in the form of not only the “black church” but also in the greater sense of African American spirituality in order to effectively petition the government’s racist policies in the mid‐20th century.**

#### Try or die for First Amendment rights – Blacks have historically been silenced – we shouldn’t just have them sit down and shut up.

#### The alt fails – literally everything has a racist historical root – their world would reject voting rights, self defense, and marriage equality.

**Winkler:** Winkler, Adam [Professor, UCLA Law School] “Gun Contorl is ‘Racist’?” *New Republic.* February 2013. RP

Of course, [N]ot every gun law in American history was motivated by racism. In fact, some of our earliest gun laws had nothing to do with prejudice. After 1820, for instance, a wave of laws swept through the South and Midwest barring people from carrying concealed weapons. These laws weren't racist in origin; blacks in many of these states were already prohibited from even owning a gun. The target of concealed carry laws was white people[.], namely violence-prone men who were a bit too eager to defend their honor by whipping out their guns. These laws, which might be thought of as the first modern gun control laws, had their origin in reducing criminal violence among whites. Moreover, Keene's claim that gun control has racist roots is not made to correct the historical record. He uses that history to raise doubts about President Obama's proposals for background checks and restrictions[.] on high-capacity magazines and assault weapons. Of course **there is no evidence any of these laws are motivated by even the hint of racism. To suggest that we shouldn't adopt any gun regulations today because our ancestors had racist gun laws is**, to be generous, **far-fetched. Property law was once profoundly racist**, **allowing racially restrictive covenants; voting law was once profoundly racist, allowing literacy tests; marriage law was once profoundly racist, allowing no interracial marriage. Does that mean we should never have laws regulating property, voting, or marriage? In these other areas of law, such a claim would be patently absurd.** Yet **in the minds of today's NRA leaders, that's what passes for logic.**

## Biopower

### Link

#### No link – I don’t claim that people have to speak out, but that we should resist speech codes

#### Turn – the Aff is a *negative state action* – speech codes are enforced by the state onto students, and the Aff is a reversal of this and a demand.

#### Censorship and speech codes are used to increase the power of the state

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**Just as free speech always has been the strongest weapon to advance equal rights causes, correspondingly, censorship always has been the strongest weapon to thwart them**. Ironically, the explanation for this pattern lies in the very analysis of those who want to curb hate speech. They contend that racial minorities and women are relatively disempowered and marginalized. I agree with that analysis of the problem, and am deeply committed to working toward solving it. Indeed, I am proud that the ACLU is, and always has been, on the forefront of the struggles for racial justice, women's rights, and other equality movements. I strongly disagree, though, that censorship is a solution for our society's persistent discrimination. **To the contrary, precisely because women and minorities are relatively powerless, it makes no sense to hand the power structure yet another tool that it can and will use to further suppress them**, in two senses of the word "suppress"-both stifling their expression and repressing their efforts to enjoy full and equal human rights. Consistent with the analysis of the censorship advocates themselves, the government is likely to wield this tool, along with all others, to the particular disadvantage of already disempowered groups. **Laws censoring hate speech are inevitably enforced disproportionately against speech by and on behalf of groups who lack political power**, including government critics, and even members of the very minority groups who are the laws' intended beneficiaries. **As I previously noted, this was precisely the conclusion reached by the respected international human rights organizations, Human Rights Watch and Article 19, citing examples ranging from South Africa to the former Soviet Union**. Other illustrations abound. **For example, the Turkish government has invoked its law against inciting racial hatred to bring thousands of prosecutions against Turkish writers, journalists, academicians, and scientists who have criticized the government's war against Kurdish separatists. In 1995, the Turkish government prosecuted a United States journalist accused of "inciting hatred" by writing an article on that same topic. Likewise, Singapore's authoritarian, long-time governing party has sued the main opposition party, the Workers' Party, for inciting racial hatred. Just as this article was going to press, on February 19, 2001, Britain launched a prosecution for racist abuse against a longtime anti-nuclear activist because she had dragged a United States flag on the ground during a demonstration against the controversial** "Son of Star Wars" missile defense system at the United States military base in North Yorkshire, England. The prosecution charged that this action was motived by "racist hatred" of the American people and caused "harassment, alarm and distress" to United States personnel who drove out ofthe base during the demonstration. These examples are consistent with a worldwide pattern throughout history. That pattern prompted a trenchant comment from former United States Supreme Court Justice Hugo Black, dissenting from a 1952 decision that upheld a hate speech law from right here in Illinois. Fortunately, that ruling since has been implicitly overturned by later Supreme Court decisions,65 thus vindicating Justice Black's prescient dissent. That dissent warned, invoking the concept of a pyrrhic victory: "If there be minority groups who hail this holding as their victory, they might consider the possible relevancy of this ancient remark: Another such victory and I am undone." Recall the episode from Arizona State University that I described earlier, in which the African-American student leader, Rossie Turman, explained why punishing students who engaged in hate speech would have been an ineffective strategy, as well as an unprincipled one. In his words: "It would have been a momentary victory, but we would have lost the war." Consistent with the general historical pattern, the first individuals prosecuted under the British Race Relations Act of 1965, which criminalized the incitement of racial hatred, were black power leaders. Their overtly racist messages undoubtedly expressed legitimate anger at real discrimination, yet the statute drew no such fine lines, nor could any similar law possibly do so. Rather than curbing speech offensive to minorities, this British law instead has been used regularly to curb the speech of blacks, trade unionists, and anti- nuclear activists. Perhaps the ultimate irony of this law, intended to restrain the National Front, a neo-Nazi group, is that it instead has barred expression by the Anti-Nazi League. The British experience is typical. None of the anti-Semites who were responsible for arousing France against Captain Alfred Dreyfus was ever prosecuted for group libel. But Emile Zola was prosecuted for libeling the French clergy and military in his classic letter "J'Accuse," and he had to flee to England to escape punishment. Similarly, University of Michigan Law School professor Eric Stein has documented that although the German Criminal Code of 1871 punished offenses against personal honor, "The German Supreme Court... consistently refused to apply this article to insults against Jews as a group-although it gave the benefit of its protection to such groups as Germans living in Prussian provinces, large landowners, all Christian clerics, German officers, and Prussian troops who fought in Belgium and Northern France. 6 7 Canada's recently adopted anti-hate-speech law also has led to the suppression of expression by members of minority groups. In one of their first enforcement actions under this law, Canadian Customs officials seized 1,500 copies of a book that various Canadian universities had tried to import from the United States. What was this dangerous racist, sexist book? None other than Black Looks: Race and Representation by the African-American feminist scholar, Bell Hooks, who is a professor at Oberlin." And this incident was not an aberration. Other such perverse applications of the law were cited by the dissenting opinion in the Canadian Supreme Court decision upholding this law-by a narrow 5-4 vote-under Canada's Charter of Rights and Freedom. The dissent noted: Although [the law] is of relatively recent origin, it has provoked many questionable actions on the part of the authorities . . . . Intemperate statements about identifiable groups, particularly if they represent an unpopular viewpoint, may attract state involvement or calls for police action. Novels such as Leon Uris' pro-Zionist novel The Ha,face calls for banning. Other works, such as Salman Rushdie's Satanic Verses, are stopped at the border on the ground that they violate the law. Films may be temporarily kept out, as happened to a film entitled Nelson Mandela, ordered as an educational film by Ryerson Polytechnical Institute .... Arrests are even made for distributing pamphlets containing the words "Yankee Go Home. '69

#### Nazi Germany proves – open dialogue is the only solution to totalitarianism

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**The historical record makes clear, however, that censorship was no more effective a response to the rise of anti-Semitic hatred in Germany's pre-Hitler era than it has been in other circumstances.** This point was discussed in a 1990 Canadian Supreme Court opinion, considering a constitutional challenge to Canada's anti-hate speech law: **Remarkably, pre-Hitler Germany had laws very much like the Canadian anti- hate [speech] law**. Moreover, those laws were enforced with some vigor. **During the 15 years before Hitler came to power, there were more than 200 prosecutions based on anti-Semitic speech**. And, in the opinion of the leading Jewish organization of that era, no more than 10%of the cases were mishandled by the authorities. **As subsequent history so painfully testifies, this type of legislation proved ineffectual on the one occasion when there was a real argument for it. Indeed, there is some indication that the Nazis of pre-Hitler Germany shrewdly exploited their criminal trials in order to increase the size of their constituency. They used the trials as platforms to propagate their message.'**

#### Speech codes become tools of the colleges to suppress ideas they don’t want to hear out of self-interest.

**Herron:** Herron, Vince [Class of 1994, University of Southern California Law Center. B.A. 1990, University of California, Los Angeles.] “NOTES: INCREASING THE SPEECH: DIVERSITY, CAMPUS SPEECH CODES, AND THE PURSUIT OF TRUTH.” Southern California Law Review. January 1994. RP

**Not only do codes suppress ideas which we find profane and unacceptable, but they often censor ideas that should not be censored, ideas which play a legitimate role in academic discourse and should be kept in the university market- place. Opponents of hate speech codes who argue that censorship is bad for the educational environment are pessimistic about the ability of university administrators to censor certain forms of expression without the censorship's de- generating into an attempt to suppress political opposition or cultural differences.** n84 But some proponents have argued that codes can selectively censor only ideas which do not play a legitimate role in discussion. They argue that censorship enforced by campus administrators should not be worrisome, because codes are neither attempts by the government to censor political ideas nor attempts to perpetuate majority groups' power over minority groups. This type of censorship is initiated by university administrators solely to further the valid goals of education and scholarship. These proponents must be suggesting, then, that it is possible for university administrators, by exercise of judgment, to prom- ulgate speech codes that only prevent the right amount of speech and will not lead down a slippery slope into gross censorship. This is a dangerous proposition. **Surely those proponents of speech codes cannot deny that this nation, throughout its history, has fought censorship that at first seemed innocent and in the public interest but later became excessive**. n88 If we put the power of censorship in the hands of a university administration, we place the university at the mercy of the morals, ethics, and judgment that those administrators possess. We cannot trust them to be able to proscribe only speech which they do not believe belongs in the university. N o one group, and no one set of values, has a monopoly on truth. n89 **The difficulty that administrators face in promulgating speech codes that proscribe only the right amount of speech stems from their inability to articulate a useable definition which distinguishes unacceptable, injury-causing speech from speech which is necessary in academic discourse and which incidentally causes injury**. Without this distinction administrators are impotent to draw an appropriate boundary inside which censorship is unacceptable, but outside which censorship is not. **Those who codify the speech policy are not able to single out a few words or expressions that inflame racial and other tensions and guarantee that those words or phrases have neither value nor an appropriate place in aca- demic debates and formal conversations**. Peter Byrne suggests that racial insults have little or no social value n90 and that n ot even the staunchest supporter of the most absolute view of first amendment protection argues that racial insults have any significant social or individual value. n91 But what Byrne fails to note is that the words and phrases that make up bigoted epithets simply do not always have one meaning such that society can ban the word or phrase from verbal commerce and feel confident that it will not impede society's ability to communicate completely. n92 Perhaps Humpty Dumpty had the luxury to say, When I use a word ... it means exactly what I want it to mean - neither more nor less, n93 but we do not. Supreme Court Justice Stewart stated that he could not define obscenity (in fact, he stated that it may not be possi- ble to define it), but, he said, I know it when I see it. n94 Campus administrators will face the same inability to define what they are trying to censor, and it is a risky proposition to hope that they will know it when they see it. The Supreme Court has emphasized the government's inability to be a fair and competent censor. n95 **Just as the Court has pointed out democratic governments' inability to proscribe speech acceptably and denied governments the right to censor even in situations in which a substantial majority agrees that a certain expression is worthless or harmful, n96 students, faculty, and administrators alike must likewise deny anyone the ability to proscribe categories of speech within the university, no matter how odious the speech. Following are some examples of the University of Michigan speech code, which seemed at the outset to be in the campus' best interest but, in the course of its application, clearly became excessive censorship**. The speech code was accompanied by an interpretive guide which defined as unacceptable a male making disparaging remarks in class such as "women just aren't as good in this field as men.' n97 Also violative of the code was a man demanding that his gay roommate be tested for AIDS. One student was disciplined under the speech code when he stated in a research class that he believed homosexuality was a disease and that he intended to develop counseling to change gay clients' sexual pref- erence. Finally, another student was counseled because he made a statement during a dentistry class orientation session that he had heard that minorities had a difficult time in the course and that he had heard that they were not treated fairly. While it is true that these remarks have the potential to result in injury, they are remarks that on their face seem to have been offered out of a legitimate belief or concern and not to have been calculated to injure. The comments may be false or ignorant, but it would be better to air them and challenge them publicly, so that society can arrive at the truth of the matter asserted in them. **Students under the University of Wisconsin-Madison speech code filed complaints about incidents so trivial that the associate dean stated that he was alarmed that people were so willing to use rules to censor objectionable speech**... That the law had high hurdles was missed. It has even been suggested that law students should not study judicial decisions reflecting negative stereotypes. Surely the intent of such suggestions is to prevent the perpetuation of stereotypes. However, these proponents fail to recognize that these judicial opinions disclose not only the history of prejudice in this country but also the plight of women and minorities in the legal system today. These lessons are invaluable and need to be acknowledged. Through these lessons we are able to start to avoid this prejudice in the future. These are not problems which should be hidden from law students, who will soon enter the legal system and have the opportunity and ability to change it. In discussing a university administration's ability to censor only injurious speech, it is important to recognize the possibility that in the course of censorship university administrations may prohibit statements that are true. John Stuart Mill noted: The opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course deny its truth, but they are not infallible. They have no authority to decide the question for all mankind, and ex- clude every other person from the means of judging. Professor Matsuda argues that, under principles of academic freedom and free expression, ignorant views need not be heard, but academically tenable views should be. n103 But how are the censors to know when a view is academically tenable and when it is ignorant? Certainly one cannot argue that governments, legal systems, and nations have not been wrong before. One need only remember the great minds who contended that the earth was flat or that slaves were not people under the U.S. Constitution n104 to remind oneself that even very closely held propositions may be false. Besides fears that certain ideas, true and false, may be expunged from the marketplace, speech codes will also indi- rectly eliminate acceptable ideas from the marketplace. The movement to control speech ... has a sinister side... The chilling effect on those who are concerned about potential punishment ... will surely stifle the free and robust exchange of ideas that is so critical to the campus climate. n105 **Even if administrators can devise a code that prohibited only the right amount of speech and allows all speech necessary for academic debate, the mere threat of penalty will have a chilling effect**. n106 This deterrence effect will be especially strong under codes which use the contextual method or bal- ancing test to determine whether certain speech is sanctionable, because these codes offer only vague definitions of what is permitted and what is prohibited. Thus, under these codes students and faculty will not offer certain ideas that are unpopular or inflammatory but nonetheless permitted and encouraged, because the students and faculty members will be unsure whether they will be free of sanction for presenting those ideas. The political correctness movement has already forced students and faculty to filter their expression and keep some opinions to themselves. Many college students today already feel as though the atmosphere of free discourse, criticism and inquiry at universities is not what it should be. n107 Even law school professors have reported an unwilling- ness among students to even argue hypothetically for the "wrong' side in matters that touch on political correctness be- cause they fear being labeled an -ist of some sort. The P.C. movement has created an atmosphere of campus repres- sion in the name of sensitivity. Students have to walk on eggshells and a number of well-respected professors have dropped courses that touch on controversial topics. This movement then acts as informal speech regulation with informal sanctions. Students are deterred from speaking up in class out of fear that their classmates will hiss at them and that they will be shunned and excluded as some sort of a bigot. Faculty members, while recognizing the importance of selling both sides of a debate to students, may be deterred from backing one side or the other because they fear that con- troversy may affect tenure decisions. People are perfectly willing to restrict speech when it serves their own agendas; speech codes will give people so inclined the ability to do so. Speech codes will formalize restrictions on the expression of opinions. They will add height to the hurdles set up by the P.C. movement and intensify this already unfortunate deterrent. Educators and administrators should address this problem by attempting to diminish the pressures that political correctness has created, thereby increasing the speech on university campuses. Speech codes do just the opposite. One example of a code that deterred free and open debate was the University of Michigan speech code. As men- tioned above, the code came with an interpretive guide which defined as violative a statement suggesting that women were not as good in a certain field as men. A teacher's assistant testified that he wished to discuss questions relating to sex and race differences in his capacity as a teaching assistant in Psychology 430, Comparative Animal Behavior. He stated that hypotheses regarding sex differences and mental abilities suggested that men as a group do better than wom- en in some spatially related mental tasks, and that this was an appropriate topic to discuss. But he stated that he was afraid to speak to the class about these differences because he feared he might be charged with a violation of the speech Policy. n111 These theories seem academically tenable and would be allowed under Matsuda's rule. The univer- sity might encourage discussion on these theories but the teaching assistant was deterred from offering them because he feared sanction under the speech code. Thus even if administrators created a code that authorized all academically tena- ble theories and ideas offered during reasoned debate, it is probable that many of these theories and ideas might still be deterred indirectly by the code. University environments do not need speech codes to add formality and intensity to the informal regulations and deterrents that already exist. Universities should avoid speech codes because they will reduce the amount of speech on the campus. n112 University administrators should seek to increase the speech.

### Alternative – Crimthinc [Other Channels]

#### **Perm do both – endorse free speech through other channels but also remove speech codes – the net benefit is that people can have multiple liberation strategies**

#### **Perm do the alternative – it’s the same thing as the 1AC – all of the Aff proves that speech codes are used to criminalize dissents, so only the Aff allows these alternate channels to be effective.**

#### Underground movements are less effective than those out in the open.

**Parekh:** Parekh, Bhikhu “Is There a Case for Banning Hate Speech?” *Cambridge University Press.* 2012.

It is sometimes argued that banning hate speech drives extremist groups under- ground and leaves us no means of knowing who they are and how much support they enjoy. It also alienates them from the wider society, even makes them more detennined. and helps them recruit those attracted by the allure of forbidden fruit. This is an important argument and its force should not be underestimated. How- eyer, it has its limits. A ban on hate speech might drive extremist groups underground, but it also persuades their moderate and law-abiding members to dissociate them- selves from these groups. **When extremist groups go underground, they are denied the oxygen of publicity and the aura of public respectability. This makes their oper- ations more difficult and denies them the opportunity to link up with other similar groups and recruit their members.** While the ban might alienate extremist groups, it has the compensating advan- tage of securing the enthusiastic commitment and support of their target groups. Besides, beyond a certain point, alienation need not be a source of worry. Some religious groups are alienated from the secular orientation of the liberal state, inst as the communists and polyamoronsly inclined persons bitterly resent its commitment (respectively) to market economy and rnonogamy. We accept such forms of alien- ation as inherent in collective life and do not seek to redress them by abandoning the liberal state. **The ban might harden the determination of some, but it is also likely to weaken that of those who seek respectability and do not want to be associated with ideas and groups considered so disreputable** as to be banned, or who are deterred by the cost involved in supporting them. There is the lure of the prohibited, but there is also the attraction of the respectable.

#### The alternative is stuck in academia – we need concrete solutions that go beyond the Ivory Tower.

**Bryant:** Bryant, Levi R. [Author, *Difference and Givenness: Deleuze’s Transcendental Empiricism and the Ontology of Immanence*, *The Democracy of Objects, Onto-Cartogrpahy:  An Ontology of Machines and Media*] “Underpants Gnomes: A Critique of the Academic Left.” Larval Subjects Wordpress, November 2012. RP

**Unfortunately, the academic left falls prey to its own form of abstraction. It’s good at carrying out critiques that denounce various social formations, yet very poor at proposing any sort of realistic constructions of alternatives. This because it thinks abstractly in its own way, ignoring how networks, assemblages, structures, or regimes of attraction would have to be remade to create a workable alternative.** Here I’m reminded by the “underpants gnomes” depicted in South Park: The underpants gnomes have a plan for achieving profit that goes like this: Phase 1: Collect Underpants Phase 2: ? Phase 3: Profit! They even have a catchy song to go with their work: Well this is sadly how it often is with the academic left. Our plan seems to be as follows: Phase 1: Ultra-Radical Critique Phase 2: ? Phase 3: Revolution and complete social transformation! Our problem is that we seem perpetually stuck at phase 1 without ever explaining what is to be done at phase 2. Often the critiques articulated at phase 1 are right, but there are nonetheless all sorts of problems with those critiques nonetheless. In order to reach phase 3, we have to produce new collectives. In order for new collectives to be produced, people need to be able to hear and understand the critiques developed at phase 1. **Yet this is where everything begins to fall apart. Even though these critiques are often right, we express them in ways that only an academic with a PhD in critical theory and post-structural theory can understand.** How exactly is Adorno to produce an effect in the world if only PhD’s in the humanities can understand him? Who are these things for? We seem to always ignore these things and then look down our noses with disdain at the Naomi Kleins and David Graebers of the world. To make matters worse, we publish our work in expensive academic journals that only universities can afford, with presses that don’t have a wide distribution, and give our talks at expensive hotels at academic conferences attended only by other academics. Again, who are these things for? Is it an accident that so many activists look away from these things with contempt, thinking their more about an academic industry and tenure, than producing change in the world? If a tree falls in a forest and no one is there to hear it, it doesn’t make a sound! Seriously dudes and dudettes, what are you doing? But finally, and worst of all, us Marxists and anarchists all too often act like assholes. We denounce others, we condemn them, we berate them for not engaging with the questions we want to engage with, and we vilify them when they don’t embrace every bit of the doxa that we endorse. We are every bit as off-putting and unpleasant as the fundamentalist minister or the priest of the inquisition (have people yet understood that Deleuze and Guattari’s Anti-Oedipus was a critique of the French communist party system and the Stalinist party system, and the horrific passions that arise out of parties and identifications in general?). This type of “revolutionary” is the greatest friend of the reactionary and capitalist because they do more to drive people into the embrace of reigning ideology than to undermine reigning ideology. These are the people that keep Rush Limbaugh in business. Well done! But this isn’t where our most serious shortcomings lie. Our most serious shortcomings are to be found at phase 2. **We almost never make concrete proposals for how things ought to be restructured, for what new material infrastructures and semiotic fields need to be produced, and when we do, our critique-intoxicated cynics and skeptics immediately jump in with an analysis of all the ways in which these things contain dirty secrets, ugly motives, and are doomed to fail. How, I wonder, are we to do anything at all when we have no concrete proposals? We live on a planet of 6 billion people. These 6 billion people are dependent on a certain network of production and distribution** to meet the needs of their consumption. That network of production and distribution does involve the extraction of resources, the production of food, the maintenance of paths of transit and communication, the disposal of waste, the building of shelters, the distribution of medicines, etc., etc., etc.

## Black Safe Spaces K

#### Perm do both – safe spaces are *content neutral* so they’re included in reasonable time place manner restrictions.

#### Safe spaces for minorities make coalitions on campus worse, and are a tool of neosegregation.

**Airaksinen:** Airaksinen, Toni [Contributor, The College Fix] “Black Harvard professor: Giving minorities safe spaces does more harm than good.” *The College Fix.* October 2016. RP

Increased sense of ethnic victimization and a decreased sense of common identity …’ **Accommodating students of color by giving them a safe space doesn’t work — it actually has a harmful effect on their relationships with other ethnic groups on campus**. So says James Sidanius, a Harvard University professor of psychology and African American Studies and the [author](http://scholar.harvard.edu/sidanius/home) of more than 330 scientific papers on race, oppression, diversity and other topics. In 2004, long before the mainstream media started extensively covering the safe space and self-segregation trends in higher education, Professor Sidanius co-authored a [paper](https://dash.harvard.edu/bitstream/handle/1/3205411/Sidanius_EthnicEnclaves.pdf?sequence=1) titled “Ethnic Enclaves and the Dynamics of Social Identity on the College Campus: The Good, the Bad, and the Ugly.” Reached for comment this month by The College Fix, Sidanius said his research can be applied to today’s trends, but it’s nothing really new. “I don’t see any signs that [ethnic enclaves have] gotten worse, it’s probably remained relatively constant, we’re just paying more attention to it now,” he said. Sidanius investigated the effects of membership in “ethnic organizations,” otherwise known as “ethnic enclaves,” in his research. Examples of such ethnic organizations could include, for example, a Black Student Organization or a Chinese Cultural Association. **For students who are members of these types of ethnic-themed organizations, Sidanius discovered during his research that “effects included an increased sense of ethnic victimization and a decreased sense of common identity and social inclusiveness**.” These ethnic organizations are often very in line with today’s “safe space” ideology — the notion that being segregated from what oppresses you or makes you feel uncomfortable is beneficial. Students of color today frequently demand — [and receive](http://www.thecollegefix.com/post/28168/) — ethnic enclaves of various sorts, seen in everything from housing and social gatherings to protests and grief sessions. While they are not exactly the same as “ethnic organizations” Sidanius’ research looked at, the impact of segregation can still apply. Sidanius’ research points out that “among minority students the evidence suggested that membership in ethnically oriented student organizations actually increased the perception that ethnic groups are locked into zero-sum competition with one another and the feeling of victimization by virtue of one’s ethnicity.” He reiterated those findings in his interview with The Fix. “**Once having joined these [ethnic] organizations, the more likely [students] were to feel that they were in this zero-sum relationship with other ethnic groups on campus, and the greater level of hostility they had towards other members on campus, the greater the degree to which they felt ethnically victimized by other ethnic groups on campus**,” he said. But while his research discovered ethnic segregation actually has a negative effect on its stated goals of multiculturalism, diversity and inclusion, administrations at thousands of colleges continue to justify these groups as having an overall positive effect on the campus community. Sidanius, in his interview, elaborated on what he believes is a better fix for racial tensions: **Cross-ethnic exposure and communication help soothe tensions—not safe spaces and self-segregation**—he explained. In another [study](https://www.washingtonpost.com/opinions/want-greater-diversity-on-college-campuses-increase-the-number-of-interracial-roommates/2016/07/01/d5bcdad6-3d5a-11e6-80bc-d06711fd2125_story.html?utm_term=.09e7feb46f68) he said he found that students who were randomly assigned to roommates who were a different racial category than themselves “had lower levels of hostility towards other ethnic groups” and that increased contact between students of different backgrounds “increased the level of positive interchange.” When asked whether his research had any effect on college diversity programming, Sidanius said it’s complicated. “They were in a bind about what to do with the ethnic student organizations, because they didn’t want to forbid or outlaw fraternities, sororities, or ethnic organizations, so they didn’t do much of anything,” he said. **Sidanius told The College Fix that if administrators wanted to help improve race-relations on campus, that they could try to offer programming that brings students of different racial backgrounds together, not pulls them apart.**

#### Restrictions and safe spaces depoliticize oppression, fracturing coalitions that are key to solve.

Halberstam Jack Halberstam, You Are Triggering me! The Neo-Liberal Rhetoric of Harm, Danger and Trauma, Bully Bloggers, 5/7/16.

**What does it mean when younger people who are benefitting from several generations now of queer social activism** by people in their 40s and 50s (who in their childhoods had no recourse to anti-bullying campaigns or social services or multiple representations of other queer people building lives) **feel abused, traumatized, abandoned, misrecognized, beaten, bashed and damaged?** These **younger folks**, with their gay-straight alliances, their supportive parents and their new right to marry regularly **issue calls for “safe space**.” However, as Christina Hanhardt’s Lambda Literary award winning book, Safe Space: Neighborhood History and the Politics of Violence, shows, **the safe space agenda has worked in tandem with urban initiatives to increase the policing of poor neighborhoods and the gentrification of others.** Safe Space: Gay Neighborhood History and the Politics of Violence traces the development of LGBT politics in the US from 1965-2005 and explains how **LGBT activism was transformed from a multi-racial coalitional grassroots movement with strong ties to anti-poverty groups and anti-racism organizations to a mainstream, anti-violence movement with aspirations for state recognition. And, as LGBT communities make “safety” into a top priority** (and that during an era of militaristic investment in security regimes) **and ground their quest for safety in competitive narratives about trauma, the fight against aggressive new forms of exploitation, global capitalism and corrupt political systems falls by the way side. Is this the way the world ends? When groups that share common cause, utopian dreams and a joined mission find fault with each other instead of tearing down the banks and the bankers, the politicians and the parliaments, the university presidents and the CEOs? Instead of realizing**, as Moten and Hearny put it in The Undercommons, **that “we owe each other everything,” we** enact punishments on one another and stalk away from projects that should unite us, and **huddle in small groups feeling** erotically **bonded through our self-righteousness**. I want to call for a time of accountability and specificity: not all LGBT youth are suicidal, not all LGBT people are subject to violence and bullying, and indeed class and race remain much more vital factors in accounting for vulnerability to violence, police brutality, social baiting and reduced access to education and career opportunities. **Let’s call an end to the finger snapping moralism, let’s question contemporary desires for immediately consumable messages of progress, development and access; let’s all take a hard long look at the privileges that often prop up public performances of grie**f and outrage; let’s acknowledge that being queer no longer automatically means being brutalized and let’s argue for much more situated claims to marginalization, trauma and violence. **Let’s not fiddle while Rome** (or Paris) **burns,** trigger while the water rises, weep while trash piles up; **let’s recognize these internal wars for the distraction they have become. Once upon a time, the appellation “queer” named an opposition to identity politics, a commitment to coalition, a vision of alternative worlds. Now it has become a weak umbrella term for a confederation of identitarian concerns. It is time to move on, to confuse the enemy, to become illegible, invisible, anonymous** (see Preciado’s Bully Bloggers post on anonymity in relation to the Zapatistas). In the words of José Muñoz, “we have never been queer.” In the words of a great knight from Monty Python and the Holy Grail, “we are now no longer the Knights who say Ni, we are now the Knights who say “Ekki-ekki-ekki-ekki-PTANG. Zoom-Boing, z’nourrwringmm.”

#### Authenticity tests for blackness get misapplied to oppress students in other ways.

**Johnson 03**: Johnson, E. Patrick. Appropriating blackness: Performance and the politics of authenticity. Duke University Press, 2003.

**The title of this book suggests that ‘‘blackness’’ does not belong to any one individual or group. Rather, individuals or groups appropriate this complex and nuanced racial signifier in order to circumscribe its boundaries or to exclude other individuals or groups.** When blackness is appropriated to the exclusion of others, identity becomes politi- cal. Inevitably, when one attempts to lay claim to an intangible trope that manifests in various discursive terrains, identity claims become embattled, or as noted in the quotation above by Baldwin, ‘‘color’’ or ‘‘blackness’’ becomes a ‘‘dangerous phenomenon.’’ Because the con- cept of blackness has no essence, ‘‘black authenticity’’ is overdeter- mined—contingent on the historical, social, and political terms of its production. Moreover, in the words of Regina Bendix: ‘‘the notion of [black] authenticity implies the existence of its opposite, the fake, and this dichotomous construct is at the heart of what makes authenticity problematic.’’4 **Authenticity, then, is yet another trope manipulated for cultural capital.¶ That said, I do not wish to place a value judgment on the notion of authenticity, for there are ways in which authenticating discourse enables marginalized people to counter oppressive representations of themselves. The key here is to be cognizant of the arbitrariness of authenticity, the ways in which it carries with it the dangers of fore- closing the possibilities of cultural exchange and understanding.** As Henry Louis Gates Jr. reminds us: ‘‘No human culture is inaccessible to someone who makes the effort to understand, to learn, to inhabit another world.’’5¶ **When black Americans have employed the rhetoric of black au- thenticity, the outcome has often been a political agenda that has ex- cluded more voices than it has included.**6 The multiple ways in which we construct blackness within and outside black American culture is contingent on the historical moment in which we live and our ever- shifting subject positions. For example, black Americans, whose vo- cality, leadership, and rhetoric flourished at the historical moment in which they lived, contested popular constructions of blackness in order to further their own political agendas and occasionally to stake out a space from which to argue for the inclusion of other signs of ‘‘blackness.’’¶ Indeed, if one were to look at blackness in the context of black American history, one would find that, even in relation to national- ism, the notion of an ‘‘authentic’’ blackness has always been contested: the discourse of ‘‘house niggers’’ vs. ‘‘field niggers’’; Sojourner Truth’s insistence on a black female subjectivity in relation to the black polity; Booker T. Washington’s call for vocational skill over W. E. B. Du Bois’s ‘‘talented tenth’’; Richard Wright’s critique of Zora Neale Hurston’s focus on the ‘‘folk’’ over the plight of the black man; Eldridge Cleaver’s caustic attack on James Baldwin’s homosexuality as ‘‘anti-black’’ and ‘‘anti-male’’; urban northerners’ condescending attitudes toward rural southerners and vice versa; Malcolm X’s militant call for black Ameri- cans to fight against the white establishment ‘‘by any means nec- essary’’ over Martin Luther King Jr.’s reconciliatory ‘‘turn the other cheek’’; and Jesse Jackson’s ‘‘Rainbow Coalition’’ over Louis Farra- khan’s ‘‘Nation of Islam.’’ All of these examples belong to the long- standing tradition in black American history of certain black Ameri- cans critically viewing a definition of blackness that does not validate their social, political, and cultural worldview. As Wahneema Lubiano suggests, ‘‘**the resonances of [black] authenticity depend on who is doing the evaluating.’’7¶ White Americans also construct blackness.8 Of course, the power relations maintained by white hegemony have different material ef- fects for blacks than for whites. When white Americans essentialize blackness, for example, they often do so in ways that maintain ‘‘white- ness’’ as the master trope of purity, supremacy, and entitlement, as a ubiquitous, fixed, unifying signifier that seems invisible.9 Alter- nately, the tropes of blackness that whites circulated in the past— Mammy, Sapphire, Jezebel, Jim Crow, Sambo, Zip Coon, pickaninny, and Stepin Fetchit, and now enlarged to include welfare queen, pros- titute, rapist, drug addict, prison inmate, etc.—have historically in- sured physical violence, poverty, institutional racism, and second- class citizenry for blacks.¶ An even more complicated dynamic occurs when whites appro- priate blackness. History demonstrates that cultural usurpation has been a common practice of white Americans and their relation to art forms not their own. In many instances, whites exoticize and/or fetishize blackness,** what bell hooks calls ‘‘eating the other.’’10 Thus, when white-identified subjects perform ‘‘black’’ signifiers—norma- tive or otherwise—the effect is always already entangled in the dis- course of otherness; the historical weight of white skin privilege nec- essarily engenders a tense relationship with its Others.

#### Safe spaces are never safe for black people – tough racial dialogue is key – even if hate speech occurs, the discussion is important.

**Leonardo and Porter:** Leonardo, Zeus and Porter, Ronald K.(2010) 'Pedagogy of fear: toward a Fanonian theory of 'safety' in race dialogue', Race Ethnicity and Education, 13: 2, 139 — 157

It **is apparent that both whites and people of color want to avoid violence from being enacted against them. They enter race dialogue from radically different locations – intellectual for the former, lived for the latter – and an unevenness that the critical race pedagogue must accept and becomes the constitutive condition of any progressive dialogue on race. It is the risk that comes with violence but one worth taking if educators plan to shift the standards of humanity. In an apparently common quest for mutual racial understanding, whites and people of color participate in a violence that becomes an integral part of the process and seeking a ‘safe space’ is itself a form of violence insofar as it fails to recognize the myth of such geography in interracial exchange. As it concerns people of color within the current regime, safe space in racial dialogue is a projection rather than a reality. This is the myth that majoritarian stories in education replay and retell in order to perpetuate an understanding of race that maintains white supremacy. Safe spaces are violent to people of color and only by enacting a different form of violence, of shifting the discourse, will race dialogue ultimately become a space of mutual recognition between whites and people of color**. If people of color observe the current call for safety, this process defaults to white understandings and comfort zones, which have a well-documented history of violence against people of color. It is a point of entry that is characterized by denials, evasions, and falsehoods (Frankenberg 1993; Mills 1997). Its shell is non-violent for in public most whites prize self-control. Race dialogue within a white framework is rational, if by that we mean a situation that preserves, as Angela Davis (1998) mentioned, peace and order. This procedural arrangement has much to recommend it if we want to avoid uprisings and outright violence. But its kernel is already violent to people of color because a certain irrational rationality is at work. Both parties leave the interaction relatively ‘intact’, which should not be equated with the absence of violence. Whites depart the situation with their worldview and value systems unchallenged and affirmed, and people of color remain fractured in theirs. Whites would need to experience violence if they expect to change. But this is different from a hegemonic understanding that violence is always a form of dehumanization. In our appropriation of Fanon’s dialectics of violence, we find transformative possibilities in violence depending on the political project to which it is attached. Moreover, in this framework violence is not so much a description of this or that act qualifying as a form of violence, but a theoretical prescription of a different state of affairs, a response to oppression that equals its intensity. Thus, we do not describe what violence looks like, but assess its consequences.

#### A culture of safety has swallowed our campuses. It locks out hard conversations about race which dooms any efforts at effective change.

**Shulevitz:** Judith Shulevitz, In College and Hiding From Scary Ideas, The New York Times, March 21, 2015

**Safe spaces are an expression of the conviction, increasingly prevalent among college students, that their schools should keep them from being “bombarded” by discomfiting or distressing viewpoints**. Think of the safe space as the live-action version of the better-known trigger warning, a notice put on top of a syllabus or an assigned reading to alert students to the presence of potentially disturbing material. Some people trace safe spaces back to the feminist consciousness-raising groups of the 1960s and 1970s, others to the gay and lesbian movement of the early 1990s. In most cases, safe spaces are innocuous gatherings of like-minded people who agree to refrain from ridicule, criticism or what they term microaggressions — subtle displays of racial or sexual bias — so that everyone can relax enough to explore the nuances of, say, a fluid gender identity. As long as all parties consent to such restrictions, these little islands of self-restraint seem like a perfectly fine idea. **But the notion that ticklish conversations must be scrubbed clean of controversy has a way of leaking out and spreading. Once you designate some spaces as safe, you imply that the rest are unsafe. It follows that they should be made safer.** This logic clearly informed a campaign undertaken this fall by a Columbia University student group called Everyone Allied Against Homophobia that consisted of slipping a flier under the door of every dorm room on campus. The headline of the flier stated, “I want this space to be a safer space.” The text below instructed students to tape the fliers to their windows. The group’s vice president then had the flier published in the Columbia Daily Spectator, the student newspaper, along with an editorial asserting that “making spaces safer is about learning how to be kind to each other.” A junior named Adam Shapiro decided he didn’t want his room to be a safer space. He printed up his own flier calling it a dangerous space and had that, too, published in the Columbia Daily Spectator. “Kindness alone won’t allow us to gain more insight into truth,” he wrote. In an interview, Mr. Shapiro said, “If the point of a safe space is therapy for people who feel victimized by traumatization, that sounds like a great mission.” **But a safe-space mentality has begun infiltrating classrooms, he said, making both professors and students loath to say anything that might hurt someone’s feelings. “I don’t see how you can have a therapeutic space that’s also an intellectual space**,” he said. I’m old enough to remember a time when college students objected to providing a platform to certain speakers because they were deemed politically unacceptable. Now students worry whether acts of speech or pieces of writing may put them in emotional peril. Two weeks ago, students at Northwestern University marched to protest an article by Laura Kipnis, a professor in the university’s School of Communication. Professor Kipnis had criticized — O.K., ridiculed — what she called the sexual paranoia pervading campus life. The protesters carried mattresses and demanded that the administration condemn the essay. One student complained that Professor Kipnis was “erasing the very traumatic experience” of victims who spoke out. An organizer of the demonstration said, “we need to be setting aside spaces to talk” about “victim-blaming.” Last Wednesday, Northwestern’s president, Morton O. Schapiro, wrote an op-ed article in The Wall Street Journal affirming his commitment to academic freedom. But plenty of others at universities are willing to dignify students’ fears, citing threats to their stability as reasons to cancel debates, disinvite commencement speakers and apologize for so-called mistakes. At Oxford University’s Christ Church college in November, the college censors (a “censor” being more or less the Oxford equivalent of an undergraduate dean) canceled a debate on abortion after campus feminists threatened to disrupt it because both would-be debaters were men. “I’m relieved the censors have made this decision,” said the treasurer of Christ Church’s student union, who had pressed for the cancellation. “It clearly makes the most sense for the safety — both physical and mental — of the students who live and work in Christ Church.” A year and a half ago, a Hampshire College student group disinvited an Afrofunk band that had been attacked on social media for having too many white musicians; the vitriolic discussion had made students feel “unsafe.” **Last fall, the president of Smith College, Kathleen McCartney, apologized for causing students and faculty to be “hurt” when she failed to object to a racial epithet uttered by a fellow panel member at an alumnae event in New York. The offender was the free-speech advocate Wendy Kaminer, who had been arguing against the use of the euphemism “the n-word” when teaching American history or “The Adventures of Huckleberry Finn**.” In the uproar that followed, the Student Government Association wrote a letter declaring that “if Smith is unsafe for one student, it is unsafe for all students.” “**It’s amazing to me that they can’t distinguish between racist speech and speech about racist speech, between racism and discussions of racism,”** Ms. Kaminer said in an email. T**he confusion is telling, though. It shows that while keeping college-level discussions “safe” may feel good to the hypersensitive, it’s bad for them and for everyone else.** People ought to go to college to sharpen their wits and broaden their field of vision. **Shield them from unfamiliar ideas, and they’ll never learn the discipline of seeing the world as other people see it. They’ll be unprepared for the social and intellectual headwinds that will hit them as soon as they step off the campuses** whose climates they have so carefully controlled. What will they do when they hear opinions they’ve learned to shrink from? **If they want to change the world, how will they learn to persuade people to join them?** Only a few of the students want stronger anti-hate-speech codes. Mostly they ask for things like mandatory training sessions and stricter enforcement of existing rules. Still, it’s disconcerting to see students clamor for a kind of intrusive supervision that would have outraged students a few generations ago. But those were hardier souls. Now students’ needs are anticipated by a small army of service professionals — mental health counselors, student-life deans and the like. This new bureaucracy may be exacerbating students’ “self-infantilization,” as Judith Shapiro, the former president of Barnard College, suggested in an essay for Inside Higher Ed. But why are students so eager to self-infantilize? Their parents should probably share the blame. Eric Posner, a professor at the University of Chicago Law School, wrote on Slate last month that although universities cosset students more than they used to, that’s what they have to do, because today’s undergraduates are more puerile than their predecessors. “Perhaps overprogrammed children engineered to the specifications of college admissions offices no longer experience the risks and challenges that breed maturity,” he wrote. But “if college students are children, then they should be protected like children.” Another reason students resort to the quasi-medicalized terminology of trauma is that it forces administrators to respond. Universities are in a double bind. They’re required by two civil-rights statutes, Title VII and Title IX, to ensure that their campuses don’t create a “hostile environment” for women and other groups subject to harassment. However, universities are not supposed to go too far in suppressing free speech, either. If a university cancels a talk or punishes a professor and a lawsuit ensues, history suggests that the university will lose. But if officials don’t censure or don’t prevent speech that may inflict psychological damage on a member of a protected class, they risk fostering a hostile environment and prompting an investigation. As a result, students who say they feel unsafe are more likely to be heard than students who demand censorship on other grounds.

#### Backlash disad – whites being excluded from speaking in Black safe spaces causes increases in white nationalism – Trump proves.

Tumulty and Johnson: Karen Tumulty and Jenna Johnson, “Why Trump may be winning the war on ‘political correctness’” 1-4-16 <https://www.washingtonpost.com/politics/why-trump-may-be-winning-the-war-on-political-correctness/2016/01/04/098cf832-afda-11e5-b711-1998289ffcea_story.html?utm_term=.db9bc85e5b87>

“Driving powerful sentiments underground is not the same as expunging them,” said William A. Galston, a Brookings Institution scholar who advised President Bill Clinton. “**What we’re learning from Trump is that a lot of people have been biting their lips, but not changing their minds**.” One thing is clear: **Trump is channeling a very mainstream frustration**. **In an October** poll by Fairleigh Dickinson University, **68 percent agreed** with the proposition that “**a big problem this country has is being politically correct**.” It was a sentiment felt strongly across the political spectrum, by 62 percent of Democrats, 68 percent of independents and 81 percent of Republicans. Among whites, 72 percent said they felt that way, but so did 61 percent of nonwhites. “**People feel tremendous cultural condescension directed at them**,” and that their values are being “smirked at, laughed at” by the political and media elite, said GOP strategist Steve Schmidt. “‘Political correctness’ are the two words that best respond to everything that a conservative feels put upon,” added pollster Frank Luntz, who has advised Republicans. The label is, he said, a validation that what many on the right see as legitimate policy and cultural differences are not the same as racism, sexism or heartlessness. “**Allegations of racism and sexism have turned into powerful silencing devices**,” Galston agreed. “You can be opposed to affirmative action without being a racist.” The PC backlash does not necessarily mean that people support the kinds of things that Trump is saying, or the way he says them. When the Fairleigh Dickinson pollsters added his name to the same question — prefacing it with “Donald Trump said recently . . . ” — the numbers dropped sharply. Only 53 percent said they agree that political correctness is a major problem. This is not a new debate. It has raged since at least the early 1990s, when college campuses began adopting speech codes. Some went well beyond obvious slurs — with animal rights activists contending, for instance, that the word “pet”was disrespectful and should be changed to “companion animal.” **More recently, the PC wars have flared again in academia, where there is an ongoing argument over whether campuses should be a “safe space” where students are protected from upsetting ideas, and receive “trigger warnings” when course material contains distressing information**. Few would argue that it is wrong to confront and eliminate prejudice. But even some liberals have called political correctness a form of McCarthyism aimed at stifling free expression. **Trump has brought the question from the university quad to the political arena** in a way that no leading candidate has in the past. For many, “it’s satisfying to have a loud tribune like Trump,” said David Axelrod, who was President Obama’s top campaign adviser. “But I don’t think the hunger for authentic plain speech is Trump-specific. One of the appeals of [Democratic presidential candidate] Bernie Sanders is that people think he says exactly what he thinks and is not passing it through a filter. **There is a fundamental yearning for authenticity** that is probably felt more broadly.” The edgy liberal comedian Bill Maher, who for nearly a decade hosted a talk show called “Politically Incorrect,” has said that Trump’s ideas sound “a little ­Hitler-adjacent.” But he has also noted a yearning for “somebody to say, ‘You know what, I just don’t bend to your bull----.’ And Donald Trump, I’ve got to say, I don’t agree with him on a lot, but I kind of get him. We’ve been doing the same thing.” Trump sounded the anti-PC clarion call at the first Republican debate in August, when moderator ­Megyn Kelly of Fox News challenged him on comments that he had made disparaging women. “I think the big problem this country has is being politically correct,” he said. “I’ve been challenged by so many people, and I don’t frankly have time for total political correctness. And to be honest with you, this country doesn’t have time either. This country is in big trouble. We don’t win anymore. We lose to China. We lose to Mexico both in trade and at the border. We lose to everybody.” **It is hard to follow the logic of an argument that insulting women could somehow make the country stronger overseas. But the sentiment behind it came through clearly**. **And it has been picked up by other GOP contenders**. “Political correctness is killing people,” said Sen. Ted Cruz (R-Tex.), because it prevents the Obama administration from focusing on the communications and activities of potential terrorists who are Muslims. “Political correctness is ruining our country,” said former neurosurgeon Ben Carson, after he was criticized for saying a Muslim should not be president. It is corrosive, Carson said in an interview, because “many people will not say what they believe because someone will look askance at them, call them a name. Somebody will mess with their job, their family. This was not supposed to be the way it was in America.” Last month’s terrorist attack in San Bernardino, Calif., carried out by a Muslim couple who appear to have been inspired by the Islamic State, also known as ISIS, has become a case in point for many conservatives. They say political correctness has made the Obama administration too timid in calling it what it is — which is why Cruz and other Republicans taunt the president for not uttering the phrase “radical Islamic terrorism.” “What animates ISIS is an ­apocalyptic religious philosophy. People look at that and don’t understand the unwillingness to say red is red and blue is blue,” Schmidt said. “We live in a post-fact America, where the facts are subordinate to the advancement of an ideology.” Political strategists and others say a number of other forces are behind the backlash. It has both a cultural and an economic component, and it also reflects the continuing polarization that has grown deeper during Obama’s presidency. “For many of these people, they played the game by the rules, and essentially, they got shafted,” Democratic pollster Peter Hart said. **Trump is “the voice of an aggrieved cohort in our society — lower-middle-income working whites who have taken the hit from the big changes in the economy, and are angry about it,” Axelrod said. “He creates a permission structure for others.”**

#### This leads to forms of segregation that makes dialogue about racial issues impossible – people run away and hide instead of engaging, retreating to their own private zones

**Pullan:** Pullan, Wendy [Contributor, Saferworld] “Just cities: the role of public space and everyday life.” January 2016. RP

**Recent years have seen private citizens flocking to their city centres in order to protest against abuses and violence, to call for more or better forms of justice and democracy, to make their rights and wishes apparent.** Tahrir Square, Gezi Park, Place de Republique have become synonymous with public demonstrations in Cairo, Istanbul and Paris. **Much has been written about the importance of mobile phones and social networking in forming these events, yet along with effective means of communication, occupying urban space was equally necessary and significant. Without dwelling upon the success or failure of such movements, ‘being in the place’ was a way of establishing civic participation**. To better understand the wider background of such events, I would like to make two observations: first of all, conflicts across the world are becoming increasingly pervasive and complex. In the words of the International Crisis Group’s Jean-Marie Guéhenno, they are more ‘fragmented’. **Rarely are today’s conflicts declared wars with clear beginnings and ends; increasingly, they take the form of prolonged strife with intermittent periods of violence and of relative peace. Many are deeply embedded in ethno-national and religious hostilities as well as economic inequality and class tensions**. Secondly, such conflicts are increasingly played out in urban settings; a 2011 World Bank Report notes that ‘in many cases, the scale of urban violence can eclipse that of open warfare’. Today, cities have become the arena for conflict. The conflicts may originate in national or transnational disputes, but they are played out in cities like Belfast, Baghdad and Jerusalem. Such cities may be targeted as in the siege of Sarajevo during the Yugoslavian civil war or the state-sponsored barrel bombs attacking Syrian cities. But conflicts may also be generated from within by hostile sectors of the population. Whether generated by outside or inside forces, or both, these conflicts increasingly represent cracks in the continuity of urban society. In considering ethno-national and religious conflicts, we find a high level of longevity and uncertainty that is proving resistant to traditional peace processes and political negotiations. Solutions are elusive and we may simply have to learn how to live with certain levels of conflict. Such a realisation affects the place of justice and the role of legal solutions. The dispensing of justice only through policy and official channels may be insufficient, biased or ineffective. One reason for this is because conflicts in cities often concern everyday institutions and practices, played out in ordinary urban life. Examples of everyday life affected by conflict are varied and pervasive: no-go streets in the city; neighbourhood domination by local strong men; regular and sometimes violent demonstrations and parades; streetscapes of graffiti, slogans and other ethnic identifiers; or, more subtle practices that dictate where one chooses to live, work or shop. In the divided cities of the Middle East, urban quarters are increasingly associated with particular ethnic or religious groups; in parts of Belfast, Republicans and Nationalists can be identified by the side of the street on which they walk. Often personal choice is absent; exclusion is pre-determined by religio-political identity and security. The ancient idea of nomos, understood as law and legal order, also has a second and related meaning of convention or custom. Justice, or lack of it, can be played out through customary practice in daily activities. It has to do with how we manage our daily interactions and the urban scenarios that determine where human exchange exists and where not. This is usually a delicate balance. Philosopher Peter Sloterdijk has noted that ‘more communication means above all more conflict’. Understanding each other needs to be supplemented by tactics, actually a ‘code of discretion’, of ‘getting out of each other’s way’. If it were one defined code, legislation would be useful. However, throughout everyday life in urban situations, many codes of behaviour play a role and skills and discretion are necessary to navigate throughout such a complex territory. Protocols shift and respond to a myriad of different powerful forces. Whilst this may be fine when there is good will, it is easy to see how such a delicate series of balances and reactions break down in times of trouble or conflict. Explicit legislation will have an effect at only a very superficial level, but most transactions are rooted in fundamental yet complex forms of praxis, effectively, as architect Peter Carl puts it, ‘in what people do’. Much of this has to do with human activity and the interaction between people, or their ability to ignore each other. **But it is worth noting that the environment also plays a major role in forming a place for these events. In other words, praxis must be located, and customs develop in physical contexts. In cities, public space, as the physical space that diverse peoples share in some way, provides critical environments**. Cities have been built on the fault lines of culture – places of trade and exchange, the coming together of religious individuals and groups, sites to make proclamations, utter judgements, build major structures – and these are inherently the places of diversity and difference. A city is only a city when it encompasses diversity, yet, returning to Sloterdijk’s statement, this, on a grand scale, is a recipe for conflict. **Thus urban public space is inherently diverse, often conflictual and sometimes contested. Many of our most important urban institutions are based upon adversarial relations – parliaments, judicial courts, debating chambers. Debate and disagreement have also traditionally taken place in other less formal bodies: markets, cafes, theatres, demonstrations and protests. In all of these, no absolute agreement is normally expected**. Rather they act as a means of moving forward, with difference and even conflict, as part of the culture, becoming embedded in everyday life. These institutions are physically situated in cities and, effectively, adversarial relations become integral parts of the urban topography. **However, when heavy conflict arises, we see changes in cities, particularly in public space. People tend to shrink back into their own neighbourhoods and communities where they do not have to contend with the ‘other’**. If violence develops, mixed populations become afraid of each other, and everyday life, with all of its ordinary customs and protocols, becomes truncated. Above all, public space becomes a casualty. Public places and facilities – like markets and malls, bus stops and train stations, busy streets and squares – may become magnets for violence and thus closed down and hidden away from public use. In some ways this is not surprising: if violence emerges with threats to safety and human life, you get rid of the places where this is happening**. Yet, I should like to suggest, that whilst this might be effective in the short term, in the medium to long term, public space and the renewal of everyday activities that take place there is key to viable urban relations and the life of a diverse city. We need our urban public space. There are a number of problems with closing down public space and severe disruptions of customary life and practice. Restrictive measures in an emergency often linger on to focus on certain racial or ethnic groups**. So-called temporary measures, like building inner city walls and barricades – prominent features in Jerusalem, Nicosia, Baghdad – have the nasty habit of becoming permanent. In the long term, in very seriously divided cities like Mostar, Beirut or Jerusalem, the possibility of seeing a face that doesn’t look like yours, or hearing a language that is local to the place but you do not understand, becomes increasingly rare and, I would argue, increasingly precious. In examining the effects of conflict in public places, the Centre for Urban Conflicts Research has found two seemingly contradictory phenomena. **In periods of intense violence people from different ethnicities avoid each other but when times are more peaceful, at least some of the populations gravitate back toward mixed areas**. At the same time, entrenched conflicts result in long term or permanent urban changes, often embedded in the physical divisions. So in Nicosia, divided by an uninhabited buffer zone running through the city centre since 1974, it is difficult and may be impossible to rejuvenate this formerly public and shared part of the city. People’s customary practices have been disrupted by what I would call ‘conflict infrastructures’, most visibly in walls and imposed barriers. A tipping point is passed and what has been relatively easy to fracture is almost impossible to knit back together. **Along with such public spaces the customary practices of urban life and the civic rights associated with them also disappear**. Thus we see that cities are both robust and delicate at the same time. If we wish to address the problem of conflict in cities, we must recognise and play to the strengths of both these qualities. **Getting rid of public space, even in times of violence, is clearly not the answer.**

#### Their legal separation of people based on race based categories kills coalitions

Mike **Cole 9**, “Critical Race Theory and Education: A Marxist Response” 2009. p. 33

**Antiracists have made some progress, in the United Kingdom at least, after years of ‘establishment’ opposition, in making antiracism a mainstream rallying point, and this is reflected, in part, in legislation (e.g., the (2000) Race Relations Amendment Act).11 Even if it were a good idea, the chances of making ‘the abolition of whiteness’ a successful political unifier and rallying point against racism are virtually non-existent.** For John Preston (2007, p. 13), ‘[t]he abolition of whiteness is . . . not just an optional extra in terms of defeating capitalism (nor something which will be necessarily abolished post-capitalism) but fundamental to the Marxist educational project as praxis’. Indeed, for Preston (2007, p. 196) ‘[t]he abolition of capitalism and whiteness seem to be fundamentally connected in the current historical circumstances of Western capitalist development’. **From a Marxist perspective, coupling the ‘abolition of whiteness’ to the ‘abolition of capitalism’ is a worrying development which, if it gained ground in Marxist theory in any substantial way would most certainly undermine the Marxist project, even more than it has been undermined already (for an analysis of the success of the Ruling Class in forging consensus to capitalism in the United Kingdom, see Cole, 2008g, 2008h).** Implications of bringing the ‘abolition of whiteness’ into schools are discussed in chapter 7 of this volume. As is argued in this volume, racism, xeno-racism, racialization, and xeno-racialization, when informed by Marxism, are far more conducive to understanding racism in contemporary societies than is the CRT concept of ‘white supremacy’. ‘White supremacy’, I believe, should be restricted to its conventional usage.

## Marcuse

#### The idea of repressive tolerance denigrates into totalitarianism

**Bauer:** Bauer, Fred [Fred Bauer is a writer from New England. His work has been featured in numerous publications, including The Weekly Standard and The Daily Caller. He also blogs at A Certain Enthusiasm. His Twitter handle is @fredbauerblog.] “The Le and ‘Discriminating Tolerance’.” *The National Review.* June 2015. RP

**Postmodern “discriminating tolerance” makes our public affairs more acrimonious because it suggests that an authentic debate is illegitimate. This kind of politics asserts that history has only one direction (ever to the left)** and that the only valid kind of conversation is one that goes in that direction. **But a one-way conversation isn’t really a conversation, and the attempt to flatten the richness of human life to a single directional arrow leads to a caricature of justice**. **People across the political spectrum have increasingly come to recognize the narrow-minded viciousness of the new politics of intolerance, shame, and opprobrium**. A shift to a more inclusive and expansive kind of tolerance could be a way out of the cul-de-sac of political rage. This alternative cultural politics would recognize human partiality and inherent dignity. It would say that we should be free to challenge opinions and values, but that we should be wary of visiting punishment on individuals because of their opinions and values. Inclusive tolerance would invite rigorous debates about ethics and human nature as a way of enriching our understanding of ourselves. This alternative approach has a long pedigree in the Anglo- American tradition. The 17th-century Puritan Roger Williams, for instance, appealed to the idea of tolerance out of a respect for human limitations and a recognition of inherent individual dignity. In The Bloudy Tenent of Persecution, Williams argued that each person has the right to follow his or her own creed and that using force to compel individual conscience was a form of “soul rape.” Because we do not have absolute knowledge of God’s plan and because of the inherent value of each person, Williams called for a broad cultural tolerance, in which all creeds would be welcomed into the public square. This tolerance would not be moral nihilism (it is not, after all, denying the legitimacy of moral truths) but rather the cultivation of a sense of modesty and mutual respect. This form of tolerance would not resolve our public disagreements for us. Questions about economic structures, sexual ethics, personal identity, and political participation would remain very much up for grabs. **Rather than the authoritarian imposition of self-righteous assumptions, inclusive tolerance would pave the way for a more integrated and enriched public square.** Because it is based on the inherent legitimacy of the individual, this mode of tolerance would not lose its way in the fray of collectivist identity politics. Inclusive tolerance supports a person’s freedom of conscience not because that person belongs to a given group — but because he or she breathes. **The Left has no monopoly on weaponized intolerance, and the recent heightening of cultural intolerance is another instance of the way that those who thirst for power also often crave the ability to ward off critiques of their use of power. As the history of the 20th century shows, programmatic perfectionistic agendas often try to crush those whose ideas complicate the pristine vision of utopia. A politics of tolerance would recognize the messiness and imperfections of our lives in this world, but it would also allow us to search for and to defend virtue, justice, and happiness.**

#### Speech limits stifle alternative viewpoints that are key to a criticism of cap

**Workers’ Liberty:** Workers’ Liberty [Blog that writes about capitalism and perspectives about addressing it] “Universities, capitalism and free speech.” *Workers’ Liberty.* March 2015. RP

**For centuries, university campuses have been, relatively speaking,** a haven within capitalist society for free debate **and criticism**. A high point, for much of the 20th century, was the right which universities in Latin America won to keep the police off their campuses and have university officials elected by staff and students. That began with the University Reform Movement in Córdoba, in northern Argentina, which opposed a focus on learning by rote, inadequate libraries, poor instruction, and restrictive admission criteria, and spread across the subcontinent. **The student radicalism which spread across much of the world in 1968 started, in 1964-5, with a Free Speech Movement at the University of California, Berkeley**. The central avenues through campus had become a lively scene, with street stalls and political gatherings; the university authorities tried to clamp down, and were eventually defeated. **Today free debate and criticism on campus is under threat from several angles. The government wants universities to ban speakers from their campuses who would be quite legal elsewhere. University administrations ban meetings, even without government prompting, when they think they might cause trouble or uproar. Campus space is increasingly commercialised and franchised-out, and university bosses try to stop student postering, leafleting, and campaigning affecting the “commercial space”.** Student unions are increasingly run by people who think that a spell as student union president will look good on their CV when they apply for a managerial job. University lecturers’ careers depend on how many articles they get published in “leading” (i.e., in almost all fields, orthodox) journals. **Over generations of academic turnover, this produces university departments filled with staff who have been selected by capacity to get wordage into those journals, and who in turn will go on to run those journals, oblivious to critiques or alternative approaches.** This narrows the range of teaching and debate on courses. Finally, and paradoxically, the shutting-down of debate is sometimes promoted by student activists who consider themselves left-wing. A chief example is the bans on the Socialist Workers Party imposed by Goldsmiths and Edinburgh University student unions, and attempted elsewhere.

#### Campus free speech is key to fight capitalism – restrictions create internal strife that make movements impossible

Halberstam Jack Halberstam, You Are Triggering me! The Neo-Liberal Rhetoric of Harm, Danger and Trauma, Bully Bloggers, 5/7/16.

**What does it mean when younger people who are benefitting from several generations now of queer social activism** by people in their 40s and 50s (who in their childhoods had no recourse to anti-bullying campaigns or social services or multiple representations of other queer people building lives) **feel abused, traumatized, abandoned, misrecognized, beaten, bashed and damaged?** These **younger folks**, with their gay-straight alliances, their supportive parents and their new right to marry regularly **issue calls for “safe space**.” However, as Christina Hanhardt’s Lambda Literary award winning book, Safe Space: Neighborhood History and the Politics of Violence, shows, **the safe space agenda has worked in tandem with urban initiatives to increase the policing of poor neighborhoods and the gentrification of others.** Safe Space: Gay Neighborhood History and the Politics of Violence traces the development of LGBT politics in the US from 1965-2005 and explains how **LGBT activism was transformed from a multi-racial coalitional grassroots movement with strong ties to anti-poverty groups and anti-racism organizations to a mainstream, anti-violence movement with aspirations for state recognition. And, as LGBT communities make “safety” into a top priority** (and that during an era of militaristic investment in security regimes) **and ground their quest for safety in competitive narratives about trauma, the fight against aggressive new forms of exploitation, global capitalism and corrupt political systems falls by the way side. Is this the way the world ends? When groups that share common cause, utopian dreams and a joined mission find fault with each other instead of tearing down the banks and the bankers, the politicians and the parliaments, the university presidents and the CEOs? Instead of realizing**, as Moten and Hearny put it in The Undercommons, **that “we owe each other everything,” we** enact punishments on one another and stalk away from projects that should unite us, and **huddle in small groups feeling** erotically **bonded through our self-righteousness**. I want to call for a time of accountability and specificity: not all LGBT youth are suicidal, not all LGBT people are subject to violence and bullying, and indeed class and race remain much more vital factors in accounting for vulnerability to violence, police brutality, social baiting and reduced access to education and career opportunities. **Let’s call an end to the finger snapping moralism, let’s question contemporary desires for immediately consumable messages of progress, development and access; let’s all take a hard long look at the privileges that often prop up public performances of grie**f and outrage; let’s acknowledge that being queer no longer automatically means being brutalized and let’s argue for much more situated claims to marginalization, trauma and violence. **Let’s not fiddle while Rome** (or Paris) **burns,** trigger while the water rises, weep while trash piles up; **let’s recognize these internal wars for the distraction they have become. Once upon a time, the appellation “queer” named an opposition to identity politics, a commitment to coalition, a vision of alternative worlds. Now it has become a weak umbrella term for a confederation of identitarian concerns. It is time to move on, to confuse the enemy, to become illegible, invisible, anonymous** (see Preciado’s Bully Bloggers post on anonymity in relation to the Zapatistas). In the words of José Muñoz, “we have never been queer.” In the words of a great knight from Monty Python and the Holy Grail, “we are now no longer the Knights who say Ni, we are now the Knights who say “Ekki-ekki-ekki-ekki-PTANG. Zoom-Boing, z’nourrwringmm.”

#### Free speech is key to a capitalist struggle – restrictions on speech result in the suppression of radical speakers.

**Farber:** Farber, Samuel [Samuel Farber has been involved in left and socialist politics for well over fifty years. His most recent book is [The Politics of Che Guevara: Theory and Practice](http://www.haymarketbooks.org/pb/The-Politics-of-Che-Guevara).] “A Socialist Approach to Free Speech.” Jacobin Magazine. February 2017. RP

**When grappling with the question of free speech, socialists should look not to Isaiah Berlin, the model of courage in defense of free speech evoked by Garton Ash, but to Rosa Luxemburg, who insisted that free expression was designed for those who disagree**. The view presented here differs not only from liberalism but also from left currents that adhere to authoritarian-from-above visions of socialism. **Among these are the longstanding notions explicitly or implicitly advocating for an “educational dictatorship” of enlightened intellectuals, as found in Herbert Marcuse’s work. In A Critique of Pure Tolerance, he argues that we should suppress the powerful’s right to free speech because they aim to brainwash the minds of the people. His argument rests on the implicit claim that intellectuals like him should decide what ideas the people should be exposed to.** Like Garton Ash, Marcuse bases his analysis of free speech on tolerance and similarly cannot produce a solid defense of the right to free expression. **This seems ironic since Marcuse and those who agreed with him were a small minority — their ideas were more likely to be suppressed than the rulers’**. Luxemburg’s position also differs from Stalinist and neo-Stalinist politics in all its expressions, which wrongly maintain that Marx was not interested in defending “bourgeois” individual rights and political democracy. In fact, Marx’s politics were deeply rooted in his time’s radical democratic movements. In his first article, he sharply criticizes the government decree that established censorship, arguing: The writer is thus subjected to the most frightful terrorism, the jurisdiction of suspicion. Laws about tendency, laws that do not provide objective norms, are laws of terrorism, such as were conceived by the state’s exigencies under Robespierre and the state’s rottenness under the Roman emperors. For some left currents, free speech and other democratic freedoms serve as an ideological cover for the bourgeoisie’s defense of private property**. In fact, the capitalist bourgeoisie has never been deeply committed to free speech and other civil liberties, happily coexisting with a wide variety of antidemocratic political regimes, South African apartheid and fascism included**. In the last analysis, private ownership of the means of production allows capitalists to maintain social and economic power independent of the political system. Indeed, breaking the ruling class control over socioeconomic power and establishing collective ownership depends on democracy: “the first step in the revolution by the working class,” proclaimed The Communist Manifesto, “is to raise the proletariat to the position of ruling class, to win the battle of democracy.” **For the most part, struggles for democratic rights — such as free speech, the abolition of slavery, universal suffrage, workers’, and women’s rights — came after the bourgeois revolution. They were democratic conquests won through popular struggle. Free speech, free association, and other democratic freedoms allowed workers to fight for their interests.** Some proponents of socialism from above tend to defend democratic freedoms only for the working class, but this perspective has a narrow and parochial view of a class that should be, as Lenin argued, “the tribune of the people,” the representative of the interests of the great social majority, and runs contrary to the socialist tradition’s strong emphasis on demanding universal political rights such as suffrage. In a more cynical vein, this political current has demanded free speech and other democratic rights only when they belong to the persecuted opposition. In contrast to this view, as Hal Draper argued in his 1968 article “Free Speech and Political Struggle”: “There can be no contradiction, no gulf in principle between what is demanded of the existing state, and what we propose for the society we want to replace it, a free society.” **Consistent with this approach, we must defend free speech on its own terms**, not merely because it helps to organize and fight for a new society. In this, free speech does not differ from the economic advances the working class and its allies have won. They are valuable both in their own right and because they strengthen the working class and its allies in their struggle for their emancipation.

## History/Genealogy

### Link

#### The aff is uniquely key to minority rights – it’s been instrumental to Black activism

**Zimmerman:** Zimmerman, Jonathan. [Contributor, *The Chronicle of Higher Education*] “Racism Was Served by Silence. Justice Requires Free Speech for All.” *The Chronicle for Higher Education*, December 2016. RP

In 1986, the Senate Judiciary Committee turned down Jeff Sessions for a federal judgeship after reports surfaced that he had called the NAACP "un-American" and "Communist-inspired." That decision is back in the news now that President-elect Donald Trump has nominated Sessions to be U.S. attorney general. His remark recalls the long history of racist hostility against the NAACP, which was harassed and persecuted across the South. Law-enforcement **[O]fficials spied on its members, and at least three states — including Sessions’s native Alabama — prohibited the group from organizing within their borders. But Sessions’s comment should also make us look anew at campaigns to restrict speech on campus, which have been stepped up since Trump’s victory.** A few days after the election, for example, students at my own institution asked for an "anonymous system" for reporting faculty members who made people of color feel "unsafe." Who will collect this information, and how will they know if it’s credible? What will happen to the professors it cites? And how long will it take before white students complain that faculty of color have made them feel unsafe? Actually, it’s already happened. **In 2013, three white students at Minneapolis Community and Technical College said an African-American professor had made them feel uncomfortable by teaching them about structural racism. The college later reprimanded her for creating a "hostile learning environment." When Americans restrict speech, in fact, it’s usually** minorities **who lose out. That’s why just about every great fighter for racial equality in our history was also a warrior for free speech. Start with Frederick Douglass, who railed against efforts to silence his fellow abolitionists.** Southern states outlawed the publication of antislavery tracts and even their delivery by mail. In Congress, meanwhile, Southern representatives and their Northern allies pushed through a "gag rule" that automatically tabled antislavery petitions. "To chain the slave, these parties have said we must fetter the free!" Douglass told an 1852 audience in Ithaca, N.Y. "To make tyranny safe, we must endanger the liberties of the nation, by destroying the palladium of all liberty and progress — the freedom of speech." Eight years later, after a mob broke up an antislavery meeting in Boston’s Music Hall, Douglass returned to the same location to deliver his most famous testament to free speech. Boston had been the fount of the American Revolution, which established freedom of speech as "the great moral renovator of society and government," he noted. If Americans turned their backs on this tradition, he warned, they would also close themselves off to collective growth and improvement. "To suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker," Douglass thundered. "It is just as criminal to rob a man of his right to speak and hear as it would be to rob him of his money." **1n 1905, when W.E.B. Du Bois** and 28 others met at Niagara Falls, Ontario — because hotels on the American side wouldn’t serve blacks — they demanded not just equal access to public facilities and the ballot box but also freedom of speech. And when Du Bois helped launch the NAACP, four years after that, he **insisted that African-Americans could never gain civil rights so long as they were prevented from speaking their minds**. After World War II, Du Bois was indicted for failing to register as a member of an antinuclear organization that the government deemed "subversive." Although he was acquitted, he continued to campaign for the freedom of others who were persecuted or muzzled during the Cold War. "It is clear still today that freedom of speech and of thinking can be attacked in the United States without the intellectual and moral leaders of this land raising a hand or saying a word in protest or defense," he wrote in 1952. "Than this fateful silence there is on earth no greater menace to present civilization." The NAACP was listed as a subversive organization in several states, too, which helps explain why Jeff Sessions thought it was Communist-inspired. Therefore members had to either keep their affiliation hidden — in violation of the law — or register with the government, which subjected them to still further harassment. And when students at South Carolina State College for Negroes protested the interrogation of NAACP members on campus, the students were investigated themselves. **In short, if you didn’t have freedom of speech,** you couldn’t counter any other injustice. **That’s a lesson that some of today’s student activists — and some college administrators — seem to have** forgotten. Although courts have consistently found campus speech codes unconstitutional, hundreds of colleges continue to discipline students for saying the wrong thing. Faculty members, too, have come under fire. During the wave of protests that swept campuses last fall, students at Duke University called for the dismissal of professors who "perpetuate hate speech that threatens the safety of students of color." At Emory University, students demanded "repercussions or sanctions for racist actions performed by professors." Let me be clear: If students think a faculty member is racist, they have every right to say so. **But nobody has a right to limit someone else’s speech, via institutional prohibitions or star chambers or anything else. That’s precisely what white America tried to do to the NAACP and other African-Americans. We insult their memories when we silence one another in the name of racial justice, which will never be served by the restriction of free speech.**

#### Protests on campus galvanize society to change and spark dialogue on racism

**Curwen:** Curwen, Thomas [Contributor, LA Times] “What’s Different About The Latest Wave of College Activism?” *LA Times.* November 2015. RP

**If the University of Missouri was the spark, then the fire didn't take long to spread. Since the resignation of its president and chancellor Nov. 9, protesters have organized at more than 100 colleges and universities nationwide**. Social media sites have lighted up with voices of dissent, and what began as a grievance has evolved into a movement. **Inspired by the marches in Ferguson, Mo., and Black Lives Matter, students are taking to social media to question the institutions they once approached for answers**. Calling for racial and social reforms on their campuses, they are borrowing tactics of the past — hunger strikes, sit-ins and lists of demands — and have found a collective voice to address their frustrations, hurt and rage. Their actions seem to have hit the mark. Last week, the dean of students at Claremont McKenna College left the university after students protested her comments to a Latina student with the offer to work for those who "don't fit our CMC mold." **Tuesday night, Jonathan Veitch, the president of Occidental College, said he and other administrators were open to considering a list of 14 reforms,** including the creation of a black studies major and more diversity training, that student protesters had drawn up. Students at USC have similarly proposed a campuswide action plan, which includes the appointment of a top administrator to promote diversity, equity and inclusion. Nationwide, complaints of racism and microaggression are feeding Facebook pages and websites at Harvard, Brown, Columbia and Willamette universities, as well as at Oberlin, Dartmouth and Swarthmore colleges. Protesters at Ithaca College staged a walkout to demand the president's resignation, and Peter Salovey, president of Yale University, announced a number of steps, including the appointment of a deputy dean of diversity, to work toward "a better, more diverse, and more inclusive Yale." **For decades, students have helped drive social change in America, if not the world**. Campuses, said University of California President Janet Napolitano, have "historically been places where social issues in the United States are raised and where many voices are heard." **Over the decades, student protests have shifted attitudes in the country on civil rights and the Vietnam War, nuclear proliferation and apartheid, and some of today's actions are borrowing from tactics of the past.** Although some of the strategies may seem familiar, it is the speed and the urgency of today's protests that are different. "What is unique about these issues is how social media has changed the way protests take place on college campuses," said Tyrone Howard, associate dean of equity, diversity and inclusion at UCLA. "A protest goes viral in no time flat. With Instagram and Twitter, you're in an immediate news cycle. This was not how it was 20 or 30 years ago." Howard also believes that the effectiveness of the actions at the University of Missouri has encouraged students on other campuses to raise their voices. "A president stepping down is a huge step," he said. "Students elsewhere have to wonder, 'Wow, if that can happen there, why can't we bring out our issues to the forefront as well?'" Shaun R. Harper, executive director of the University of Pennsylvania's Center for the Study of Race and Equity in Education, agrees. The resignation of two top Missouri administrators, Harper said, showed students and athletes around the country that they have power they may not have realized before. The protests show "we're all together and we have the power to make the change we deserve," said Lindsay Opoku-Acheampong, a senior studying biology at Occidental. "It's affirming," said Dalin Celamy, also a senior at the college. "It lets us know we're not crazy; it's happening to people who are just like you all over the country." Celamy, along with other students, not only watched the unfolding protests across the country, but also looked to earlier protests, including an occupation of an administrative building at Occidental in 1968. Echoes of the 1960s in today's actions are clear, said Robert Cohen, a history professor at New York University and author of "Freedom's Orator," a biography of Mario Savio, who led the Free Speech Movement at UC Berkeley in the 1960s. "The tactical dynamism of these nonviolent protests and the public criticism of them are in important ways reminiscent of the 1960s," Cohen said. "Today's protests, like those in the '60s, are memorable because they have been effective in pushing for change and sparking dialogue as well as polarization." Although the targets of these protests are the blatant and subtle forms of racism and inequity that affect the students' lives, the message of the protests resonates with the recent incidents of intolerance and racial inequity on the streets of America. There is a reason for this, Howard said. Campuses are microcosms of society, he said, and are often comparable in terms of representation and opportunity. "So there is a similar fight for more representation, acceptance and inclusion." The dynamic can create a complicated and sensitive social order for students of color to negotiate. "Latino and African American students are often under the belief if they leave their community and go to colleges, that it will be better," Howard said. "They believe it will be an upgrade over the challenges that they saw in underserved and understaffed schools. But if the colleges and universities are the same as those schools, then there is disappointment and frustration." In addition, Howard said, when these students leave their community to go to a university, they often feel conflicted. "So when injustice comes up," he said, "they are quick to respond because it is what they saw in their community. On some level, it is their chance to let their parents and peers know that they have not forgotten the struggle in the community." On campuses and off, Harper, of the University of Pennsylvania center, finds a rising sense of impatience among African Americans about social change. "As a black person, I think black people are just fed up. It's time out for ignoring these issues," he said. While protests in the 1960s helped create specific safeguards for universities today, such as Title IX, guaranteeing equal access for all students to any educational program or activity receiving federal financial assistance, a gap has widened over the years between students and administrators over perceptions of bias. **Institutions often valued for their support of free speech find themselves wrestling with the prospect of limiting free speech, but to focus on what is or isn't politically correct avoids the more important issue,** Cohen said: whether campuses are diverse enough or how to reduce racism. Occidental student Raihana Haynes-Venerable has heard criticism that modern students are too sensitive, but she argues that subtle forms of discrimination still have a profound effect. She pointed to women making less than men and fewer minorities getting jobs as examples. "This is the new form of racism," she said.

#### Turn – whenever speech codes have been tried, they’ve failed. Cross apply Strossen from the Aff – they just get used against Black people – that’s a counter genealogy.

#### Turn – the First Amendment has historically helped Blacks – it was the basis for Malcom X and MLK and helped reclaim black culture.

**McGregor:** McGregor, Michael “Issue Brief: African Americans and First Amendment Rights (Free Speech and Religion).” 2009. RP

**The First Amendment to the Constitution states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble,** and to petition the Government for a redress of grievances.” **Therefore, as this amendment not only allows for but also protects individual freedom of religion, freedom of speech, and, innovatively, freedom to petition the government, it is not surprising that this amendment was the basis for the Civil Rights Movement. Interestingly, this movement relied heavily on the first two aspects of the First Amendment in the vein of strong vocal leaders, such as Martin Luther King Jr. and Malcolm X, and the usage of religion in the form of not only the “black church” but also in the greater sense of African American spirituality in order to effectively petition the government’s racist policies in the mid‐20th century.**

#### Case outweighs – the reason Black people are oppressed in the status quo is not because of the history of speech but because of concrete conditions – any reason why free speech works now is better

### Alternative

#### Perm do both – allow free speech but situate it within a historical analysis – the perm shields the links. It’s not a neutral acceptance of speech but working with history to improve it

#### The alt fails – literally everything has a racist historical root – their world would reject voting rights, self defense, and marriage equality.

**Winkler:** Winkler, Adam [Professor, UCLA Law School] “Gun Contorl is ‘Racist’?” *New Republic.* February 2013. RP

Of course, [N]ot every gun law in American history was motivated by racism. In fact, some of our earliest gun laws had nothing to do with prejudice. After 1820, for instance, a wave of laws swept through the South and Midwest barring people from carrying concealed weapons. These laws weren't racist in origin; blacks in many of these states were already prohibited from even owning a gun. The target of concealed carry laws was white people[.], namely violence-prone men who were a bit too eager to defend their honor by whipping out their guns. These laws, which might be thought of as the first modern gun control laws, had their origin in reducing criminal violence among whites. Moreover, Keene's claim that gun control has racist roots is not made to correct the historical record. He uses that history to raise doubts about President Obama's proposals for background checks and restrictions[.] on high-capacity magazines and assault weapons. Of course **there is no evidence any of these laws are motivated by even the hint of racism. To suggest that we shouldn't adopt any gun regulations today because our ancestors had racist gun laws is**, to be generous, **far-fetched. Property law was once profoundly racist**, **allowing racially restrictive covenants; voting law was once profoundly racist, allowing literacy tests; marriage law was once profoundly racist, allowing no interracial marriage. Does that mean we should never have laws regulating property, voting, or marriage? In these other areas of law, such a claim would be patently absurd.** Yet **in the minds of today's NRA leaders, that's what passes for logic.**

## Prefs K

Omitted

## Wilderson

### Framework

Omitted

### Overview – Risk of Offense

Omitted

### Overview – Evans

Omitted

### Link

Omitted

### Alternative

Omitted

## Baudrillard

### Link

Omitted

### Alternative – Silence

Omitted

## Black Nihilism

### Framework

Omitted

### Overview – Risk of Offense

Omitted

### Overview – Evans

Omitted

### Link

Omitted

### Alternative

Omitted

## Education Bad

Omitted

## Anthro

Omitted

## Critical Pedagogy Bad

Omitted

## Queer Pessimism

### Link

Omitted

### Alternative – Queer Nihilism

Omitted

## Deleuze

### Framework

Omitted

### Link

Omitted

### A2 Evans

Omitted

### Alternative

Omitted

## Fiat

Omitted

## Militarism

Omitted

## Counterfactuals

### Framing

Omitted

### Offense

#### Turn – free speech historically has allowed movements and protests – looking at it counterfactually would prove that it’s a good idea

**Puzder:** Puzder, Andy [Chief Executive Officer, CKE Restaurants. Also a former activist] “The Importance of Free Speech on Campus.” *Real Clear Politics.* December 2015. RP

**As a former student protester from the '60s, I believe there is no better place for open debate and free expression than the campus quad.** I fully support America’s youth exploring outlandish ideas because I believe our values can withstand the comparisons and will be stronger because of them. But, what’s happening on our campuses from Mizzou to Yale to Claremont-McKenna is different and disturbing. Student activists seem to lack any real understanding of what empowers them to promote their concepts of diversity and tolerance. As the product of a public education from a different era, I was taught that America was a unique nation in world history because it was based on the concepts of equality and liberty as set forth in our Declaration of Independence; equality before God and the liberty to live your life as you choose as long as you don’t interfere with the rights of others. These values led to the Civil War as slavery is incompatible with equality before God. As President Lincoln queried, the question was whether “a nation conceived in Liberty and dedicated to the proposition that all men are created equal . . . can long endure.” Equality before God won, evolving over time to equality of opportunity (as most people understand it today). **It’s that notion of equality that has been at the core of every civil rights struggle from racial equality to women’s’ rights and, more recently, gay rights. In order to defend these values, each individual must hold certain inalienable rights upon which government cannot infringe. Perhaps the most important is the right of free speech.** Its value comes from both the ability of every individual to freely express their views and the inability of any individual or group to suppress opposing views. Disturbingly, students today seem to have lost touch with the importance of free speech and view it as an obstacle to achieving their goals. **At the University of Missouri, a student photographer covering protests of alleged racism faced a group of students chanting “Hey hey, ho ho, reporters have got to go.” The photographer protested that “This is the First Amendment that protects your right to stand here and mine. . . . The law protects both of us.” An assistant professor of mass media (really) responded: “Who wants to help me get this reporter out of here? I need some muscle over here**.” When asked about this effort to “muscle” a student journalist away from a public event, the vice president of the Missouri Students Association responded: "I personally am tired of hearing that First Amendment rights protect students when they are creating a hostile and unsafe learning environment for myself and for other students here." At Yale, a college official told students that offensive Halloween costumes should not be taken seriously stating that: “After all, free speech and the ability to tolerate offence are the hallmarks of a free and open society.” A very vocal student’s response: “You should not sleep at night! You are disgusting.” And “Walk away, he doesn’t deserve to be listened to.” Continuing this trend, the student government at Wesleyan University voted to cut funding for the 150-year-old campus newspaper because it published an opinion piece by a conservative writer questioning the tactics of the Black Lives Matter movement, although not the merits. At Amherst, students insisted that the university punish individuals who posted flyers on the importance of free speech. Why are these students so disconnected from the very right upon which their freedom stands? One explanation: A recent survey by the American Council of Trustees and Alumni of 1,100 colleges and universities found that a mere 18 percent required courses in American history or government, where the place the First Amendment and free speech hold in our hierarchy of values might have been explained and understood. Lacking this understanding, a recent Pew Research Center poll found that 40 percent of American millennials (ages 18-34) support government prevention of public statements offensive to minorities. Only around a quarter of Gen Xers (27%) and baby boomers (24%) and roughly one-in-ten in the Silent Generation (12%) said the government should be able to prevent such speech. Perhaps most disturbing has been the reaction of college administrators (apologies and resignations) which seem to all but concede the legitimacy of student attempts to suppress free speech. Of course, no college administrator wants to appear to be a racist and there’s nothing wrong with people examining their actions and apologizing if their motives were misguided. But, the issues here go beyond racism. Colleges should be addressing the needs and strengths of a free society well before an inflamed group of students tramples the rights of others in the name of diversity and tolerance. **You don’t change peoples’ minds by stopping them from speaking theirs. Rather than labeling dissenting views as hate speech or trigger warnings, colleges would better serve their students by emphasizing that a free society can only remain free if there is genuine respect for open thought and free expression**. That you can only achieve genuine diversity when people are free to say what they think regardless of political correctness. Otherwise, our campuses will become bastions of conformity rather than learning. **This is the discussion we should be having on college campuses,** while we still have the freedom to do so.

## Psychoanalysis

Omitted

## Tuck and Yang

Omitted

## Black Rage

### Framing

Omitted

### Link

#### Speech codes chill black radical activism – even if enforced fairly, black voices are chilled.

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal.* Winter 1995. RP

The second "paternalistic objection," that "antiracism rules will end up hurting minorities," n81 also has more substance in recent experience than Delgado's and Yun's analysis suggests. **Although they may be correct that prosecutions of minority group members for violating a campus hate-speech code "seem rare," n82 two examples serve to illustrate the importance of allowing members of the campus community, including members of minority groups, to engage in speech that may be offensive to others. The first example shows how several outspoken African-American students benefitted from the atmosphere of free speech and counterspeech at A.S.U. after the racist poster incident described in part A above. Vernard Bonner, the African-American leader of Students Against Racism, vented his [\*1264] outrage over the racist poster with an opinion letter that some complained reflected racist stereotyping of whites. n83 Although his own speech was offensive to some and sparked criticism, he was secure in his right to speak his mind without fear of censorship or discipline**. Similarly, one year after he led the counterspeech to the racist poster and a year before being elected student body president, Rossie Turman reaffirmed his support for A.S.U.'s policies supporting free speech, precisely because those policies protected his right to strongly express his own views. n84 **In the same year, a militant African-American student, Ashahed Triche, expressed his more radical views on race relations in a regular column of the campus newspaper, regularly offending white readers**. Though some of the offended readers engaged in their own counterspeech and even recommended that the newspaper drop his column, n85 he continued to express his provocative views free from censorship. **A campus policy that prohibited offensive, racially hostile speech presumably would have bottled up these emerging African-American speakers along with their white counterparts. Perhaps the result of such a policy would be a kinder, gentler campus, but these African-American students were willing to sacrifice subtlety in their speech to draw attention to their perspectives.**

#### The naivete of speech codes is that they rest their faith in institutions that are inherently anti-black

Henry Louis **Gates 94**, [Professor and Director of the Hutchins Center for African and African American Research at Harvard University], “War of Words: Critical Race Theory and the First Amendment”, in Speaking of Race, Speaking of Sex: Hate Speech, Civil Rights, and Civil Liberties, New York University Press, 1994. RFK

One other paradox fissures the hate speech movement. Because these scholars wish to show that substantial restrictions on racist speech are consistent with the Constitution, they must make the case that racist speech is sui generis among offensive or injurious utterances; otherwise the domain of unprotected speech would mushroom beyond the point of constitutional and political plausibility. "Words That Wound," the title of Delgado's pioneering essay, designates a category that includes racist speech but is scarcely exhausted by it. Nor could we maintain that racist insults, which tend to be generic, are necessarily more wounding than an insult tailor-made to hurt someone: being jeered at for your acne or your obesity may be far more hurtful than being jeered at for your race or your religion. Alert to this consideration, scholars like Matsuda, Lawrence and Delgado argue that racist speech is peculiarly deserving of curtailment precisely because it participates in (and is at least partly constitutive of) the larger structures of racism that are "hegemonic" in our society. "Black folks know that no racial incident is `isolated' in the United States," writes Lawrence: That is what makes the incidents so horrible, so scary. It is the knowledge that they are not the isolated unpopular speech of a dissident few that makes them so frightening. These incidents are manifestations of a ubiquitous and deeply ingrained cultural belief system, an American way of life. To this consideration Matsuda annexes the further argument that what distinguishes racist speech from other forms of unpopular speech is "the universal acceptance of the wrongness of the doctrine of racial supremacy." Unlike Marxist speech, say, racist speech is "universally condemned." At first blush, this is a surprising claim. After all, **if racist speech really were universally rejected, ordinances against it would be an exercise in antiquarianism. And yet there is something in what Matsuda says: a shared assumption about the weight of the anti-racist consensus, a conviction that at least overt racists are an unpopular minority, that authority is likely to side with us against them.** This hopeful conviction about the magnitude of racist expression in America provides the hidden and rather unexpected foundation for the hate speech movement. **Why would you entrust authority with enlarged powers of regulating the speech of unpopular minorities, unless you were confident that the unpopular minorities would be racists, not blacks?** Lawrence may know that racial incidents are never "isolated," but he must also believe them to be less than wholly systemic. You don't go to the teacher to complain about the school bully unless you know that the teacher is on your side. **The tacit confidence of critical race theory in the anti-racist consensus also enables its criticism of neutral principles**. This becomes clear when one considers the best arguments in favor of such principles. Thus David Coles, a law professor at Georgetown University, suggests that in a democratic society the only speech government is likely to succeed in regulating will be that of the politically marginalized. If an idea is sufficiently popular, a representative government will lack the political wherewithal to suppress it, irrespective of the First Amendment. But if an idea is unpopular, the only thing that may protect it from the majority is a strong constitutional norm of content-neutrality. Reverse his assumptions about whose speech is marginalized and you stand the argument on its head. If blatantly racist speech is unpopular and stigmatized, a strong constitutional norm of content- neutrality may be its best hope for protection. For these critics, however, that is a damning argument against content-neutrality. **This, then, is the political ambiguity that haunts the new academic activism. "Our colleagues of color, struggling to carry the multiple burdens of token representative, role model and change agent in increasingly hostile environments, needed to know that the institutions in which they worked stood behind them**," declare our critical race theorists in their joint manifesto. Needed to know that the institutions in which they worked stood behind them: **I have difficulty imagining this sentiment expressed by activists in the '60s, who defined themselves in a proudly adversarial relation to authority and its institutions. Here is the crucial difference this time around. The contemporary aim is not to resist power, but to enlist power.**

### Alternative

Omitted

## Sick Woman

### Framework

Omitted

### Link

#### No link – this is obviously a link of omission – just because protests don’t help the disabled does not mean that protests can’t do other desirable things

#### Turn – protests empirically include disabled people – their refusal to recognize this is an act of whitewashing

**DPMH:** Disabled People Make History [Organization and advocacy group for disabled people] “Disabled People Make History.” December 2010. RP

**History doesn’t do justice to the lives of disabled people**. All too often we are hidden from history because our lives aren’t considered worthwhile and when we do appear the accounts are shaped by the views of others within stereotyped presentations of who and what we are. **Rarely do disabled people get the opportunity to speak for ourselves and in so doing leave our imprint within history. Today we want to make our voices heard and speak out along with others who wish to protest against the unjust measures being taken by the CONDEM Government. Today we want to ensure the 26th of March 2011 goes down in history as the first time since the 1920s that disabled people en bloc have joined a mainstream demonstration called by the Trade Union Congress. To make sure disabled people on this March and those supporting us through virtual protests and other activities aren’t forgotten or left as footnotes in history, DPAC is launching a new project: Disabled People Make History in collaboration with** [**Disability History Month**](http://www.ukdisabilityhistorymonth.com/) **and** [**Spaghetti Gazetti.**](http://www.spaghettigazetti.com/) **We are asking disabled people to make notes during the day about either the events that are going on around them and their involvement, or on how they found the media coverage of disabled people’s participation**, (this of course can include non media coverage), and then using whatever media suits them forward it to us so that we can get good coverage of disabled people and their stories at the demo together. If you want to we would also like to hear the main reason(s) you have come on the demo, what is that has got you involved in the rally and what you are doing to challenge this. We are looking for written material, texts, photos, clips, etc. **Depending upon the support we gain for this project our ultimate aim would be publish an edited book about disabled people’s participation within and experience of the biggest demonstration against the cuts**. Of course there will be disabled people who would’ve liked to have been here but for various reasons can’t be, therefore, we will be inviting them to speak about their support and what alternative activities they took part in. If you wish to be involved in or follow the progress of Disabled People Make History you can do this via: [https://disabledpeopleprotest.wordpress.com](https://disabledpeopleprotest.wordpress.com/). Email address for sending in your contributions will be [dpac26march@gmail.com](mailto:dpac26march@gmail.com) We look forward to hearing your stories post 26th March – this is just the beginning!

### Alternative

Omitted

## World Order

### Link

Omitted

### Alt

Omitted

## Wynter

### Link – Generic Wynter

Omitted

### Link – Lawrence/First Amendment

#### Turn – the First Amendment has historically helped Blacks – it was the basis for Malcom X and MLK and helped reclaim black culture.

**McGregor:** McGregor, Michael “Issue Brief: African Americans and First Amendment Rights (Free Speech and Religion).” 2009. RP

**The First Amendment to the Constitution states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble,** and to petition the Government for a redress of grievances.” **Therefore, as this amendment not only allows for but also protects individual freedom of religion, freedom of speech, and, innovatively, freedom to petition the government, it is not surprising that this amendment was the basis for the Civil Rights Movement. Interestingly, this movement relied heavily on the first two aspects of the First Amendment in the vein of strong vocal leaders, such as Martin Luther King Jr. and Malcolm X, and the usage of religion in the form of not only the “black church” but also in the greater sense of African American spirituality in order to effectively petition the government’s racist policies in the mid‐20th century.**

#### Try or die for First Amendment rights – Blacks have historically been silenced – we shouldn’t just have them sit down and shut up. Cross apply Puzder – the Aff allows bottom up activism on campus.

### Link – Lawrence/Sacrifice Blacks

#### No link – this is a reps link that isn’t relevant to the Aff – I don’t say we should sacrifice minorities for some gain later. Cross apply ACLU 1– codes in the status quo are an excuse to target Black people, so the Aff removes that

### Alternative – Black Counter-anthropology

Omitted

## Fem Killjoy

### Links

#### No link – the Aff doesn’t mandate free speech – it’s a you do you approach where people who want to speak out can

#### Turn – free speech is key to ensure the voices of the subaltern are heard

**Weheliye:** Weheliye, Alexander G. [Alexander G. Weheliye is Professor of African American Studies and English at Northwestern University. He is the author of Phonographies: Grooves in Sonic Afro-Modernity, also published by Duke University Press.] “Habeas Viscus.” *Duke University Press.* 2014. RP

In this closing chapter I would like to continue taking up Hortense Spillers's challenge and ask what it might mean to claim the monstrosity of the flesh as a site for freedom beyond the world of Man in order to heed Baby Suggs's words in Toni Morrison's Beloved about loving the flesh: “In this here place, we flesh; flesh that weeps, laughs; flesh that dances on bare feet in grass. Love it. Love it hard. Yonder they do not love your flesh. They despise it**.” In order to improperly inhabit and understand the politics and poetics of habeas viscus, we must return to some of the voices from the previous two chapters. Revisit them we should, however, not to authenticate them as acoustic mirrors of the oppressed or to grant them juridical humanity but in order to listen more closely to prophetic traces of the hieroglyphics of the flesh in these echoes of the future anterior tense**. Many critics assume that political violence is somehow outside the grasp of linguistic structures. In her now classic account of the body in pain, Scarry argues that pain in general and torture in particular causes a regression to the “pre-language of cries and groans,” which becomes indicative of the annihilation of the tortured's world. In making this argument, Scarry assumes that world and language preexist and are unmade by the act of torture, which imagines political violence as exterior to the normal order rather than as an instrument in the creation of the world and language of Man. **Agamben's point about language and witnessing vis-à-vis Auschwitz, although not quite in the same register**, skirts fairly close to making a similar argument: “It is thus necessary that the impossibility of bearing witness, the ‘lacuna,’ that constitutes human language, collapses, giving way to a different impossibility of bearing witness— that which does not have language” (Remnants, 39). **Perhaps it might be more useful to construe “cries and groans,” “heart-rending shrieks,” “the mechanical murmurs without content” as language that does not rely on linguistic structures, at least not primarily, to convey meaning, sense, or expression. For language, especially in the space-ways of the flesh, comes in many varieties, and functions not only—or even primarily—to create words in the service of conforming to linguistic structures transparent in the world of Man**. This approach also cannot imagine that for many of those held captive by Man it is always already “after the end of the world.... Don't you know that yet?” long before the actual acts of torture have begun. Roman Grzyb, a former concentration camp prisoner, for instance, gives the following account of the Muselmann's idiolect: “The Muselmann used his very own jargon by constantly repeating what came to his completely confused mind. The sentences were often incomplete and were illogical, stopping abruptly at random points.” As can be gleaned from the testimonies of Muselmänner, slaves, or Ellis Island detainees, what is at stake is not so much the lack of language per se, since we have known for a while now that the subaltern cannot speak, but the kinds of dialects available to the subjected and how these are seen and heard by those who bear witness to their plight. Nevertheless, the suffering voices exemplified by James and the Muselmänner should not be understood as fountains of authenticity but rather as instantiations of a radically different political imaginary that steers clear of reducing the subjectivity of the oppressed to bare life. In R. Radhakrishnan's thinking, this political domain produces “critical knowledge, which in turn empowers the voice of suffering to make its own cognitive- epistemological intervention by envisioning its own utopia, rather than accepting an assigned position within the ameliotary schemes proposed by the dominant discourse.” Thus, suffering appears as utopian erudition—or is expressed through hieroglyphics of the flesh to echo Spillers and Zora Neale Hurston—and not as an end unto itself or as a precritical sphere of truth, as the liberal humanist Weltanschauung would have it; rather, “**liberalism is tolerant of abundant speech as long as it does not have to take into account voices it does not understand.” Where dominant discourse seeks to develop upgrades of the current notions of humanity as Man, improvements are not the aim or product of the imaginaries borne of racializing assemblages and political violence**; instead they summon forms of human emancipation that can be imagined but not (yet) described. While this form of communication does not necessarily conform to the standard definition of linguistic utterance, to hear Aunt Hester's howls or the Muselmann's repetition merely as pre- or nonlanguage absolves the world of Man from any and all responsibility for bearing witness to the flesh. Hardly anterior to language and therefore the human, these rumblings vocalize the humming relay of the world that makes linguistic structures possible, directly corresponding to how the not-quite- and nonhuman give rise to the universe of Man. That is to say, the flesh engulfs not only Man's visually marked others via instruments of torture and the intergenerational transmission of hieroglyphics but emanates rays of potential enfleshment throughout the far-flung corners of Being in the world of Man.

### Alternative

Omitted

## Academic Victimhood

### Victims K OV/Off

Omitted

### Link – Suffering

Omitted

### Alt – Fabulation

Omitted

## Crip Liberalism

### Framework

Omitted

### Link

Omitted

### Alternative – Crip Killjoy

Omitted

## Orthodox Marxism

### Link – Discourse

#### No link – the Aff never mandates a focus on discourse or says it’s noamtviely good – the Aff is a you do you approach

#### Turn – the Aff is a negative state action – speech codes are an imposition on students by colleges, which the Aff removes

#### Speech limits stifle alternative viewpoints that are key to a criticism of cap

**Workers’ Liberty:** Workers’ Liberty [Blog that writes about capitalism and perspectives about addressing it] “Universities, capitalism and free speech.” *Workers’ Liberty.* March 2015. RP

**For centuries, university campuses have been, relatively speaking,** a haven within capitalist society for free debate **and criticism**. A high point, for much of the 20th century, was the right which universities in Latin America won to keep the police off their campuses and have university officials elected by staff and students. That began with the University Reform Movement in Córdoba, in northern Argentina, which opposed a focus on learning by rote, inadequate libraries, poor instruction, and restrictive admission criteria, and spread across the subcontinent. **The student radicalism which spread across much of the world in 1968 started, in 1964-5, with a Free Speech Movement at the University of California, Berkeley**. The central avenues through campus had become a lively scene, with street stalls and political gatherings; the university authorities tried to clamp down, and were eventually defeated. **Today free debate and criticism on campus is under threat from several angles. The government wants universities to ban speakers from their campuses who would be quite legal elsewhere. University administrations ban meetings, even without government prompting, when they think they might cause trouble or uproar. Campus space is increasingly commercialised and franchised-out, and university bosses try to stop student postering, leafleting, and campaigning affecting the “commercial space”.** Student unions are increasingly run by people who think that a spell as student union president will look good on their CV when they apply for a managerial job. University lecturers’ careers depend on how many articles they get published in “leading” (i.e., in almost all fields, orthodox) journals. **Over generations of academic turnover, this produces university departments filled with staff who have been selected by capacity to get wordage into those journals, and who in turn will go on to run those journals, oblivious to critiques or alternative approaches.** This narrows the range of teaching and debate on courses. Finally, and paradoxically, the shutting-down of debate is sometimes promoted by student activists who consider themselves left-wing. A chief example is the bans on the Socialist Workers Party imposed by Goldsmiths and Edinburgh University student unions, and attempted elsewhere.

#### Campus free speech is key to fight capitalism – restrictions create internal strife that make movements impossible

Halberstam Jack Halberstam, You Are Triggering me! The Neo-Liberal Rhetoric of Harm, Danger and Trauma, Bully Bloggers, 5/7/16.

**What does it mean when younger people who are benefitting from several generations now of queer social activism** by people in their 40s and 50s (who in their childhoods had no recourse to anti-bullying campaigns or social services or multiple representations of other queer people building lives) fee**l abused, traumatized, abandoned, misrecognized, beaten, bashed and damaged?** These **younger folks**, with their gay-straight alliances, their supportive parents and their new right to marry regularly **issue calls for “safe space**.” However, as Christina Hanhardt’s Lambda Literary award winning book, Safe Space: Neighborhood History and the Politics of Violence, shows, **the safe space agenda has worked in tandem with urban initiatives to increase the policing of poor neighborhoods and the gentrification of others.** Safe Space: Gay Neighborhood History and the Politics of Violence traces the development of LGBT politics in the US from 1965-2005 and explains how **LGBT activism was transformed from a multi-racial coalitional grassroots movement with strong ties to anti-poverty groups and anti-racism organizations to a mainstream, anti-violence movement with aspirations for state recognition. And, as LGBT communities make “safety” into a top priority** (and that during an era of militaristic investment in security regimes) **and ground their quest for safety in competitive narratives about trauma, the fight against aggressive new forms of exploitation, global capitalism and corrupt political systems falls by the way side. Is this the way the world ends? When groups that share common cause, utopian dreams and a joined mission find fault with each other instead of tearing down the banks and the bankers, the politicians and the parliaments, the university presidents and the CEOs? Instead of realizing**, as Moten and Hearny put it in The Undercommons, **that “we owe each other everything,” we** enact punishments on one another and stalk away from projects that should unite us, and **huddle in small groups feeling** erotically **bonded through our self-righteousness**. I want to call for a time of accountability and specificity: not all LGBT youth are suicidal, not all LGBT people are subject to violence and bullying, and indeed class and race remain much more vital factors in accounting for vulnerability to violence, police brutality, social baiting and reduced access to education and career opportunities. **Let’s call an end to the finger snapping moralism, let’s question contemporary desires for immediately consumable messages of progress, development and access; let’s all take a hard long look at the privileges that often prop up public performances of grie**f and outrage; let’s acknowledge that being queer no longer automatically means being brutalized and let’s argue for much more situated claims to marginalization, trauma and violence. **Let’s not fiddle while Rome** (or Paris) **burns,** trigger while the water rises, weep while trash piles up; **let’s recognize these internal wars for the distraction they have become. Once upon a time, the appellation “queer” named an opposition to identity politics, a commitment to coalition, a vision of alternative worlds. Now it has become a weak umbrella term for a confederation of identitarian concerns. It is time to move on, to confuse the enemy, to become illegible, invisible, anonymous** (see Preciado’s Bully Bloggers post on anonymity in relation to the Zapatistas). In the words of José Muñoz, “we have never been queer.” In the words of a great knight from Monty Python and the Holy Grail, “we are now no longer the Knights who say Ni, we are now the Knights who say “Ekki-ekki-ekki-ekki-PTANG. Zoom-Boing, z’nourrwringmm.”

#### Student movements can create counter-hegemony with radical anti-capitalist organization on a broad scale.

Delgado & Ross: [Sandra Delgado (doctoral student in Curriculum Studies at the University oritish Columbia) and E. Wayne Ross (Professor in the Faculty of Education at the University of British Columbia), "Students in Revolt: The Pedagogical Potential of Student Collective Action in the Age of the Corporate University", 2016].

As students’ collective actions keep gaining more political relevance, student and university movements also establish themselves as spaces of counter-hegemony (Sotiris, 2014). **Students are constantly opening new possibilities to displace and resist the commodification of education offered by mainstream educational institutions. As Sotiris (2014) convincingly argues, movements within the university have not only the potential to subvert educational reforms, but in addition, they have become “strategic nodes” for the transformation of the processes and practices in higher education, and most importantly for the constant re-imagination and the recreation of “new forms of subaltern counter-hegemony**” (p. 1). The strategic importance of university and college based moments lays precisely in the role that higher education plays in contemporary societies, namely their role in “the development of new technologies, new forms of production and for the articulation of discourses and theories on contemporary issues and their role in the reproduction of state and business personnel.” (p.8) **Universities and colleges therefore, have a crucial contribution in “the development of class strategies** (both dominant and subaltern), in the production of subjectivities, (and) in the transformation of collective practices” (p.8) The main objective of this paper is to examine how contemporary student movements are disrupting, opposing and displacing entrenched oppressive and dehumanizing reforms, practices and frames in today’s corporate academia. This work is divided in four sections. The first is an introduction to student movements and an overview of how student political action has been approached and researched. The second and third sections take a closer look at the repertoires of contention used by contemporary student movements and propose a framework based on radical praxis that allows us to better understand the pedagogical potential of student disruptive action. The last section contains a series of examples of students’ repertoires or tactics of contention that exemplifies the pedagogical potential of student social and political action. An Overview of Student Movements Generally speaking, students are well positioned as political actors. They have been actively involved in the politics of education since the beginnings of the university, but more broadly, students have played a significant role in defining social, cultural and political environments around the world (Altbach, 1966; Boren, 2001). **The contributions and influences of students and student movements to revolutionary efforts and political movements beyond the university context are undeniable.** **One example is the role that students have played in the leadership and membership of the political left** (e.g. students’ role in the Movimiento 26 de Julio - M-26-7 in Cuba during the 50’s and in the formation of The New Left in the United States, among others). Similarly, several political and social movements have either established alliances with student organizations or created their own chapters on campuses to recruit new members, mobilize their agendas in education and foster earlier student’s involvement in politics2 (Altbach, 1966; Lipset, 1969). Students are often considered to be “catalysts” of political and social action or “barometers” of the social unrest and political tension accumulated in society (Barker, 2008). **Throughout history student movements have had a diverse and sometimes contradictory range of political commitments. Usually, student organizations and movements find grounding and inspiration in Anarchism and Marxism, however it is also common to see movements leaning towards liberal and conservative approaches**. Hence, student political action has not always been aligned with social movements or organizations from the political left. In various moments in history students have joined or been linked to rightist movements, reactionary organizations and conservative parties (Altbach, 1966; Barker, 2008). Students, unlike workers, come from different social classes and seemly different cultural backgrounds. As a particularly diverse social group, students are distinguished for being heterogeneous and pluralists in their values, interests and commitments (Boren, 2001). Such diversity has been a constant challenge for maintaining unity, which has been particularly problematic in cases of national or transnational student organizations (Prusinowska, Kowzan, & Zielińska, 2012; Somma, 2012). To clarify, social classes are defined by the specific relationship that people have with the means of production. In the case of students, they are not a social class by themselves, but a social layer or social group that is identifiable by their common function in society (Stedman, 1969). The main or central aspect that unites student is the transitory social condition of being a student. In other words, students are a social group who have a common function, role in society or social objective, which is “to study” something (Lewis, 2013; Simons & Masschelein, 2009). Student movements can be understood as a form of social movement (LuesherMamashela, 2015). They have an internal organization that varies from traditionally hierarchical structures, organizational schemes based on representative democracy with charismatic leadership, to horizontal forms of decision-making (Altbach, 1966; Lipset, 1969). **As many other movements, student movements have standing claims, organize different type of actions, tactics or repertoires of contention, 3 and they advocate for political, social or/and educational agendas, programs or pleas.**

### Alt – Class Analysis First

Omitted

## Habeas Viscus

### Link – speech

#### The Aff is a recognition of the voice of the subaltern – this dismantles Eurocentric politics

**Grosfoguel:** “Decolonizing Post-Colonial Studies and Paradigms of Political-Economy: Transmodernity,¶ Decolonial Thinking, and Global Coloniality,” TRANSMODERNITY: Journal of Peripheral Cultural Production of the Luso-Hispanic World, 1(1), Grosfoguel, Ramón, University of California, Berkeley, 2011.

The perspective articulated here is not a defense of “identity politics.”¶ **Subaltern identities could serve as an epistemic point of departure for a radical¶ critique of Eurocentric paradigms and ways of thinking.** However, “identity politics”¶ is not equivalent to epistemological alterity. The scope of “identity politics” is limited¶ and cannot achieve a radical transformation of the system and its colonial power¶ matrix. Since all modern identities are a construction of the coloniality of power in¶ the modern/colonial world, their defense is not as subversive as it might seem at¶ first sight. “Black,” “Indian,” “African,” or national identities such as “Colombian,”¶ “Kenyan,” or “French” are colonial constructions. Defending these identities could¶ serve some progressive purposes depending on what is at stake in certain contexts.¶ For example, in the struggles against an imperialist invasion or in anti-racist¶ struggles against white supremacy these identities can serve to unify the oppressed¶ people against a common enemy. But identity politics only addresses the goals of a¶ single group and demands equality within the system rather than developing a¶ radical anti-systemic struggle against the systemic and planetary Western-centric¶ civilization. The system of exploitation is a crucial space of intervention that requires¶ broader alliances along not only racial and gender lines but also along class lines and¶ among a diversity of oppressed groups around the radicalization of the notion of¶ social equality. **But instead of Eurocentric modernity’s limited, abstract and formal¶ notion of equality, the idea here is to extend the notion of equality to every relation¶ of oppression such as racial, class, sexual, or gender. The new pluriverse of meaning¶ or new imaginary of liberation needs a common language despite the diversity of¶ cultures and forms of oppression. This common language could be provided by¶ radicalizing the liberatory notions arising from the old modern/colonial pattern of¶ power, such as freedom (press, religion, or speech), individual liberties or social ¶ equality and linking these to the radical democratization of the political, epistemic,¶ gender, sexual, spiritual and economic power hierarchies at a global scale.¶ Quijano’s (2000) proposal for a “socialization of power” as opposed to a¶ “statist nationalization of production” is crucial here**. Instead of “state socialist” or¶ “state capitalist” projects centered in the administration of the state and in¶ hierarchical power structures, the strategy of “socialization of power” in all spheres¶ of social existence privileges global and local struggles for collective forms of public¶ authority.¶ **Communities, enterprises, schools, hospitals and all of the institutions that¶ currently regulate social life would be self-managed by people under the goal of¶ extending social equality and democracy to all spaces of social existence. This is a¶ process of empowerment and radical democratization from below that does not¶ exclude the formation of global public institutions to democratize and socialize¶ production, wealth and resources at a world-scale.** The socialization of power would¶ also imply the formation of global institutions beyond national or state boundaries to¶ guarantee social equality and justice in production, reproduction and distribution of¶ world resources. This would imply some form of self-managed, democratic global¶ organization that would work as a collective global authority to guarantee social¶ justice and social equality at a world-scale. **Socialization of power at a local and¶ global level would imply the formation of a public authority that is outside and¶ against state structures.**

#### Some notion of speech is necessary – blocking out the voices of the subaltern ignores those who are not quite human

**Weheliye:** Weheliye, Alexander G. [Alexander G. Weheliye is Professor of African American Studies and English at Northwestern University. He is the author of Phonographies: Grooves in Sonic Afro-Modernity, also published by Duke University Press.] “Habeas Viscus.” *Duke University Press.* 2014. RP

In this closing chapter I would like to continue taking up Hortense Spillers's challenge and ask what it might mean to claim the monstrosity of the flesh as a site for freedom beyond the world of Man in order to heed Baby Suggs's words in Toni Morrison's Beloved about loving the flesh: “In this here place, we flesh; flesh that weeps, laughs; flesh that dances on bare feet in grass. Love it. Love it hard. Yonder they do not love your flesh. They despise it**.” In order to improperly inhabit and understand the politics and poetics of habeas viscus, we must return to some of the voices from the previous two chapters. Revisit them we should, however, not to authenticate them as acoustic mirrors of the oppressed or to grant them juridical humanity but in order to listen more closely to prophetic traces of the hieroglyphics of the flesh in these echoes of the future anterior tense**. Many critics assume that political violence is somehow outside the grasp of linguistic structures. 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The sentences were often incomplete and were illogical, stopping abruptly at random points.” As can be gleaned from the testimonies of Muselmänner, slaves, or Ellis Island detainees, what is at stake is not so much the lack of language per se, since we have known for a while now that the subaltern cannot speak, but the kinds of dialects available to the subjected and how these are seen and heard by those who bear witness to their plight. Nevertheless, the suffering voices exemplified by James and the Muselmänner should not be understood as fountains of authenticity but rather as instantiations of a radically different political imaginary that steers clear of reducing the subjectivity of the oppressed to bare life. In R. Radhakrishnan's thinking, this political domain produces “critical knowledge, which in turn empowers the voice of suffering to make its own cognitive- epistemological intervention by envisioning its own utopia, rather than accepting an assigned position within the ameliotary schemes proposed by the dominant discourse.” Thus, suffering appears as utopian erudition—or is expressed through hieroglyphics of the flesh to echo Spillers and Zora Neale Hurston—and not as an end unto itself or as a precritical sphere of truth, as the liberal humanist Weltanschauung would have it; rather, “**liberalism is tolerant of abundant speech as long as it does not have to take into account voices it does not understand.” Where dominant discourse seeks to develop upgrades of the current notions of humanity as Man, improvements are not the aim or product of the imaginaries borne of racializing assemblages and political violence**; instead they summon forms of human emancipation that can be imagined but not (yet) described. While this form of communication does not necessarily conform to the standard definition of linguistic utterance, to hear Aunt Hester's howls or the Muselmann's repetition merely as pre- or nonlanguage absolves the world of Man from any and all responsibility for bearing witness to the flesh. Hardly anterior to language and therefore the human, these rumblings vocalize the humming relay of the world that makes linguistic structures possible, directly corresponding to how the not-quite- and nonhuman give rise to the universe of Man. That is to say, the flesh engulfs not only Man's visually marked others via instruments of torture and the intergenerational transmission of hieroglyphics but emanates rays of potential enfleshment throughout the far-flung corners of Being in the world of Man.

### Link – legal incorporation

Omitted

### Alt

Omitted

# DA Blocks – Radical Democracy

## Hate Speech

### 1AC Cards

-In case these aren’t read

#### DAs have no uniqueness: hate speech is GETTING WORSE in the squo, despite the existence of speech codes.

**Long ’17:** Long, Katherine. [Journalist, *Seattle Times*] “UW on Edge Over Perception of Rise in Hate Speech.” *The Seattle Times*,January 27, 2017. RP

**More than a week after a Breitbart News editor’s speech was punctuated by violence on the University of Washington’s Red Square, students and faculty say the campus is on edge because of the perception that hate speech is on the ri**se. Some students and faculty who say they’ve been targeted by online harassment and threats are calling for a more forceful response from the university. The university also is keeping an eye on a possible pro-Donald Trump demonstration on campus Monday. UW spokesman Norm Arkans acknowledged that Trump’s election seems to have resulted in a wave of hate speech, and the university is trying to find ways to support people who are being harassed. “We want them to feel as though we’ve got their backs,” he said. “I think we need to figure out more ways to do that.” **Why does one of the country’s most liberal campuses appear to be suddenly experiencing a rash of prejudice? The switch in people’s willingness to openly express bias and prejudice is real** nationwide, **and it’s wrapped up in the concept of social norms, which changed after Donald Trump was elected[.] to the highest office, an expert on prejudice says. “Literally overnight” after Trump won the election Nov. 8 it became acceptable to disparage Muslims, Mexican immigrants, women and other minority groups**, said Chris Crandall, a University of Kansas psychology professor who grew up in Seattle and received his undergraduate degree at the University of Washington. Crandall said his research shows that President Trump’s election didn’t create new biases. But his win has unleased the expression of those prejudices. People who felt biases against others suddenly decided it was all right to say them out loud, Crandall said. That feeling extended to people on all sides of the political spectrum, including Democrats, who earlier felt it was wrong to express bias, but now believe it’s acceptable, his research shows. In his Jan. 20 speech at the UW, Breitbart editor Milo Yiannopoulos — who’s been banned on Twitter — mocked liberals, Democrats, feminists, gays and lesbians, to his audience’s delight. He concluded by saying that Americans are raising a generation of children who can’t handle words used against them, that cyberbullying is not the same as real bullying, and that people should ignore things they find offensive. “If someone is speaking on campus you don’t like, don’t attend the lecture,” he said. Students who had opposed Yiannopoulos’s appearance on campus argued that the talk should be canceled out of concern for student safety. On the night of the speech, protesters who tried to shut down the event clashed with people standing in line to hear Yiannopoulos, and one man was shot in the stomach. UW President Ana Mari Cauce defended Yiannopoulos’ right to speak, saying to do so meant upholding the public university’s commitment to the free exchange of ideas and expression. But she also condemned the violence. Late this week, a Facebook group calling itself “UW Wall Building Association” advertised a pro-Trump campus demonstration that is to take place Monday on Red Square. The UW College Republicans, who hosted Yiannopoulos, say the event is fake, placed online to bait students and the media. **But the Latinx Student Law Association, which believes UW students are behind the post, called on the university to intervene because the event constitutes harassment, which would violate the UW’s Student** Code of Conduct. “We want the administration to really address this seriously now, especially because of heightened sense of fear and anxiety” among all students, especially undocumented students, said Michelle Saucedo, a member of the Latinx Law Student Association, who helped draft a letter calling on the university to take action. “We’re not trying to limit anyone’s free speech,” Saucedo said. “**We’re calling on the university to stand by the Student Code of Conduct, and investigate” to find out who is behind the post.** The UW Wall group is violating the code, she said, by targeting a specific group based on race, national origin and citizenship. The post also calls for students to bring bricks, which could be used as weapons. The group has created a “hostile and offensive environment in which undocumented and Latinx UW students feel unsafe and unwelcome,” the letter reads. Saucedo said about 1,500 students, faculty, staff and community members have signed it. UW officials say they don’t know if the event is real or fake, but they plan to have security in place on Monday. In response to the rally, Denzil Suite, the UW’s vice president for student life, released a statement Friday saying that anyone who commits criminal acts will be arrested. S**ome online threats in recent weeks have extended to individual students and faculty.** Alan-Michael Weatherford, a graduate student who teaches a queer-studies course, said he was harassed online after the Yiannopoulos event, including posts that have included slurs, threats and the release of his personal information. “Let me just say very clearly that having an entire internet presence solely dedicated to finding, contacting and harassing with the promise of potentially harming you is petrifying,” he wrote in a guest editorial to the UW Daily. In an interview, Weatherford said the university is “barely responding, if at all,” and has told him he needs to take care of it himself. He said he thinks other students have also been targeted with harassment. Chanda Hsu Prescod-Weinstein, a theoretical astrophysicist at the UW, said she, too, has been targeted by hate speech, including hate mail and threats, because of her race and religion. She is African American and Jewish. “I am a firm believer in free speech, but it goes both ways, and I’ve been disappointed that while Milo has been vocal about his views, there’s been relative silence from the administration,” she said. Crandall, the psychology professor, said it’s wrong to pretend that words can’t incite people to violence, even if free speech is protected by the Constitution. In arguing that speech is not the same as physical violence, Yiannopoulos is “making the argument that Hitler’s speeches had no effect, and I think that’s a foolish argument,” Crandall said. “What people say really does matter.” Crandall noted that during his election rallies, Trump told his audience to beat up protesters. And some protesters did get assaulted. He advised people who were upset about the increase in expression of prejudice to be open to what others have to say. “Be open to dissent, and be open to dissenting. And we all need to keep doing our jobs, as a reporter, a researcher, a university teacher, the cop on the beat working with the prosecutors to ensure equal justice, the politicians in town making good policy, the parents of students ensuring that the schools and the school board are open to helping all children.” Said Crandall: “There’s no shortage of activities — and activity is much better than sitting in a dark and quiet room with a computer, being enraged and feeling futile.”

#### Narrow campus codes against Constitutionally unprotected speech solve for hate speech.

**Johnson**: Johnson, Catherine B. [J.D. Candidate, Fordham University School of Law, 2001] “Stopping Hate Without Stifling Speech: Re-examining the Merits of Hate Speech Codes on University Campuses.” *Fordham Urban Law Journal*, Vol. 27, Issue 6, 1999. CH

**In drafting such a code, the goal would be to prohibit severe, intentional, face-to-face verbal assaults that would disrupt a reasonable person's ability to function effectively in the campus setting. 300 This aspect of the code would be race-neutral and drafted** in accordance with **the recognized First Amendment exception of workplace harassment.** 301 **Challenges regarding content-based restrictions on speech as well as viewpoint discrimination hurdles should therefore be avoided because a race-neutral code does not single out certain speech about certain groups. The speaker must intend to cause harm, and the interference with the victim's educational rights must be objectively identifiable to a reasonable person.3** °2 In further narrowing this provision, a university should employ sanctions that are the "least restrictive means available to discourage prejudiced harassment. ' 30 3 In addition, the incident should be "highly likely to produce serious psychological harm and a hostile or intimidating educational environment. '30 4 **Students should be informed as to exactly what could constitute a violation of the code so as to avoid vagueness challenges, and in suspect cases, “a presumption in favor of free speech should prevail.”** **She adds:** A ban on viewpoint discrimination, however, is not as absolute as critics contend. In fact, laws in the past have been upheld though they discriminate on the basis of viewpoint.225 For example, in the areas of commercial speech, the government forbids advertising in favor of cigarette smoking even though it does not forbid advertising against cigarette smoking.226 The same is true regarding alcohol advertising.227 Also, in the area of securities law and the regulating of proxy statements, favorable comments about a company may be banned while unfavorable ones are allowed or even encouraged.228 **A regulation on hate speech could conceivably overcome the presumption of invalidity based on viewpoint if "(a) there is at most a small risk of illegitimate motivation, (b) low value or unprotected speech is at issue, (c) the skewing effect on the system of free expression is minimal, and (d) the government is able to make a powerful showing of harm. 229 In drafting a campus code, a university could arguably prove that hate speech is of low value and that its harm is great.** Although a university's motivation may be less suspect than the city council's in R.A.V., the effect on free expression is still a hurdle a university would have to overcome. Given the ambiguity of First Amendment jurisprudence, proponents of hate speech restrictions ask "why can we not mark off boundaries between prohibited racist and sexist harassment and permissible, though racist or sexist, self-expression or intellectual inquiry? '231 Matsuda succinctly stated, "If the harm of racist hate messages is significant, and the truth value marginal, the doctrinal space for regulation of such speech is a possibility. 2 31 This possibility, however, faces much criticism from First Amendment absolutists.

#### The question isn’t whether all speech is good, but who should regulate it: administrators, or students themselves – empirics show community counter-speech solves.

**Majeed:** Majeed, Azhar. [J.D., University of Michigan] “Defying the Constitution: The Rise, Persistence, and Prevalence Of Campus Speech Codes.” *Georgetown Journal of Law & Public Policy*, 7 Geo. J.L. & Pub. Pol’y 481, 2009. CH

**Moreover, the counterspeech approach can have** significant benefits **for minority students. One commentator writes that “only by pointing out the weaknesses and the moral wrongness of an oppressor’s speech can an oppressed group realize the strength of advocating a morally just outcome.” [250] As is the case whenever one participates in campus dialogue and debate, minority students can expect to bolster their arguments and sharpen their views; “Through the active, engaging, and often relentless debate on issues of social and political concern,” they “learn the strengths of their own arguments and the weaknesses of their opponents’. With this knowledge, these groups are better able to strike at the heart of a bigoted argument with all of the fervor and force necessary to combat hateful ideas.”** Therefore, the experience and knowledge gained through the process of debate and discussion will serve minority students well in the long run. **Minority students also benefit in that engaging in counterspeech, rather than appealing to the authorities for protection, may provide a strong sense of self-autonomy and empowerment. The efforts of minority students will often be met by a** receptive **campus audience, one which is curious to hear how they respond to hateful and prejudicial messages, affording these students the opportunity to meaningfully impact the way many individuals on campus think about important issues. Counterspeech “can serve to define and underscore the community of** support **enjoyed by the targets of the hateful speech, faith in which may have been shaken by the hateful speech.”** Consequently, when minority students respond to hateful speech with counterspeech, successfully engage the campus community, and inform their fellow students’ views, they gain “a sense of self-reliance and constructive activism” as well as “a sense of community support and empowerment.”[254] Nadine Strossen asserts that, for this reason, counterspeech “promotes individual autonomy and dignity.”[255] These are significant benefits that other methods of responding to hateful speech do not offer, and it is difficult to place a value or measure on the positive impact this can have on students’ lives. **He adds**: Charles Calleros provides two illustrative examples of such an opportunity. **The first arose at Arizona State University, where one of a group of female African-American students who found a racist poster in a dormitory convinced one of the students who had put up the poster to voluntarily take it down, then sent a copy of the poster to the campus newspaper along with a letter discussing its racist stereotypes.** Calleros, supra note 216, at 1259. She also requested action from the director of the residence hall, which resulted in a residents’ group meeting to discuss the issues involved. Id. Ultimately, **“the result was a series of opinion letters in the campus newspaper** discussing **the problem of racism, numerous workshops on race relations and free speech, and overwhelming approval in the Faculty Senate of a measure to add a course on American cultural diversity to the undergraduate breadth requirement.” Id. The second episode took place at Stanford University. There, students, faculty, and administrators at the law school responded to a student’s homophobic speech by sending opinion letters to the campus newspaper, writing comments on a poster board at the law school, and signing a published petition disassociating the law school from the speaker’s message.** Id. at 1261. Several students even wrote a letter reporting the incident to a prospective employer of the speaker. Id. **These two experiences, by their very facts and the results achieved, speak volumes about the effectiveness of counterspeech when used to respond to hateful messages.**

#### Silencing speakers turns them into martyrs and boosts their popularity.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**As well as the possibility of backlash, there is a great risk that speech codes will have the ironic effect of publicizing and glorifying the very ideas which the censors would abolish. Professor Nadine Strossen has argued cogently that attempts at suppressing racist speech (and by implication other forms of discriminatory expression) generate** publicity **and attention that the speaker would never have attracted on his or her own. There is some psychological evidence that attempts by government to censor speech makes it more appealing to many,' and may even transform censored speakers into martyrs.** Although I am wary of basing law or policy on psychological theory,8 2 I have personally observed how censorship can glorify the most abominable thoughts. **When I was an undergraduate at the University of North Carolina in the early 1970's, the Student Union issued an invitation to David Duke to participate in a speakers series. At that time Duke was a full-sheet Ku Klux Klan leader who had not yet attained national prominence. He never got the chance to speak.** His presentation was drowned out by the chants of student protesters. Had he been allowed to speak, I am sure that he would have presented a racist, anti-semitic explanation for America's falling star, sanitized for presentation to a university audience. Duke on his own would have attracted modest media attention **and** then have left campus, soon forgotten."3 **As it turned out, he left town a well-publicized martyr in the cause of free speech.** Fortunately, the sympathy for David Duke faded quickly. However, unlike particular speakers, speech codes are a fixture of campus society. Glorification of censored speech is a risk that we endure as long as the censorship continues.

#### Speech codes make hate a “forbidden fruit,” increasing racism.

**Burrus:** Burrus, Trevor. [Contributor, *Forbes*] “Why Offensive Speech is Valuable.” March 2015. RP

Fostering self-expression and self-development is another important reason we have a strong and uncompromising First Amendment. As homosexuals who have “come out” know all too well, expressing something publicly is crucial to defining oneself. Does this apply to those who hate other races, religions, and ethnicities? Yes. They have as much right to define themselves through speech as anyone. And those who abhor the hateful have a right to shun them, expose them, and call them out. Government **prohibitions on hate speech drive the hateful underground, where they can proliferate freely and without pushback from those who dare not enter. Sunlight, not government, is the best disinfectant. I, for one, would like racists and bigots to speak freely. I want to know who not to invite to my parties. Government is not as effective as civil society in properly squelching and shaming hateful speech. If the government defines the parameters of acceptable speech, then many people will break those boundaries just because the government told them not to do it. They will explore the hidden, underground world of hate speech** just because it is a forbidden fruit. **There they will find whole new ways to offend people because offensive people, like water, will always find a way**. In fact, there is no correlation between the strength of a country’s hate speech laws and the eradication of hateful views. **Greece, for example, has passed laws that try to combat “certain forms and expressions of racism and xenophobia by means of criminal law.” Yet according to the Anti-Defamation League, 69 percent of Greeks hold anti-semitic views, compared to just 9 percent of Americans.** Just like drug laws, driving hate speech underground will do little to eliminate the habit, and could make the situation worse. So go forth and offend and be offended. Do it for Lenny Bruce.

### 1AR Top Level

#### Global empirics prove that hate speech laws increase violence – multiple warrants.

**Ash:** Timothy Garton Ash (Isaiah Berlin Professorial Fellow at St. Antony’s College, University of Oxford; Senior Fellow at the Hoover Institution, Stanford University; prize-winning author of many books of political writing). Free Speech: Ten Principles for a Connected World. Yale University Press. 2016. RP

-Reverse enforcement

-Underground

-Pressure Valve

Moreover, so much depends on the context. Harmless hate speech in Reykjavik is dangerous speech in Rwanda. In the argument that follows, I shall confine myself to mature democracies, having the rule of law, diverse media and a developed civil society. **Here there is a compelling case that the advantages of hate speech laws, as they have actually worked over the last half century, are outweighed by the disadvantages, including their unintended consequences. There is scant evidence that mature democracies with extensive hate speech laws manifest any less racism, sexism or other kinds of prejudice than those with few or no such laws. Take France, which has a relatively high level of hate speech prosecutions. There were about 100 convictions per year in the five-year period from 1997 to 2001, and an annual average of 208 in 2005 to 2007. French courts have convicted Brigitte Bardot five times for incitement to racial hatred, on account of her fulminating attacks on Muslims in France, starting with the way they slaughter animals.** The distinguished intellectual Edgar Morin was found guilty for a fierce attack on Israel’s treatment of the Palestinians, and a member of parliament, Christian Vanneste, for expressing ‘homophobic views’, although both convictions were overturned on appeal. **Yet France has endemic discrimination in its labour market against people of migrant origin and especially Muslims, racist monkey chants in its football stadiums and a xenophobic party, the Front National, which gains the support of a large number of French voters. Similarly, the British writer Kenan Malik has pointed out, recalling his own personal experience of racist attacks, that the decade after Britain passed legislation against incitement to racial hatred in 1965 was probably the country’s worst for racism. Plainly we can’t argue that the persistence of prejudice is a result of the laws, and some will say that, on the contrary, it shows how necessary they are. Indeed, the apparent ineffectiveness of Britain’s 1965 law was one reason it was strengthened in 1976, so that you did not even have to intend to stir up racial hatred; your words or actions just had to be ‘likely to’ stir it up**. A causal connection cannot be proven either way. **What is clear is that there is no correlation between the presence of extensive hate speech laws on the statute books and lower levels of abusively expressed prejudice about human difference.** If, as Errera argues, the main purpose of such laws is to enforce civility, they have not succeeded. Interestingly, even two of the most outspoken American critics of racist hate speech, from the perspective of what they call ‘critical race theory’, Jean Stefancic and Richard Delgado, found the efficacy of such laws to be ‘an open question’. The application of good laws is clear, predictable and proportionate. That of hate speech laws has been unpredictable and often disproportionate. **In Canada, the uncertainty has been even greater because findings on hate speech have in part been delegated to Human Rights Commissions in each individual province.** As a result, the Canadian Human Rights Tribunal found in 2009 that section 13 of the Human Rights Act, which mandated controls over hate speech on the internet, violated the free speech clause of the country’s own Charter of Rights and Freedoms. Section 13 was repealed in 2013. What is more, laws intended to afford protection to ‘vulnerable minorities’ have often ended up being used against members of those minorities. There is a reason for this. **Members of a secure majority, where it still exists, are less likely to express themselves in extreme terms**. They don’t feel the need to scream to make themselves heard. The internet has brought an explosion of offensive, extreme expression, exacerbated by the online norm of anonymity. Reacting instantly, behind the mask of a pseudonym, people jerk out things online that they would never say when using their real name in a face-to-face encounter or public meeting. If we believe in openness and robust civility, we must address this challenge, and I shall say more about how this can be done by civil society, online communities and private powers. **However, this new reality weakens rather than strengthens the case for hate speech laws**. Given this explosion, the law struggles to identify and prosecute even those cases of online abuse which plainly do constitute incitement to violence against particular people, harassment and the online equivalent of ‘fighting words’. It does not catch many of them. If, beyond that, the state attempts to prosecute more general forms of rude and offensive speech, it will be bound to catch only a tiny fraction of what is out there. As the Hungarian scholar Peter Molnar notes, trying to stop extreme speech on the internet is ‘like jumping on a shadow’. The result will be even more legal uncertainty. Again and again, people will ask: ‘why me but not him—and him, and her, and him?’ **The very principle of equality—specifically a claim for equal treatment by the state—which is one of the justifications for such laws will be undermined by their arbitrary application.**

#### Psychology proves that banning hate speech makes it more prevalent

**Stevens:** Stevens, Sean [Contributor, Heterodox Academy] “Free Speech is the Most Effective Antidote to Hate Speech.” Heterodox Academy. December 2016. RP

On December 6, Texas A&M University will play host to Richard Spencer, a leader of the “alt-right” movement, and an open white supremacist. **Many will likely view Spencer’s presence at Texas A & M as confirmation that Donald Trump’s election to the presidency has allowed fringe political views to enter mainstream discussion.** When Spencer, or someone like him, makes a statement like “America was, until this last generation, a white country, designed for ourselves and our posterity. It is our creation and our inheritance, and it belongs to us,” many people may question why we should remain committed to the First Amendment. This post argues why members of an academic community need to remain steadfast in that commitment, even when faced with a figure like Richard Spencer. When hardcore racists and xenophobes remain consigned to obscure message boards and poorly attended events, it’s fairly easy to believe in freedom of speech and expression. But when organized hatred arrives on campus, such defenses can be perceived as granting unacceptable cover to viewpoints that are widely considered despicable and immoral. To many, such viewpoints don’t deserve the protection of the First Amendment. **Unfortunately, the impulse to start limiting speech – either with on- the-books campus speech codes or simply through stepped-up social enforcement of speech taboos – is likely to pour gasoline on the fire and make the problem worse. Research suggests that restrictions perceived to threaten or possibly eliminate behavioral freedoms may trigger “psychological reactance”, and increase one’s desire to engage in the restricted behavior. For instance, Worchel and colleagues (1975) assessed desire to hear censored material among students at the University of North Carolina. The experimenter informed participants that they would soon be hearing a tape recording of a speech and that the study was interested in how personal characteristics impact a speaker’s ability to get their message across. Some participants were then informed that because a student group (either the YM-YWCA or the John Birch Society) on campus was opposed to the content of the speech, the experimenter would not be able to play the taped recording. Consistent with reactance theory, participants who were informed they could not hear the content of the speech, reported a stronger desire to do so. This effect occurred regardless of whether the student group was viewed positively (YM-YWCA) or negatively (the John Birch Society). More recently, Silvia (2005) investigated if interpersonal similarity could override the experience of psychological reactance. In two separate studies, psychological reactance occurred when people felt their attitudinal freedom was threatened when interpersonal similarity was low, but not when interpersonal similarity was high**. More broadly, while ingroup favoritism may depend more on positive affect towards the ingroup, perceived discrimination by an outgroup increases ingroup identification, and can increase anger, hostility and aggression towards outgroups. If we incorporate these findings into our thinking about whether to censor a speaker, the following chain of events does not seem to be an implausible reaction: 1. **Censoring a speaker may increase some people’s desire to hear that speaker’s message, particularly those who perceive the speaker as similar to them in some way. 2. Censoring a speaker may be perceived as threatening to people who perceive the speaker as similar to them**. 3. The perception of threat is likely to increase identification with a salient ingroup. 4. Increased ingroup identification in response to threat may result in anger, hostility, and aggression towards outgroups. **In other words, censoring and disinviting a speaker such as Richard Spencer may actually make him and his views more popular. Instead of acting as an antidote to hatred, censorship may pour gasoline onto an already simmering fire**. Calls to disinvite, and thus censor, Spencer may produce the unintended consequence of promoting his vile, racist views. **People like Spencer revel in the power of their words to arouse emotions and strong reactions in their opponents. They interpret attempts to silence and exile their voices as fear of the truth they possess.** The alt-right movement confidently hoists the pirate flag of rebellion, but it can only claim to be rebellious if it can point to the “powers that be” trying to shut them down. Meeting hate speech with more speech is hard. It is extremely difficult to engage with people who hold beliefs that call another’s humanity into question. But engagement may be the most effective tool we have. **Speech codes and disinvitations may feel good in the moment, but they represent an easy way out. Often, what has been made taboo and socially undesirable comes back stronger than before.**

#### Free speech is empowering – it can be cathartic for the oppressed to engage in bottom up mobilization

**Stevens:** Stevens, Sean [Contributor, Heterodox Academy] “Free Speech is the Most Effective Antidote to Hate Speech.” Heterodox Academy. December 2016. RP

**We believe a stronger antidote is needed, and that antidote is more speech. To challenge Spencer, this speech can take different forms; and on December 6, some may find it cathartic, empowering and/or exciting to do so.** However, we urge that opposition be constructive, not disruptive. **Donating to counter causes, such as the Anti-Defamation League, the Simon Wiesenthal Center, and the National Organization for Advancement of Colored People’s legal defense fund, that are actively combatting people like Spencer and his ideas is one useful tactic. Indeed, shortly after the announcement that Spencer would be speaking on campus, the psychology department at Texas A & M launched a fundraising campaign to protest Spencer and his racism. Joining this protest and funding groups opposed to Spencer is a form of speech and action that makes Spencer weaker, not strong. Same thing for attending his talk and rebutting his speech during the question and answer period. Speech can be deployed as a scalpel, able to cut through vitriol, rhetoric and mendacity to help counter speech that advocates for harmful ideas and outcomes.**

#### Speech codes cause backlash from dominant groups

**Herron:** Herron, Vince [Class of 1994, University of Southern California Law Center. B.A. 1990, University of California, Los Angeles.] “NOTES: INCREASING THE SPEECH: DIVERSITY, CAMPUS SPEECH CODES, AND THE PURSUIT OF TRUTH.” Southern California Law Review. January 1994. RP

Some will argue that speech codes were never intended to solve the underlying problems of racism, sexism, and homophobia. According to this theory, speech codes are meant only to give minority groups respite from verbal attacks while the university employs other mechanisms to attack root problems. These proponents argue that speech codes achieve these rather temporary and modest goals. Speech codes, they will argue, improve the situation for the minority students and give the university time to defeat the ignorance and intolerance that originally necessitated the promulgation of the speech codes. But it is unlikely that speech codes are so unambitious that they envision only preventing injury without attempting to address real problems. To believe the above proposition, one must believe that university administrators, in an at- tempt to foster better relations on campuses, produce codes with no more in mind than the vain hope that speech codes will be a quick fix to a long-term problem. The argument then, is that because they are offered only as a quick fix to a long-term problem, speech codes in fact do succeed in their goal of injury prevention. Even if it is true that administrators are so short-sighted, there is some evidence that speech codes actually serve to exacerbate already strained tensions on campuses. **Dominant groups, which consider codes to be abridgements of free expression created to solve a problem reported only by minority groups (a problem whose gravity the dominant group does not recognize or understand), may struggle to accept the restrictions. Also, both dominant and minority group members alike have been and will be sanctioned by university administrators under these codes that, doubtless, exacer- bate tensions among members of these groups. It has also been suggested that censoring certain expression makes the expression more, rather than less, attractive. This leads to increased, not decreased, use of this expression, and, there- fore, more injury, not less. Speech code proponents may disagree with the proffered evidence and dispute that the codes actually exacerbate tensions. They may continue to assert that speech codes in fact benefit minority group members by protecting them from injurious speech. But even if this assertion is accepted, these modest gains will be short-lived and are far out- weighed by what both minority group members and educational environments sacrifice when speech codes are estab- lished and enforced.**

#### Speech codes aren’t enforced until it’s too late – their reactive approach isnt as good as the Aff’s proactive cultural change.

**Baker:** Baker, C. Edwin “Hate Speech” Penn Law, Public Law and Legal Theory Research Paper Series. March 10th, 2008. RP

**Even more problematic, to be an effective place to intervene, adopted prohibitions must be efficacious in reducing the likelihood of serious racist evils**. Most obviously, this result probably requires sufficient enforcement of the prohibitions against the relevant targets. Maybe, however, their mere adoption could help create a cultural climate where racist speech, and even more importantly, virulent racist practices, are unacceptable. **The question of whether to expect effective enforcement is made more difficult because it is not clear at what stage enforcement would be meaningful in preventing the polity from devolving in an unacceptably racist direction or whether enforcement could be effective at reversing cultural directions. Active enforcement (against appropriate targets) is likely only if racist groups have not become too established. By the time Nazis were gaining power, or during the year immediately preceding the genocide in Rwanda, effective enforcement was unlikely. At the relevant time, enforcement would likely either be blocked, create a backlash against the enforcers and sympathy for the ‘suppressed’ racists, or as will be discussed below, enforced primarily against ‘unpatriotic’ or ‘racist’ speech of those most needing protection – Jews or Tutsis, for example, or against African-Americans in the United States or Algerians in France. Thus, the hope of those favoring hate speech prohibitions must be that enforcement will be meaningful and effective at a quite early stage**. Pessimism about this speculative hope seems justified. First are generic doubts about the likelihood of effective legal enforcement. More important, however, is the likelihood that at this most relevant stage the speech that meaningfully contributes to developing or sustaining racism will be subtle, quotidian and, to many people, seemingly inoffensive or at least not ‘seriously’ offensive speech. **This speech is likely to fly under the legal radar screen and, in any event, meaningful enforcement of prohibitions against this speech is even less likely. Thus, even given a belief that racist speech contributes significantly to virulent racism and genocidal practice, my hypothesis is that at earlier stages legal prohibitions will not cover or be effectively enforced against the most relevant speech and at later stages enforcement will not occur, will be counter-productive in creating martyrs for a racist cause, or will focus on the wrong targets.**

#### Legal remedies aren’t as good as social ones – laws banning hate speech let racists claim victimhood instead of being shunned socially.

**Baker:** Baker, C. Edwin “Hate Speech” Penn Law, Public Law and Legal Theory Research Paper Series. March 10th, 2008. RP

-People hate government more than they hate racists

-Take sides of racists and view them as victims

-ACLU good example – defending Skokie Nazis but not people who are attacked

**As an empirical hypothesis, I suggest that more active (and thus more effective) opposition to racist views is likely to come from social practices of not tolerating racist expression than from laws making it illegal. People in positions of power or authority do and should lose their influence, and often even their position of authority, for public or exposed private racist expression.** Society should be and apparently is prepared to maintain strong social norms rejecting racist viewpoints. **I fear, however, that such social practices would be weakened by, and even replaced by laws prohibiting racist expression. Legal prosecutions focus on the wrong issues – legal requirements, legal line drawing, propriety of prosecution of this rather than other cases. In any minimally decent society that legally permits hate speech, such expression of hate reflexively creates, for those who object to racism, a platform to explain and justify their objections. This expressive activity may provide the greatest safeguard against racist cultures and polities. In contrast, repression creates a platform for racists to claim victim-hood and to appeal to the many who value liberty to oppose the suppression of their freedom, shearing off the energy of a significant group from the chorus that condemns the racist views.**

#### Speech codes don’t stop racist IDEAS from spreading – sanitized expressions are even worse than epithets.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**Even then, controlling epithets alone will contribute little toward a harmonious campus environment. Epithet restrictions may soften the expressions of hatred in some ways. Still they do not insulate students from the pain of a more nicely phrased statement. For example, I wonder if a black student would regard the following statement as any less offensive than a common epithet: "Black Americans are inherently inferior to whites in intelligence** and capacity for work and other organized behavior. Their presence in this nation is a historical accident which the government should act now to correct by forced repatriation to Liberia." Such is the sort of sanitized, undirected statement which would be permitted in many if not all circumstances under the Wisconsin and Stanford rules. **I cannot imagine that it is any less grievous for a black student to hear the above instead of a standard slur. In fact, the calm, respectable facade of such a statement will probably cause its effects to linger longer than the ring of an epithet. Nor can we stop enterprising bigots from using code words or gleefully converting their banter into respectfully phrased derogatory comments.**

#### Non-legal remedies like shunning are designed to deter harmful speech.

**Etzioni**: Etzioni, Amitai. [Director of the Institute for Communitarian Policy Studies, George Washington University] *The Spirit of Community: Rights, Responsibilities, and the Communitarian Agenda*. New York: Crown Publishers, Inc., 1993. CH

Thus it might be legal to declare: "All blacks should go back to Africa" or "It's a shame Hitler did not finish off the Jews." We might even extol the merits of a political system in which people are free to say what they wish to say, however bigoted and hateful their statements are. There is, however, no moral or legal reason to stop members of a community subject to such offensive words-and other members of the community-from freely expressing their disapproval. They, too, have First Amendment rights! **If a drunken white man shouts racist expletives on Brown University's campus, charging him with a legal offense or arresting him is not the response of choice; a long line of peers who tell him how despicable they find his utterances is probably a more effective and surely a more legitimate community response.** Heed the words of Judge Learned Hand: "I often wonder whether we do not rest our hopes too much upon constitutions, upon laws and upon courts. These are false hopes; believe me, these are false hopes. Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court, €an save it." **We should inform people who spout prejudice and spread hate that we consider them to be bigoted, uncivilized boors, people whose company we shun.** "Sure," we may tell them, "you have a right to say most anything you want, but using this right in certain ways is not morally appropriate or socially acceptable." **If enough of us make that clear, they are likely to put their First Amendment rights to better use than insulting others. At least the [V]ictims of slurs will know that the community does not share the hate and prejudice expressed by some and that the community is offended by them.**

#### Colleges can condemn hate on campus without violating free speech rights.

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” New York Law School. 2000. RP

**I would like to comment on a few of these non-censorial strategies for addressing bias[.] and discrimination, to underscore their efficacy. First, it is important for people in leadership positions in any community in which hate speech occurs to denounce and dissociate their institutions from the discriminatory attitudes that such expression reflects. One good example of this kind of statement was provided in 1985 by the then-President of Harvard University, Derek Bok, who circulated a letter to the entire Harvard community, in response to a sexist flyer that an undergraduate fraternity had distributed.** He wrote: The wording of the letter was so extreme and derogatory to women that I wanted to communicate my disapproval publicly, if only to make sure that no one could gain the false impression that the Harvard administration harbored any sympathy or complacency toward the tone and substance of the letter. **Such action does not infringe on free spee**ch. Indeed, statements of disagreement are part and parcel of the open debate that freedom of speech is meant to encourage; the right to condemn a point of view is as protected as the right to express it. Of course, I recognize that even verbal disapproval by persons in positions of authority may have inhibiting effects on students. Nevertheless, this possibility is not sufficient to outweigh the need for officials to speak out on matters of significance to the community-provided, of course, that they take no action to penalize the speech of others. **Likewise, six years later, [W]hen some Harvard students displayed Confederate flags-usually viewed as a racist symbol, particularly offensive to African-Americans-and another displayed a swastika in response, Harvard President Bok responded with another thoughtful statement strongly criticizing the displays but equally strongly defending free speech principles**. He wrote, in part: To begin with, it is important to distinguish clearly between the appropriateness of such communications and their status under the First Amendment. The fact that speech is protected by the First Amendment does not necessarily mean that it is right, proper, or civil. In this case, I believe that the vast majority in this community believes that hanging a Confederate flag in public view-or displaying a swastika in response-is insensitive and unwise.., because any satisfaction it gives to the students who display these symbols is far outweighed by the discomfort it causes to many others. I agree with this view and regret that the Harvard students involved saw fit to behave in this fashion .... One reason why the power of censorship is so dangerous is that it is extremely difficult to decide when a particular communication is offensive enough to warrant prohibition or to weigh the degree of offensiveness against the potential value of the communication. If we begin to forbid flags, it is only a short step to prohibiting offensive speakers. Do we really want Harvard officials (oranyone else) to begin deciding whether Louis Farrakhan or Yasser Arafat or David Duke or anyone else should be allowed to speak on this campus? **Those who are still unconvinced should remember the long, sorry history of preventing Dick Gregory and other civil rights activists from speaking at Southern universities on grounds that they might prove "disruptive" or ‘offensive’ to the campus community, not to mention the earlier exclusion of suspected communists for fear that they would corrupt students' minds.**

#### DOUBLE-BIND: speech codes either get passed and don’t do anything, or go far and get struck down.

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal*, Winter 1995. RP

Unfortunately, our solutions may be empty, because it is fairly simple for us to draft a code of conduct that prohibits hate speech and then walk away from the problem. **If we guess wrongly in drawing the line between protected and unprotected speech, a court will declare the policy unconstitutional and the students we seek to protect will have lost another battle. n117 If we draft more cautiously and neutrally prohibit only speech that currently is subject to constitutional regulation, n118 we sanction relatively little hateful speech. Either way,** we do little **in the long run to affect the climate on campus[.] for diversity and civility.** Real **progress comes only at the price [\*1276] of an immense amount of nonscholarly elbow grease as hundreds of selfless members of a campus community work year-round with students to provide education, support, and the tools for student growth and activism.**

#### Psychological evidence and Britain proves regulations are empirically ineffective and cause backlash.

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Regulating Racist Speech on Campus: A Modest Proposal?” *Duke Law Journal*, 484-573, 1990. BE

First, **there is** no persuasive psychological evidence **that punishment for name-calling changes** **deeply held attitudes**. To the contrary, psycho- logical **studies show that censored speech becomes more** appealing and persuasive **to many listeners merely by virtue of the censorship**.358 **Nor is there any empirical evidence, from the countries that do out- law racist speech, that censorship is an effective means to counter racism**. For example, Great **Britain began to prohibit racist defamation in 1965**. 359 **A quarter century later, this law has had** no discernible adverse impact **on the National Front and other neo-Nazi groups active in Brit- ain**.360 As discussed above,361 it is impossible to draw narrow regulations that precisely specify the particular words and contexts that should lead to sanctions. Fact-bound determinations are required. For this reason, authorities have great discretion in determining precisely which speakers and which words to punish. Consequently, **even vicious racist epithets have gone unpunished** under the British law.362 Moreover, even if actual or threatened enforcement of the law has deterred some overt racist in- sults, that **enforcement has had no effect on more subtle, but nevertheless clear, signals of racism**.363 Some observers believe that racism is even more pervasive in Britain than in the United States.364

#### Hate speech is an important safety valve that staves off actual violence

**Falkvinge:** Falkvinge, Rick [Contributor, Falkvinge on Liberty] “Acknowledging The Important Value Of Hate Speech.” October 2013. RP

**Hate speech is an important safety valve before hate violence. If you prevent hate speech, people inclined to hatred will go directly from hate thought to the third step, which is hate violence.** You want to prevent that. **Somebody who carries resentment can not be detected at the hate thought stage – the hate speech stage is the first stage detectable to society, which is why you want this, you want to see as much of it as possible.** This is when somebody can be addressed by the community through informal and formal means – **why are they full of hatred? Are they feeling well? Are they just stupid bigots, and if so, can & they be talked out of it? Or have they possibly pinpointed a very real injustice in society?** (Don’t neglect that last possibility.) **In all three cases, you want this hate speech to appear, so that the problem can be peacefully addressed. If it is not allowed to appear, it will proceed to the next stage, which is hate violence. Banning hate speech does not get rid of the underlying problem. It does, however, destroy the crucial safety valve in society before violence appears.**

#### Speech codes distract away from solving the root cause of hate on campus

**Herron:** Herron, Vince [Class of 1994, University of Southern California Law Center. B.A. 1990, University of California, Los Angeles.] “NOTES: INCREASING THE SPEECH: DIVERSITY, CAMPUS SPEECH CODES, AND THE PURSUIT OF TRUTH.” Southern California Law Review. January 1994. RP

**Speech codes are not a viable solution to the problem of offensive language in the university. Speech codes do not attack the root problems which breed the language; they therefore cannot offer any long-term relief to victims. Also, speech codes may intensify the tensions which lead to injurious speech and may actually impede other mechanisms from attacking the root problems by effectively masking the underlying problems.** Finally, the speech codes fail the university as a whole by trampling on the very foundations upon which the university is grounded. Following is a more in-depth analysis of speech codes that demonstrates their inevitable failure. As mentioned above, speech that can cause egregious injuries may be characterized as a product either of malice and intolerance of close-minded bigots or the result of guileless and naive individuals who meant no harm and are often unaware that their statements generated injury. **But speech codes seek only to prevent the results of abusive speech. They fail to remedy, and in many instances even to acknowledge, the root causes of the abusive speech**. **These codes, then, do little or nothing to defeat the real problems of hate speech - intolerance and ignorance. In this respect speech codes are as ineffective as** fighting a fire by spraying water on the tips of flame while allowing the house to continue to burn. This technique will reduce the size of the flames but will never put out the fire. Addressing the intolerance that breeds hate speech, one critic comments, Suppressing objectionable speech solves nothing**. Suppressing racist speech will not eliminate racism**. Suppressing sexist speech will not abolish sexism. And suppressing anti-gay speech will not eradicate homophobia. As for enlightening the ignorant who make comments either because they mistakenly believe in group superiority or are unaware of the damage that innocent comments can create, the same scholar notes, Students bring to college their prejudices, their fears, their doubts, their misconceptions. If they spend four years cooped up under repressive regulations, they might dutifully obey the rules, offend no one, en- joy politically correct acceptance and leave with their prejudices, fears, doubts and misconceptions firmly intact. **Another author, demonstrating that codes do not attack the problem at its core, makes a distinction between man- ners and virtue. She comments that while manners can be coerced, compelling a person to act virtuously will not create a virtuous person. Enforcing virtuous behavior will not lead to internalization of the underlying moral be- liefs upon which speech codes are grounded. John Locke once said that it is one thing to press with arguments, another with penalties. n61 Abraham Lincoln agreed that if a man is shunned he will retreat within himself, close all the avenues to his head and his heart**. Speech codes that force students to act virtuously, but fail to instill in the students the vir- tues upon which the codes are grounded, will do little to combat the real problems and thus are destined to fail. There is an argument that enforcing speech codes will offer some education and internalization of the underlying virtues, an effect similar to the use of gender-inclusive speech. Using such speech, which at first feels irregular to the speaker, reminds the speaker of its purpose of eliminating sexism from the English language. University students re- quired to employ certain expressions and forbidden to use others surely understand that there is a purpose for the regula- tion. Not blind to the history of oppression and prejudice against particular minority groups, they will internalize an extra awareness of difficulties that face these minority groups and understand that speech codes are a mechanism to remove those difficulties. Thus the simple enforcement of these codes leads to some degree of internalization of the underlying virtues by the speaker. Of course, it is impossible to garner whether the student internalizes more through coercion than as a result of fur- ther education and illustration, but it seems logical to assume that a student with a complete understanding of the sensi- tivities of other groups and the effects of certain expressions is more likely to grasp the awareness that the speech codes wish to foster. **One must also concede that speech codes which prevent the expression of certain intolerances and una- warenesses deprive the listener of the opportunity for education about the underlying virtues**. This, then, is a sort of out of sight, out of mind argument and is dealt with more fully in Part III.C. One pitfall, into which campus administrators have fallen in their haste to invent a cheap, quick fix, is that they have failed to devise speech codes that attack the perceived problem of offensive speech at its roots. **For this reason alone, speech codes on college campuses may be one of the least effective ways a university can improve campus rela- tions and diminish campus tensions.** n65

#### Speech codes take resources away from better methods of combatting hate

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**Now I will comment on yet another reason why censoring hate speech may well undermine, rather than advance, equality causes: its diversionary nature. Focusing on biased expression diverts us from both the root causes of prejudice-of which the expression is merely one symptom-and from actual acts of discrimination**. The track record of campus hate speech codes highlights this problem, too, just as it highlighted the previous problem I discussed, of discriminatory enforcement. **Too many universities have adopted hate speech codes at the expense of other policies that would constructively combat bias and promote tolerance. In fact, some former advocates of campus hate speech codes have become disillusioned for this very reason**. One example is the minority student who was initially a leading advocate of one of the earliest campus hate speech codes, at the University of Wisconsin, Victor DeJesus. After the ACLU successfully challenged that code under the First Amendment, Mr. DeJesus opposed the University's efforts to rewrite the code in the hope of coming up with something that would pass constitutional muster. As the New York Times reported: Victor DeJesus, co-president of the Wisconsin Student Association, said that he initially supported the hate speech rule, but that he had changed his mind because he felt the regents were using it as an excuse to avoid the real problems of minority students. "**Now they can finally start putting their efforts into some of our major concerns like financial aid, student awareness, and recruitment retention**," Mr. DeJesus said.76

#### *All* free speech should be heard – even bad ideas shouldn’t be silenced –Britain empirically confirms that censorship makes violence worse.

**Malik:** Malik, Kenan [I am a writer, lecturer and broadcaster. My latest book is *The Quest for a Moral Compass: A Global History of Ethics*.] “Why hate speech should not be banned.” *Pandaemonium.* 2012. RP

PM: **Do you support content-based bans of ‘hate speech’ through the criminal law, or do you instead agree with the American and Hungarian approach**, which permits prohibition only of speech that creates imminent danger? KM: I believe that no speech should be banned solely because of its content; **I would distinguish ‘content-based’ regulation from ‘effects-based’ regulation and permit the prohibition only of speech that creates imminent danger. I oppose content-based bans both as a matter of principle and with a mind to the practical impact of such bans**. Such laws are wrong in principle because free speech for everyone except bigots is not free speech at all. It is meaningless to defend the right of free expression for people with whose views we agree. **The right to free speech only has political bite when we are forced to defend the rights of people with whose views we profoundly disagree. And in practice, you cannot reduce or eliminate bigotry simply by banning it. You simply let the sentiments fester underground.** As Milton once put it, to keep out ‘evil doctrine’ by licensing is ‘like the exploit of that gallant man who thought to pound up the crows by shutting his Park-gate’. **Take Britain. In 1965, Britain prohibited incitement to racial hatred as part of its Race Relations Act. The following decade was probably the most racist in British history. It was the decade of ‘Paki-bashing’, when racist thugs would seek out Asians to beat up**. It was a decade of firebombings, stabbings, and murders. In the early 1980s, I was organizing street patrols in East London to protect Asian families from racist attacks. Nor were thugs the only problem. Racism was woven into the fabric of public institutions. The police, immigration officials – all were openly racist. In the twenty years between 1969 and 1989, no fewer than thirty- seven blacks and Asians were killed in police custody – almost one every six months. The same number again died in prisons or in hospital custody. When in 1982, cadets at the national police academy were asked to write essays about immigrants, one wrote, ‘Wogs, nignogs and Pakis come into Britain take up our homes, our jobs and our resources and contribute relatively less to our once glorious country. They are, by nature, unintelligent. And can’t at all be educated sufficiently to live in a civilised society of the Western world’. Another wrote that ‘all blacks are pains and should be ejected from society’. So much for incitement laws helping create a more tolerant society. Today, Britain is a very different place. Racism has not disappeared, nor have racist attacks, but the open, vicious, visceral bigotry that disfigured the Britain when I was growing up has largely ebbed away. It has done so not because of laws banning racial hatred but because of broader social changes and because minorities themselves stood up to the bigotry and fought back. Of course, as the British experience shows, hatred exists not just in speech but also has physical consequences. Is it not important, critics of my view ask, to limit the fomenting of hatred to protect the lives of those who may be attacked? In asking this very question, they are revealing the distinction between speech and action. Saying something is not the same as doing it. But, in these post-ideological, postmodern times, it has become very unfashionable to insist on such a distinction. In blurring the distinction between speech and action, what is really being blurred is the idea of human agency and of moral responsibility. Because lurking underneath the argument is the idea that people respond like automata to words or images. But people are not like robots. They think and reason and act on their thoughts and reasoning. Words certainly have an impact on the real world, but that impact is mediated through human agency. Racists are, of course, influenced by racist talk. It is they, however, who bear responsibility for translating racist talk into racist action. Ironically, for all the talk of using free speech responsibly, the real consequence of the demand for censorship is to moderate the responsibility of individuals for their actions. Having said that, there are clearly circumstances in which there is a direct connection between speech and action, where someone’s words have directly led to someone else taking action. Such incitement should be illegal, but it has to be tightly defined. There has to be both a direct link between speech and action and intent on the part of the speaker for that particular act of violence to be carried out. Incitement to violence in the context of hate speech should be as tightly defined as in ordinary criminal cases. In ordinary criminal cases, incitement is, rightly, difficult legally to prove. The threshold for liability should not be lowered just because hate speech is involved.

#### Speech codes can’t be enforced because we can’t define “hate speech.”

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Regulating Racist Speech on Campus: A Modest Proposal?” *Duke Law Journal*, 484-573, 1990. BE

The **difficulty of formulating limited, clear definitions of prohibited hate speech, that do not encompass valuable contributions to societal discourse, is underscored by the seemingly intractable ambiguities in vari- ous campus rules.**271 Even proponents of campus hate speech regulations recognize their inevitable ambiguities and contextualized applications, 272 with the result that the individuals who enforce them must have substan- tial discretion to draw distinctions based upon the particular facts and circumstances involved in any given case. Professor Richard **Delgado**, an early advocate of rules proscribing hate speech, **acknowledged that the offensiveness of even such a traditionally insulting epithet as "nigger" would depend on the context in which it was uttered**, since it could be a term of affection when exchanged between friends.273 The imprecise na- ture of racist speech regulations is underscored further by the fact that **even their proponents are unsure or disagree as to their applicability in particular situations.** Once we acknowledge the substantial discretion that anti-hate speech rules will vest in those who enforce them, then **we are ceding to the** government **the power to pick and choose whose words to protect and whose to punish**. Such discretionary governmental power is funda- mentally antithetical to the free speech guarantee. Once the government is allowed to punish any speech based upon its content, **free expression exists only for those with power.**

#### Speech codes make oppression worse and are paternalizing.

**Shelton:** Shelton, Michael W. [Professor, Department of Communications, Weber State University] “Hateful Help – A Practical Look at the Issue of Hate Speech.” November 1993. RP

**Many hate speech codes are also designed to protect women, minorities, and others who might be victimized by hate speech**. Hate speech reformers and advocates are often driven by the goal of "creating and sustaining true equality on campus by eradicating speech that makes minorities, women, and gays feel unwanted."' The protection of minorities and others often victimized by hate speech is certainly a noble goal. Hate speech codes are not an effective device for such protection. A number of critics of hate speech codes suggest that "informal constraints already present in the academic setting on teachers and students "can work to curb racism.' **Hate speech restrictions have actually made the struggle for equality more difficult.** Bartlett and O'Barr explain: **A focus on the verbal and symbolic abuse has the unintended consequence of further reinforcing the invisibility of those everyday forms of oppression. First, by comparison, these behaviors seem so trivial, so harmless, so ordinary …Second, this focus on regulation reinforces a conceptualization of racism, sexism, and heterosexism as blatant and intentional with specific perpetrators and specific victims.** This conceptualization makes it more difficult to recognize and respond to the kind of racist, sexist, or heterosexist behaviors that are subtle, unknowing, and without a single clear perpetrator or intended victim. Obviously, the use of a regulatory response to hate speech is problematic. "**Some black scholars and activists maintain that an anti-racist speech policy may perpetuate a paternalistic view of minority groups" because such a policy suggests "that they are incapable of defending themselves against biased expressions." Some members of the black community felt that such policies are not only paternalistic, but incapacitating as well: The basic problem with all these regimes to protect various people is that the protection incapacitates.** **To think that I [as a black man] will be told that white folks have the moral character to shrug off insults**, and I do not…That is the most insidious, the most insulting, the most racist statement of all!' **Hate speech restrictions do appear to place blacks and other groups in a special class that is deemed incapable of defending itself**

#### Speech codes make the root cause of racist attitudes worse.

**Shelton:** Shelton, Michael W. [Professor, Department of Communications, Weber State University] “Hateful Help – A Practical Look at the Issue of Hate Speech.” November 1993. RP

**Hate speech policies might also preclude the pursuit of a real solution to the problems of racism and sexism**. An "anti-hate speech policy stultifies the candid intergroup dialogue concerning racism and other forms of bias that constitutes an essential precondition for reducing discrimination." **'The fixation with hate speech codes is a distraction to the resolution of the root causes of racist and sexist conduct. The hate speech debate" may even stymie a full analysis of the wider range of subordinating behaviors that characterize racism, sexism, and heterosexism on college campuses in this country." The use of hate speech codes might force racist and sexist behaviors underground along with ideas that might help to resolve such behavior. If "such bans succeed in suppressing obnoxious impulses, they merely drive them underground-along with many ideas that deserve to be aired, if only to kindle a more heated debate." 'Indeed, the use of a hate speech code approach is diversionary. "It makes it easier for communities to avoid coming to grips with less convenient and more expensive, but ultimately more meaningful, approaches for combating racial discrimination."'**

#### They glorify oppressive speakers, creating martyrdom.

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Regulating Racist Speech on Campus: A Modest Proposal?” *Duke Law Journal*, 484-573, 1990. BE

A second reason why censorship of racist speech actually may sub- vert, rather than promote, the goal of eradicating racism is that such **censorship measures often have the effect of** glorifying racist speakers**. Efforts at suppression result in racist speakers receiving attention and publicity which they otherwise would not have garnered**. As previously noted, psychological studies reveal that whenever the government at- tempts to censor speech, the censored speech-for that very reason- becomes more appealing to many people.38 Still worse, **when pitted against the government, racist speakers may appear as martyrs or even heroes**. Advocates of hate speech regulations do not seem to realize that their own **attempts to suppress speech increase public interest in the ideas they are trying to stamp out.** Thus, Professor Lawrence wrongly sug- gests that the ACLU's defense of hatemongers' free speech rights "makes heroes out of bigots";3 89 in actuality, experience demonstrates that it is the attempt to suppress racist speech that has this effect, not the attempt to protect such speech. 390

#### Speech codes only account for 2 percent of a campus attitude policy and don’t solve their impacts.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**A final argument against thought codes is that at best they do not work and at worst they will worsen racial and other tensions**. In an editorial entitled *The Two Percent Solution,* Mary Rouse, the Dean of Students at the University of Wisconsin-Madison, pointed out that there are three elements to any program designed to create a welcome environment for traditionally excluded students. First and second, a university must establish proper standards of conduct for interpersonal relationships and must educate students about diversity and racism. She calculated that these efforts accounted for 30 and 68 percent, respectively, of an institutional strategy to combat bigotry. **Discipline of students whose conduct violates such standards, accord- ing to Rouse, accounts for** only two percent **of the overall strategy." If Rouse's calculations correctly reflect that speech codes and other behavioral controls play a minor role in the process of creating a more hospitable campus, then we should have little trouble in dismissing them as a costly, nearly pointless trespass into the precincts of free expression.** Furthermore, I suspect that champions of speech codes overestimate their value. **There is no evidence that campuses have become gentler places since the imposition of speech codes**. Of course, the codes as a whole are a recent phenomenon and we lack experience with them over time. **However, other places do have a track record with censorship of racist speech. Great Britain has out- lawed racial defamation since *1965,76* yet neo-Nazi groups such as the National Front still flourish. I likewise suspect that speech codes have little power to effect the changes in attitude on campuses that their sponsors desire**

#### Speech codes drive oppressive thought underground – Britain confirms.

**Strossen 2:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Regulating Racist Speech on Campus: A Modest Proposal?” *Duke Law Journal*, 484-573, 1990. BE

There is a third reason why laws that proscribe racist speech could well undermine goals of reducing bigotry. As Professor Lawrence recog- nizes, given the overriding importance of free speech in our society, **any speech regulation must be narrowly drafted.391 Therefore, it can affect only the most blatant, crudest forms of racism. The more subtle, and hence potentially more invidious, racist expressions will survive.** Virtually all would agree that no law could possibly eliminate all racist speech, let alone racism itself. If the marketplace of ideas cannot be trusted to winnow out the hateful, then there is no reason to believe that c**ensorship will do so. The most it could possibly achieve would be to drive some racist thought and expression underground, where it would be more difficult to respond to such speech and the underlying attitudes it ex- presses. 392 The British experience confirms this prediction. 393 The positive effect of racist speech – in terms of making society aware of and mobilizing its opposition to the evils of racism – are illustrated by the wave of campus racist incidents now under discussion**. Ugly and abominable as these expressions are, they undoubtedly have had the beneficial result of raising public consciousness about the under- lying societal problem of racism. **If these expressions had been chilled by virtue of university sanctions, then it is doubtful that there would be such widespread discussion on campuses,** let alone more generally, about the real problem of racism. 394 Consequently, **society would be less mobilized to attack this problem**. Past experience confirms that the public airing of racist and other forms of **bate speech catalyzes communal efforts to redress the bigotry** that underlies such expression and to stave off any dis- criminatory conduct that might follow from it.39 5

#### Speech codes are comparatively less likely to combat hate than counterspeech

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal.* Winter 1995. RP

On the other hand, counterspeech by the targets of hate speech could be less empowering on a campus in which the majority of students, faculty, and staff approve of hostile epithets directed toward members of minority groups. One hopes that such campuses are exceedingly rare; although hostile racial stereotyping among college students in the United States increased during the last decade, those students who harbored significant hostilities (as contrasted with more pervasive but less openly hostile, subconscious racism) still represented a modest fraction of all students. **Moreover, even in a pervasively hostile atmosphere, counterspeech might still be more effective than broad restrictions on speech. First, aside from the constitutional constraints of the First Amendment, such a heartless campus community would be exceedingly unlikely to adopt strong policies prohibiting hateful speech. Instead, the campus likely would maintain minimum policies necessary to avoid legal action enforcing guarantees of equal educational opportunities under the Fourteenth Amendment** n75 or federal antidiscrimination statutes such as Title VI n76 or Title IX. **Second, counterspeech even from a minority of members of the campus community might be effective to gradually build support by winning converts from those straddling the fence or from broader regional or national audiences. Such counterspeech might be particularly effective if coupled with threats from diverse faculty, staff, and students to leave the university for more hospitable environments**; even a campus with high levels of hostility likely would feel pressures to maintain its status as a minimally integrated institution. n78 **The A.S.U. and Stanford examples illustrating the efficacy of counterspeech also lend support to the argument that "free speech has been minorities' best friend . . . [as] a principal instrument of social reform." n79 In both cases, demonstrations, opinion letters, and other forms of counterspeech dramatically defined the predominant atmosphere on each campus as one that demanded respect and freedom from bigotry for all members of the community;** it is doubtful that passage of a speech-restrictive policy could have sent a similar message of consensus any more strongly. Moreover, in the A.S.U. case, the reasoned counterspeech, coupled with the decision to refrain from disciplining the hateful speaker, persuaded the Faculty Senate to pass a multicultural education proposal whose chances for passage were seriously in doubt in the previous weeks and months. n80 The racist poster at A.S.U. may have been a blessing in disguise, albeit an initially painful one, because it sparked counterspeech and community action that strengthened the campus support for diversity.

#### No impact – their authors assume that removing speech codes mean NO PROTECTION for minorities, but there can still be penalties for harassment

**Calleros:** Calleros, Charles R. [Professor of Law, Arizona State University] “Paternalism, Counterspeech, and Campus Hate-Speech Codes.” *Arizona State Law Journal.* Winter 1995. RP

**Delgado and Yun still may have an argument with those, such as Nat Hentoff, who espouse near absolutism in freedom of speech**. **However, the national ACLU, which Delgado and Yun concede typifies the moderate left, has long taken an official position that supports the kind of balance between protection of speech and prevention of harm against minorities and others that Delgado and Yun recommend. In recent years, the national ACLU has reaffirmed this approach by supporting carefully drawn elevated penalties for bias-motivated crimes. n42 It also approves of campus regulation of actions such as "harassment, intimidation and invasion of privacy" while urging campuses to protect most forms of speech and to respond to offensive protected speech with education and counterspeech. n43 Perhaps more tellingly, since 1991, the national ACLU has endorsed the anti-harassment policies of Arizona State University, n44 which permit the utterance of even outrageous academic and political ideas, but which also prohibit various forms of "harassment" in regulations that in many ways are more comprehensive than those espoused by Delgado and Yun**. n45

#### Speech codes are controlled by white elites who empirically use it against Blacks

Glasser: Ira Glasser (Former executive director of the American Civil Liberties Union, now president of the board of directors of the Drug Policy Alliance), quoted in “HATE SPEECH IS FREE SPEECH” by Jonothan Haidt, Spiked, 6/12/16,

**How is ‘hate speech’ defined, and who decides which speech comes within the definition? Mostly, it’s not us**. In the 1990s in America, **black students favoured ‘hate speech’ bans because they thought it would ban racists from speaking on campuses. But the deciders were white. If the codes the black students wanted had been in force in the 1960s, their most frequent victim would have been Malcolm X**. In England, **Jewish students supported a ban on racist speech. Later, Zionist speakers were banned on the grounds that Zionism is a form of racism. Speech bans are like poison gas: seems like a good idea when you have your target in sight — but the wind shifts, and blows it back on us.**

#### Only open discussion of hate speech on campus can create social change that solves the root cause.

**The ACLU:** The American Civil Liberties Union [Organization that sues for justice and writes about the law] “Hate Speech on Campus.” *ACLU.* 2016. RP

**Many universities, under pressure to respond to the concerns of those who are the objects of hate, have adopted codes or policies prohibiting speech that offends any group based on race, gender, ethnicity, religion or sexual orientation. That's the wrong response, well-meaning or not.** The First Amendment to the United States Constitution protects speech no matter how offensive its content. Speech codes adopted by government-financed state colleges and universities amount to government censorship, in violation of the Constitution. And the ACLU believes that all campuses should adhere to First Amendment principles because academic freedom is a bedrock of education in a free society. How much we value the right of free speech is put to its severest test when the speaker is someone we disagree with most. Speech that deeply offends our morality or is hostile to our way of life warrants the same constitutional protection as other speech because the right of free speech is indivisible: **When one of us is denied this right, all of us are denied.** Since its founding in 1920, the ACLU has fought for the free expression of all ideas, popular or unpopular. That's the constitutional mandate. **Where racist, sexist and homophobic speech is concerned, the ACLU believes that more speech -- not less -- is the best revenge**. This is particularly true at universities, whose mission is to facilitate learning through open debate and study, and to enlighten. Speech codes are not the way to go on campuses, where all views are entitled to be heard, explored, supported or refuted. **Besides, when hate is out in the open, people can see the problem. Then they can organize effectively to counter bad attitudes, possibly change them, and forge solidarity against the forces of intolerance. College administrators may find speech codes attractive as a quick fix, but as one critic put it: "Verbal purity is not social change." Codes that punish bigoted speech treat only the symptom: The problem itself is bigotry. The ACLU believes that instead of opting for gestures that only appear to cure the disease, universities have to do the hard work of recruitment to increase faculty and student diversity; counseling to raise awareness about bigotry and its history, and changing curricula to institutionalize more inclusive approaches to all subject matter.**

#### The Aff just causes the problem to go underground.

**The ACLU:** The American Civil Liberties Union [Organization that sues for justice and writes about the law] “Hate Speech on Campus.” *ACLU.* 2016. RP

A: **Bigoted speech is symptomatic of a huge problem in our country; it is not the problem itself.** Everybody, when they come to college, brings with them the values, biases and assumptions they learned while growing up in society, so it's unrealistic to think that punishing speech is going to rid campuses of the attitudes that gave rise to the speech in the first place. **Banning bigoted speech won't end bigotry, even if it might chill some of the crudest expressions. The mindset that produced the speech lives on and may even reassert itself in more virulent forms. Speech codes, by simply deterring students from saying out loud what they will continue to think in private, merely drive biases underground where they can't be addressed. In 1990, when Brown University expelled a student for shouting racist epithets one night on the campus, the institution accomplished nothing in the way of exposing the bankruptcy of racist ideas.**

#### Speech codes get circumvented, or are enforced in a draconian manner.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**Indeed, the chances that a speech code will be used as a scourge of conformity are even greater than we may at first recognize. Such codes are written in words that are inherently vague. What does it mean to say that public statements must not be "intimidating" or "hostile?" When does an expression "degrade" or "demean?" Nor can we reasonably expect that any speech code be drafted with such exacting detail that vagueness is put to rout. The coupling of a mean spirit with human inventiveness guarantees that there will be an unending flow of offensive thoughts and invective so long as human society continues. Inevitably, someone or some group on the university campus must be vested with the discretion to determine whether ideas or words are offensive or harmful. Such a concentration of power in one place increases the risk that an orthodoxy will be established and again, proves right Lord Acton's dictum that power corrupts.** Moreover, we must not forget that the attitudes of the person exer- cising such discretion are subject to change over time. There is no guarantee against a resurgence of conservative censorship like that rejected in *Keyishian* and *Sweezy.*

#### Speech codes cause backlash.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

#### In fact, the effect of the codes will probably be negative. The one certain reaction to thought codes is resentment. We should not be surprised when students and others react to the yoke of censorship with contempt and derision. As a general matter, people reject paternalistic attempts to control their thoughts and to order their relationships with others. Speech codes communicate an unstated assumption that students cannot be trusted to interact with members of other groups without the benevolent guidance of the campus authorities. Nor should we deceive ourselves by thinking that the backlash will be confined to the archetypal "white male" student. Surely the black law student at Michigan who called a classmate "white trash" must have felt immeasurable resentment at having to write a humiliating letter of apology. It is doubtful that a sense of equality will emerge from an atmosphere of resentment against university paternalism.

### Not CPS

#### Speech targeting specific groups isn’t protected

**Tsesis:** Tsesis, Alexander [Professor, Loyola University School of Law] “Burning Crosses on Campus: University Hate Speech Codes.” December 2010. RP

**In Beauharnais, the Court upheld the constitutionality of a group libel statute that rendered it actionable to "portray depravity, criminality. .. or lack of virtue of a class of citizens, of any race, color, creed, or religion" and to expose those citizens to "contempt, derision, or obloquy."' The majority found that, given Illinois's history of racial friction, its legislature could enact legislation to punish the dissemination of demeaning messages**, such as those opposed to neighborhood integration, because those messages threatened "the peace and well-being of the State." The opinion conceived of government playing a role in establishing a standard of decency designed to prevent intergroup friction.

#### No link -- hate speech isn’t constitutionally protected

**Delgado:** Delgado, Richard [J.D. University of California, Berkeley, 1974. Professor of Law, UCLA Law School.] “WORDS THAT WOUND: A TORT ACTION FOR RACIAL INSULTS, EPITHETS, AND NAME-CALLING.” *Harvard Civil Rights Civil Liberties Law Review.* Volume 17. 1982. RP

**The government also has an interest in regulating the use of words harmful in themselves. In *Chaplinsky v. New Hampshire*, the United States Supreme Court stated that words which "by their very utterance inflict injury or tend to incite an immediate breach of the peace" are not protected by the first amendment.241** **Racial insults, and even some of the words which might be used in a racial insult, inflict injury by their very utterance**. 2 Words such as "nigger" and "spick" are badges of degradation even when used between friends; these words have no other connotation.

#### Hate speech on campus isnt protected speech -- court precedent proves.

**Tsesis:** Tsesis, Alexander [Professor, Loyola University School of Law] “Burning Crosses on Campus: University Hate Speech Codes.” December 2010. RP

**Several mid-twentieth century cases identified some of the harmful expressions that are unprotected by the First Amendment. In a case decided during World War II, Chaplinsky v. New Hampshire,' the Court found that a Jehovah's Witness who verbally attacked a police marshal could be prosecuted pursuant to an ordinance prohibiting public incitement**.72 The Court has long contrasted constitutional expression and violent bombast because "[t]here are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem." The social interest in "order and morality" outweighs any cathartic benefit a speaker may derive. **Just as fighting words are unprotected by the First Amendment because they are unconnected to traditional speech values, neither should hate speech receive First Amendment protection when it aims to incite people to commit harmful acts against identifiable groups**. Not all hate speech seeks to incite others to act; sometimes it is simply a true threat that might constitute an assault.76 **But where hate speech threatens a protected group and seeks to incite others to act against an identifiable target, a university speech code can punish it. The free exchange of ideas is not furthered through exhortations to attack, harm, or discriminate against others**. A judge determining whether a verbal attack is dangerous enough to constitute an offense must consider the context in which it was uttered. **Even the content-based regulation of speech that is drafted with enough generality not to discriminate against particular viewpoints can be a permissible use of government power** when "the evil to be restricted so overwhelmingly outweighs the expressive interests." **Fighting words are analogous to hate speech insofar as both are meant to provoke violent reaction rather than to elicit discussion**. In circumstances where fighting words are meant to intimidate others by reference to historically intimidating symbols, like swastikas or burning crosses, they enter the realm of hate speech. Neither form of expression seeks to promote debate. Rather than being discursive, hate messages are meant to be threatening or damaging to targeted individuals.

### A2 International Ev

#### Discount international evidence on hate speech – there’s no one definition of what hate speech is.

**Malik:** Malik, Kenan [I am a writer, lecturer and broadcaster. My latest book is *The Quest for a Moral Compass: A Global History of Ethics*.] “Why hate speech should not be banned.” *Pandaemonium.* 2012. RP

Kenan Malik: **I am not sure that ‘hate speech’ is a particularly useful concept. Much is said and written, of course, that is designed to promote hatred. But it makes little sense to lump it all together in a single category, especially when hatred is such a contested concept**. In a sense, hate speech restriction has become a means not of addressing specific issues about intimidation or incitement, but of enforcing general social regulation. **This is why if you look at hate speech laws across the world, there is no consistency about what constitutes hate speech. Britain bans abusive, insulting, and threatening speech. Denmark and Canada ban speech that is insulting and degrading. India and Israel ban speech that hurts religious feelings and incites racial and religious hatred. In Holland, it is a criminal offense deliberately to insult a particular group. Australia prohibits speech that offends, insults, humiliates, or intimidates individuals or groups. Germany bans speech that violates the dignity of, or maliciously degrades or defames, a group. And so on. In each case, the law defines hate speech in a different way.**

## White Nationalism

#### No uniqueness – Trump was literally just elected

#### Restrictions on speech create radical white nationalists – Trump proves

Nichols: Tom Nichols, “How the P.C. Police Propelled Donald Trump,” 1-3-16, <http://www.thedailybeast.com/articles/2016/01/04/how-the-p-c-police-propelled-donald-trump.html>

These brutish **leftist tactics radicalized otherwise more centrist people toward Trump not because they care so much about gay marriage or guns or refugees any other issue, but because they’re terrified that they’re losing the basic right to express themselves. Many of these people are not nearly as conservative or extreme as the white supremacists, nativists, and other assorted fringe nuts who are riding along on Trump’s ego trip. But they are cheering on Trump because they feel they have nowhere else to go.** And for that, **liberals**—especially those **who have politely looked away as such methods were employed in the public square—must directly shoulder the blame. The great mistake made by both liberals and their most extreme wing on the American left is to assume that ordinary people, once corrected forcefully enough, will comply with their new orders. This is, of course, ridiculous**: **Americans do not magically become complacent and accepting multiculturalists just because they’ve been bullied out of the public debate. They will find a new vessel for their views, and will become more extreme with each attempt to shut them down** **as the issue moves from particular social positions to the far more encompassing problem of who has the right to tell whom to shut up,** and to make it stick. Nixon’s “Silent Majority” increasingly feels itself to be a silenced majority, and **Trump is their solution**. Note, for example, how Trump turned the incident in which Black Lives Matter activists humiliated Sen. Bernie Sanders to his own advantage. He didn’t bother drawing partisan lines or going after Sanders. Trump and his supporters couldn’t care less about any of that, and Trump until that point almost had almost never mentioned Sanders. Instead, he made it clear that he’d never allow himself to be shut down by a mob. That, for his loyalists, was the money shot, especially when Trump pretty much dared BLM to disrupt a Trump event, in effect inviting them for an ass-kicking. A lot of people loved that shtick, because they want to see someone—literally, anyone—stand up to groups like BLM, even if it’s in defense of poor Bernie, because they worry that they’re next for that kind of treatment. For the record, I despise Donald Trump and I will vote for almost any Republican (well, OK, not Ben Carson) rather than Trump. I’m a conservative independent and a former Republican. I quit the party in 2012 because of exactly the kind of coarse ignorance that Trump represents. The night Newt Gingrich won the South Carolina primary on the thoughtful platform of colonizing the moon, I was out. If in the end God turns his back on America and we’re left with only the choice of Trump or Hillary Clinton, I will vote for a third candidate out of protest—even if it means accepting what I consider the ghastly prospect of a Clinton 45 administration. But I understand the fear of being silenced that’s prompting otherwise decent people to make common cause with racists and modern Know-Nothings, and I blame the American left for creating that fear. With that said, we have to consider the GOP elephant in the room. If regaining their voice is all that Trump supporters really want, then why haven’t they turned away from him as his statements have become increasingly insane? Trump reveled in the endorsement of Putin, an avowed enemy of the United States; if Obama had accepted a similar endorsement, conservatives would have impeached him. (Recall that when the U.K.’s David Cameron said a nice word about Obama in the 2012 campaign, people who no doubt now approve of Trump’s bromance with Putin went berserk at this foreign interloping from one of our closest allies.) What’s it going to take? **Trump’s staying power**, however, **is rooted in the fact that his supporters are not fighting for any particular political outcome, they are fighting back against a culture they think is trying to smother them into cowed silence. What they want, more than any one policy, is someone to turn to the chanting mobs and say, without hesitation: “No, I will not shut up.”** How long this will go on, then, depends on how long it will take for those people to feel reassured that someone besides Trump will represent their concerns without backing down in the face of catcalls about racism, sexism, LGBTQ-phobia, Islamophobia, or any other number of labels deployed mostly to extinguish their dissent.

#### Speech codes make white supremacists into marytrs – Nazi Germany proves.

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**The historical record makes clear, however, that censorship was no more effective a response to the rise of anti-Semitic hatred in Germany's pre-Hitler era than it has been in other circumstances.** This point was discussed in a 1990 Canadian Supreme Court opinion, considering a constitutional challenge to Canada's anti-hate speech law: **Remarkably, pre-Hitler Germany had laws very much like the Canadian anti- hate [speech] law**. Moreover, those laws were enforced with some vigor. **During the 15 years before Hitler came to power, there were more than 200 prosecutions based on anti-Semitic speech**. And, in the opinion of the leading Jewish organization of that era, no more than 10%of the cases were mishandled by the authorities. **As subsequent history so painfully testifies, this type of legislation proved ineffectual on the one occasion when there was a real argument for it. Indeed, there is some indication that the Nazis of pre-Hitler Germany shrewdly exploited their criminal trials in order to increase the size of their constituency. They used the trials as platforms to propagate their message.'**

#### The plan is key to avert massive backlash that would cause an increase in white nationalism.

Tumulty and Johnson 1-4: Karen Tumulty and Jenna Johnson, “Why Trump may be winning the war on ‘political correctness’” 1-4-16 <https://www.washingtonpost.com/politics/why-trump-may-be-winning-the-war-on-political-correctness/2016/01/04/098cf832-afda-11e5-b711-1998289ffcea_story.html?utm_term=.db9bc85e5b87>

“Driving powerful sentiments underground is not the same as expunging them,” said William A. Galston, a Brookings Institution scholar who advised President Bill Clinton. “**What we’re learning from Trump is that a lot of people have been biting their lips, but not changing their minds**.” One thing is clear: **Trump is channeling a very mainstream frustration**. **In an October** poll by Fairleigh Dickinson University, **68 percent agreed** with the proposition that “**a big problem this country has is being politically correct**.” It was a sentiment felt strongly across the political spectrum, by 62 percent of Democrats, 68 percent of independents and 81 percent of Republicans. Among whites, 72 percent said they felt that way, but so did 61 percent of nonwhites. “**People feel tremendous cultural condescension directed at them**,” and that their values are being “smirked at, laughed at” by the political and media elite, said GOP strategist Steve Schmidt. “‘Political correctness’ are the two words that best respond to everything that a conservative feels put upon,” added pollster Frank Luntz, who has advised Republicans. The label is, he said, a validation that what many on the right see as legitimate policy and cultural differences are not the same as racism, sexism or heartlessness. “**Allegations of racism and sexism have turned into powerful silencing devices**,” Galston agreed. “You can be opposed to affirmative action without being a racist.” The PC backlash does not necessarily mean that people support the kinds of things that Trump is saying, or the way he says them. When the Fairleigh Dickinson pollsters added his name to the same question — prefacing it with “Donald Trump said recently . . . ” — the numbers dropped sharply. Only 53 percent said they agree that political correctness is a major problem. This is not a new debate. It has raged since at least the early 1990s, when college campuses began adopting speech codes. Some went well beyond obvious slurs — with animal rights activists contending, for instance, that the word “pet”was disrespectful and should be changed to “companion animal.” **More recently, the PC wars have flared again in academia, where there is an ongoing argument over whether campuses should be a “safe space” where students are protected from upsetting ideas, and receive “trigger warnings” when course material contains distressing information**. Few would argue that it is wrong to confront and eliminate prejudice. But even some liberals have called political correctness a form of McCarthyism aimed at stifling free expression. **Trump has brought the question from the university quad to the political arena** in a way that no leading candidate has in the past. For many, “it’s satisfying to have a loud tribune like Trump,” said David Axelrod, who was President Obama’s top campaign adviser. “But I don’t think the hunger for authentic plain speech is Trump-specific. One of the appeals of [Democratic presidential candidate] Bernie Sanders is that people think he says exactly what he thinks and is not passing it through a filter. **There is a fundamental yearning for authenticity** that is probably felt more broadly.” The edgy liberal comedian Bill Maher, who for nearly a decade hosted a talk show called “Politically Incorrect,” has said that Trump’s ideas sound “a little ­Hitler-adjacent.” But he has also noted a yearning for “somebody to say, ‘You know what, I just don’t bend to your bull----.’ And Donald Trump, I’ve got to say, I don’t agree with him on a lot, but I kind of get him. We’ve been doing the same thing.” Trump sounded the anti-PC clarion call at the first Republican debate in August, when moderator ­Megyn Kelly of Fox News challenged him on comments that he had made disparaging women. “I think the big problem this country has is being politically correct,” he said. “I’ve been challenged by so many people, and I don’t frankly have time for total political correctness. And to be honest with you, this country doesn’t have time either. This country is in big trouble. We don’t win anymore. We lose to China. We lose to Mexico both in trade and at the border. We lose to everybody.” **It is hard to follow the logic of an argument that insulting women could somehow make the country stronger overseas. But the sentiment behind it came through clearly**. **And it has been picked up by other GOP contenders**. “Political correctness is killing people,” said Sen. Ted Cruz (R-Tex.), because it prevents the Obama administration from focusing on the communications and activities of potential terrorists who are Muslims. “Political correctness is ruining our country,” said former neurosurgeon Ben Carson, after he was criticized for saying a Muslim should not be president. It is corrosive, Carson said in an interview, because “many people will not say what they believe because someone will look askance at them, call them a name. Somebody will mess with their job, their family. This was not supposed to be the way it was in America.” Last month’s terrorist attack in San Bernardino, Calif., carried out by a Muslim couple who appear to have been inspired by the Islamic State, also known as ISIS, has become a case in point for many conservatives. They say political correctness has made the Obama administration too timid in calling it what it is — which is why Cruz and other Republicans taunt the president for not uttering the phrase “radical Islamic terrorism.” “What animates ISIS is an ­apocalyptic religious philosophy. People look at that and don’t understand the unwillingness to say red is red and blue is blue,” Schmidt said. “We live in a post-fact America, where the facts are subordinate to the advancement of an ideology.” Political strategists and others say a number of other forces are behind the backlash. It has both a cultural and an economic component, and it also reflects the continuing polarization that has grown deeper during Obama’s presidency. “For many of these people, they played the game by the rules, and essentially, they got shafted,” Democratic pollster Peter Hart said. **Trump is “the voice of an aggrieved cohort in our society — lower-middle-income working whites who have taken the hit from the big changes in the economy, and are angry about it,” Axelrod said. “He creates a permission structure for others.”**

## Ptx Generics

### Tricks

Omitted

### Top Level

#### No link – the Aff defends colleges, not a USFG policy – even if it’s enforced by the government, it won’t be tied to the president.

#### Uniqueness overwhelms the link – they say Republicans like free speech, but the Aff is just a drop in the bucket – free speech limits exist outside of colleges independent of the Aff and NONE OF THEIR EVIDENCE IS SPECIIFC TO COLLEGES

#### Non unique – Trump is killing his own polcap now – so many thumpers like ACA and the wall

**Buchanan:** Buchanan, Neil H. [[Neil H. Buchanan](https://www.law.gwu.edu/neil-h-buchanan) is an economist and legal scholar, a professor of law at [George Washington University](https://www.gwu.edu/) and a senior fellow at the [Taxation Law and Policy Research Institute at Monash University in Melbourne, Australia.](https://business.monash.edu/business-law-and-taxation) He teaches tax law, tax policy, contracts, and law and economics. His research addresses the long-term tax and spending patterns of the federal government, focusing on budget deficits, the national debt, health care costs and Social Security.] “NEIL BUCHANAN: TRUMP IS FAST BLOWING HIS POLITICAL CAPITAL.” Newsweek. March 18, 2017. RP

Although Donald Trump's presidency is beginning to show recurring patterns, which is not to say that he is becoming normal, but merely that some of the abnormality is now feeling drearily familiar, we still know surprisingly little about what he really wants from being president. Many of us have assumed all along that this is the ultimate ego trip for the world's most insecure narcissist. **There is still plenty of evidence to support that theory, of course, but lately I have begun to wonder if Trump is starting to show that he has an agenda that he truly cares about. Or perhaps he is even more incompetent than he seemed to be all along. He is supporting a regressive agenda, to be sure, but the surprise is that he is spending political capital on things that have so little upside for him politically or personally. For a man who is all about being seen as a winner, he is picking some very foolish fights. The most obvious current example is Trump's embrace of the Republicans'**[**shockingly cruel and ill-conceived**](https://www.nytimes.com/2017/03/13/opinion/trumpcare-vs-obamacare-apocalypse-foretold.html)**attempt to replace the Affordable Care Act (ACA). Even before the Congressional Budget Office's released**[**its analysis**](https://www.nytimes.com/2017/03/13/us/politics/affordable-care-act-health-congressional-budget-office.html)**showing how many people would be harmed by the Republicans' bill, it was obvious that this was going to be a political mess.** During the campaign, of course, Trump had gleefully joined with all other Republicans in savaging the ACA. He knows an applause line and how to raise the volume, but it never seemed that the issue was important to Trump other than as a way to call Barack Obama the worst president ever. Trump is the perfect vehicle to level nonspecific and opportunistic complaints about the imperfections in the ACA. As Republicans in Congress are learning, however, it is much more difficult to devise and defend specific legislation than to throw rocks through windows. Trump's entire political persona is about throwing rocks through windows, of course, so it is unsurprising that he piled on when it was fun. But why stick with it now? Trump, after months of being notably distant from the health care debate, has suddenly decided that he is a huge fan of the Republicans' bill, and he is [urging his supporters](https://www.nytimes.com/2017/03/15/us/politics/trump-rally-health-care-policy.html) to get behind it. **Even if Trump honestly was the last person on earth to**[**discover that**](http://www.cnn.com/2017/02/27/politics/trump-health-care-complicated/)**"health care could be so complicated," he knows now. Yet he is throwing his weight behind his party's unpopular leaders' new, terrible bill**. What makes this surprising, and the reason I am calling this an unforced error, is that Trump could easily have continued to stay on the sidelines. Even Barack Obama, after all, stayed largely out of the legislative process when the ACA was being formulated. Although he eventually embraced the bill as his own, his supporters were frequently frustrated during the process by his unwillingness to get involved in the fight. For example, the so-called Public Option went down essentially with little more than a whimper. Trump could, in fact, have used his previous over-the-top hype about the ACA replacement as an excuse to step aside. He could have simply said that he promised to support a bill that provided better coverage to everyone at a lower price. "When Congress sends me that bill, I'll sign it." He could even have tried to blame Democrats for somehow being the reason that the Republicans' magical bill never came into existence. This unforced error raises a number of possibilities, as noted above. He might be revealing that he cares about something other than his own self-importance. Maybe he has concluded that, as a policy matter, the Republicans' bill is a fine piece of work. We certainly have plenty of reason to believe that he does not care at all about the people who would be harmed by the bill, and he likes tax cuts for rich people. **But again, why put his own credibility on the line with a bill that is obviously a train wreck? He will either be tarred by its ugly demise, or perhaps worse for Trump politically, he will be left to defend a terrible bill that somehow emerges from the food fight among Republicans and carries his name. This suggests incompetence, not evidence of sincere belief in a proposed policy change. Similarly, what is Trump thinking with his renewed enthusiasm for actually building the ridiculous "big beautiful wall" on the Mexican border? He is**[**requesting serious money**](https://www.nytimes.com/2017/03/16/us/politics/donald-trump-border-wall-budget.html?_r=0)**in his new budget to begin building the wall**. What madness is this? To be clear, I am not expecting Trump to admit that the idea of keeping out non-white people from the United States is an immoral position to hold. I am simply saying—as many, many people have said over the last few months—that there are plenty of easy ways for Trump to finesse this situation in a way that spares him political damage. Trump might well worry that this, unlike health care, is an issue that is already truly his own. His campaign was organized around The Wall, and he could be forgiven for imagining that his credibility with his supporters is on the line. If that is what he is thinking, however, then his critics have actually been too generous in their assessment of him as a political fool. Even during the campaign, various Trump supporters were preparing the way for Trump to declare victory without actually building his wall. He could have said that, now that he is president, he has seen that he can achieve his objectives by getting the Border Patrol to be more aggressive. (Blame Obama for being too shy about law enforcement.) Famously, Trump's supporters have said that they do not take his statements as literal truth. Now that Trump and his people have said that the term "wire tapped" is [not to be taken literally](http://thehill.com/homenews/administration/324162-trump-defends-wiretapping-claims) because it could mean a lot of surveillance-related things, we know that they are capable of walking back even the most specific blunders, no matter how silly it makes them look. **And even though Trump spent a lot of time during the campaign talking about the wall, his other big applause line was that he would put Hillary Clinton in jail. None of his supporters seem to care that he was not serious about that. ("Draining the swamp" is also long gone.) In short, Trump is making himself**[**look like a fool**](http://www.msnbc.com/rachel-maddow-show/trumps-defense-his-wiretap-conspiracy-theory-goes-horribly-awry)**. More importantly, he is doing this when it is absolutely unnecessary to do so. Trump might believe that he has unlimited political capital—and with most of his supporters,**[**he might well be right**](http://www.dorfonlaw.org/2017/03/trump-will-hang-on-because-press-will.html)**—but he does not, and it makes no sense for him to make this unforced political error**. It makes no sense, that is, unless he has drawn one of two conclusions: (1) Going through with building the wall will actually become popular with people who currently do not support it, or (2) He is willing to lose political popularity over this issue, because the substantive advantages of building a wall are worth it. If he believes explanation No. 1, he is fooling himself. If it is No. 2, he simply does not understand how border protection works. (See also his travel bans.) It could be both, and I am betting that it is. The reason that this is all so odd is that Trump seemed to have figured out a way to glide through his presidency without actually doing anything important. He has created such a distorted political atmosphere that he can, for example, [both confirm and deny](https://www.nytimes.com/2017/03/15/us/politics/trump-calls-2005-tax-return-release-fake-news.html) that a 2005 tax form was accurate, leaving everyone to wonder whether the "leak" of that shred of information was planted by the White House. Watching the press chase every crazy thing coming from his Administration was turning out to be a seriously plausible survival strategy. All Trump had to do was say something bizarre every time anything serious came up, and he could skate along to the next news cycle. Would it matter that nothing ever happened under Trump's presidency? Not really. Trump could blame the Democrats, the Republicans (especially his chew toy, Paul Ryan), and pretty much anyone else for not getting it right. More importantly, he would not have to put his name on anything that would be open to attack. This is especially important because a White House does have to do some things that are going to be politically contentious. The federal budget is a minefield, for example, and any president is going to be take heat for the choices of winners and losers that his budget implies.Trump's first budget proposal makes it obvious that he is not going to do anything to help his non-rich supporters, and he is actually proposing to [make their lives worse](https://www.nytimes.com/2017/03/15/us/politics/trump-budget-military-analysis.html). (This is also true of the new health care bill.) **All of this means that a president who came into office with historically low approval ratings, and who still cannot accept his drubbing in the popular vote, needs to do everything he can to avoid self-inflicted wounds**. Again, is this because Trump actually has some core (terrible) beliefs that he is willing to pursue, no matter the consequences? Or does it mean that he is a political masochist?I always thought that his only core policy belief lined up with Republican orthodoxy: tax cuts for the rich and screw everyone else. That he might actually care about anything other than that (and, of course, his own ego gratification) is surprising, and that he is willing to risk his own brand to pursue those goals is puzzling in the extreme.

#### Foreign policy issues thump for Trump

**Robertson:** Robertson, Nic [Contributor, CNN] “Trump is spending his political capital and costing the US friends.” *CNN.* February 26, 2017. RP

**While President Donald Trump was busy ignoring the reality of his low approval ratings by bathing in the** [**embrace of an adoring crowd last weekend**](http://edition.cnn.com/videos/politics/2017/02/18/donald-trump-melbourne-florida-rally-sot.cnn)**, his foreign policy challenges were stacking up**. He was enjoying the warm applause and sunny skies of Florida as Vice President Mike Pence was enduring darker, damper, colder skies and a somewhat chillier reception at a [diplomatic gathering in Munich, Germany.](http://edition.cnn.com/2017/02/17/politics/mike-pence-europe-trip-munich/) Pence also was on a mission to wow the crowds, but the vice president's task was far harder. Among his audience were not die-hard fans, but prime ministers, presidents and foreign and defense ministers from around the globe, all thinking about the here and now -- not a US election in four years. Staffan de Mistura, [the lead UN negotiator at the Syria talks this week](http://www.cnn.com/2017/02/19/middleeast/syria-ceasefire-un-peace-talks/), nailed the common thinking in Munich when he commented, "Where is the US in all this? Well, I can't tell you because I don't know." **Away from the crowds of diplomats, de Mistura confided to me that he would miss John Kerry, the Obama administration's secretary of state and top diplomat. He could "rely on Kerry for help on anything."** Brett McGurk, Obama's point man on Syria, was at the Munich conference, too. He was wondering out loud what the US role should be on Syria: "The United States is looking for a role to help reinforce the Syrian ceasefire brokered by Turkey and Russia," he told the gathered diplomats. That McGurk is still around is a symptom of Trump's flat-footed approach to foreign policy. Another holdover from the Obama administration is State Department spokesman Mark Toner. He is still in office more than a month after Kerry left. He still answers questions from reporters but hasn't held a press conference in a month. For the diplomats at Munich whose first port of call to the United States is often through the State Department, the inertia is surprising -- particularly given the rapid rate of executive orders. De Mistura explained to me what he would later say publicly: that Kerry's replacement, Rex Tillerson, is "a nice man," but he doesn't have any direction from Trump on Syria. It wasn't the only global issue that came to a boil in Munich. **Pence's pronouncements on behalf of Trump** [**pushed Russian President Vladimir Putin into his own chain reaction of decisions on Ukraine**](http://edition.cnn.com/2017/02/22/europe/ukraine-ceasefire-violations/)**. Pence said: "Today, on behalf of President Trump, I bring you this assurance, the United States strongly supports NATO." The same message -- support for NATO** -- was delivered by Defense Secretary James Mattis and Tillerson. Yet every diplomat I talked to at the Munich conference -- from North Africa to Australia, the Middle East to Europe and even America -- told me that he or she is still uncertain as to what Trump will do next. Will he stick to this track or reverse course again? By the time they were leaving Munich, diplomats had had a chance to weigh what they'd heard from Pence at the conference in the elegant Hotel Bayerischer Hof to what they'd heard from Trump during his Florida rally and an earlier rambling press conference. From my conversations, it was clear any illusion of clarity that Pence had brought was lost in the chaos of Trump's own making. The weekend had only added to concerns of the past month, where many believe Trump has been too erratic to give them confidence. Senior officials in the administration were so busy making amends for Trump's past comments about NATO being "obsolete" that their appearances at the conference barely amounted to fleshing out one tiny corner of what normally counts as US foreign policy. Pence, like Mattis, made clear Trump's desire that NATO members must significantly accelerate plans to pay their way in the 28-member alliance. But this point has been beaten home at the expense of so much political capital. **Indeed, Trump's handling of the NATO issue may have helped tip Russia into a far more combative posture**. Saudi Arabia's foreign minister, the reassuring Adel al-Jubeir, told me that the world must be patient and give Trump a few months. British Foreign Secretary Boris Johnson echoed his Saudi counterpart, telling me he thinks Trump will muddle through the chaos of his early days in office. In the long game they may be right. **In the short term, Putin is in no mood to wait, and that became clear in the time that we were in Munich. Last week, a watershed was reached, and Putin's patience with Trump fell a foul of pragmatic Washington politics.** Embracing the bear, for now, seems out of the question. Ousted national security adviser Mike Flynn's apparently unauthorized flirtation with Moscow proved too toxic for all but the most blinkered of Republicans. So while the Munich conference was still underway, Putin pulled the pin on his own piece of explosive foreign policy. The Russian President signed an executive order and [authorized the recognition of documents in the pro-Russian breakaway region of Luhansk and Donetsk](http://www.cnn.com/2017/02/20/europe/ukraine-ceasefire/) -- in effect taking a step closer to recognizing the pro-Russian separatist region. Russian Foreign Minister Sergey Lavrov announced a Ukrainian ceasefire, but it appeared to mask Putin's real play: to take another step toward making Russia's role inside Ukraine even more permanent. Formal recognition of breakaway documents is in many diplomats' eyes another step in the direction of formal recognition of the breakaway government. So Putin waiting for Trump to put his house in order with regard to Syria seems unlikely. Which right now is a bit of a problem. By the time delegations arrived in Geneva, Switzerland, for the Syria peace talks, the 30-day deadline Trump gave his defense chief to come up with a [new policy to tackle ISIS](http://www.cnn.com/2017/02/20/opinions/trump-isis-dangerous-weapons-andelman-opinion/) was already uncomfortably close. [The executive order](https://www.whitehouse.gov/the-press-office/2017/01/28/plan-defeat-islamic-state-iraq) explicitly authorizes the former general, whom Trump still likes to call "Mad Dog Mattis," to find new partners for the United States in the fight against ISIS. At the time the order was written, it seemed the perfect opener for tighter ties with Putin. With Putin looking less like an ally, where that leaves Trump's policy on Syria now is anyone's guess: No doubt it's one of several priorities for Flynn's replacement, Lt. Gen. H.R. McMaster. And with all these foreign policy issues stacking up, what does Trump do? Makes a statement about a terror attack in Sweden that didn't actually happen, leading to a week of confusion and confirming American allies' worst fears about the chaos blizzard currently blowing through the White House. On Sunday, Trump tried to correct himself, tweeting he'd seen a story on Fox News about "immigrants and Sweden." The next day he was backtracking further: "(M)edia is trying to say that large scale immigration is working out just beautifully. Not!" Irrespective of what he intended, Trump's comments fuel the very fears that undermine his pro-NATO message -- that he sent Pence all the way to Europe to deliver. Sweden has not been without serious issues from imported Muslim crime gangs, but **Trump's characterization of the country's problems triggered a global backlash, lampooning him for his crass and ill-informed comments** -- with suggestions of erecting an IKEA "border wall" to recalling ABBA to "stand guard." But the most cutting comment came from former Swedish Prime Minister Carl Bildt, whom I first met in Bosnia in the early '90s when he was the European Union's special envoy there. He was then and is today a pragmatic and patient diplomat. [He responded to Trump's comments](http://www.cnn.com/2017/02/19/politics/trump-rally-sweden/) with a clarity revealing the American President's falsehoods: "Sweden? Terror attack? What has he been smoking?" Bildt's strong words in the days after the Munich Security Conference were a resounding echo of the sentiments and skepticism I heard about Trump while I was there. **With so much on his foreign policy plate, Trump has little time to create more confusion -- such is the mood around the world. The United States is entering an era where losing friends may become far easier than making new ones. In diplomacy that is not usually the chosen path**.

### Link Turn – Plan Popular

#### The Aff is bipartisan and popular across various ideologies.

**Kurtz:** Kurtz, Stanley [Contributor, National Review] “A Plan to Restore Free Speech on Campus.” *The Corner.* December 2015. RP

**While it is true that a great many faculty members have rejected classic liberal values, other faculty — and especially many students — have not**. To a considerable extent, a willful faction of students and allied faculty has succeeded in intimidating the larger number of students who continue to adhere to classic liberalism. **Our goal must be to marshal support from the broader public for this weakened and wavering yet potentially powerful majority of students. We need a program that can simultaneously energize a movement of students on campus and marshal concrete support from the broader public. The greatest advantage enjoyed by supporters of free speech is that the public outside of the universities — liberals and conservatives alike — continues to uphold the ideal of intellectual freedom**. The most powerful way to activate that support is by way of state university systems. **State legislatures have the ability to establish and reinforce the core values of their respective university systems, and any such initiatives would have consequences far beyond public institutions.**

#### Aff gives Trump polcap- the plan wins over the Ways and Means committee—they see it as bipartisan and it’s a top priority

**Jagoda 16** [NAOMI JAGODA , 3-2-2016, "House Republican concerned about colleges stifling students' speech,”]

The chairman of the House Ways and Means oversight subcommittee expressed concern Wednesday that colleges are stifling students’ political speech because they are incorrectly worried that such speech could jeopardize the schools’ tax-exempt statuses. Through provisions in the tax code, “taxpayers give financial benefits to schools based on the educational value that they offer to our society,” Rep. Peter Roskam (R-Ill.) said at a hearing. “When colleges and universities suppress speech, however, we have to question whether that educational mission is really being fulfilled.” Roskam asked students, faculty and administrators who have had their speech suppressed to share their experiences with the committee by emailing campus.speech@mail.house.gov. Frances Hill, a professor at the University of Miami School of Law, said during the hearing that “students can do almost anything” without jeopardizing a college’s tax-exempt status. The Internal Revenue Service (IRS) is more likely to be concerned about university administrators engaging in political speech without making clear that they are not speaking on behalf of the school, she added. Catherine Sevcenko, director of litigation at the Foundation for Individual Rights in Education, said that students are likely being censored because colleges are confused about IRS guidelines. “As long as the IRS guidance is ambiguous, censorship will win out every time,” she said, adding that lawmakers need to communicate to the IRS that there is an “urgent need for guidance.” Sevcenko also said the issue of censorship is a “bipartisan problem,” and students are being stifled for both liberal and conservative speech. Roskam told reporters after the hearing that he’s interested in looking to see if there’s something the IRS can do to make it clear that student expression won’t jeopardize colleges’ tax exemptions. “It seems like the letter of the law is clear, but for whatever reason, it’s not penetrating,” he said. Democrats on the panel argued the free speech issue does not fall under the committee's jurisdiction. They suggested that it would be a better use of the panel’s time to hold hearings about the effect of budget cuts on the IRS’s customer service and about identity thieves stealing taxpayer information. “Let me be clear. We have plenty of work do, and this is not it,” said Rep. John Lewis (D-Ga.), the subcommittee’s ranking member. Rep. Joseph Crowley (D-N.Y.) said the subcommittee is “searching for a problem where no problem exists.” But Roskam and other Republicans defended a hearing about colleges limiting students’ free expression. “To say that we don’t have a role here is disingenuous,” said Rep. Tom Reed (R-N.Y.).

### Link Turn – Plan Unpopular

#### Dems are playing ideological gymnastics over campus free speech – the plan divides them.

**Maines 15:** Patrick Maines, Campus protests and blatant attacks on free speech, The Hill, 11/25/15.

The blatant attacks on free speech seen recently on college campuses pose a special challenge to Democrats and liberals. This, because the illiberalism inherent in the conjuring-up by campus progressives of things like "trigger warnings," "microaggressions" and "safe spaces" is an outgrowth of the identity politics and victim culture that have been promoted by Democrats and liberals generally.¶ Take, for instance, immigration and our changing racial demographics. In a demonstration of the most corrosive kind of stereotyping, Democratic strategists like Stanley Greenberg triumphantly wave the "demographics is destiny" meme like a sword. Whether there is any predictive value in Greenberg's recent claim that racial minorities are "supporting Hillary Clinton by more than 2 to 1 in today's polls," how is it helpful to profile them as bloc voters, politically defined by their ethnicity?¶ Are not Hispanics, Asian-Americans and African-Americans interested in having for themselves and their families secure, middle-class lives? And if so, might not some, perhaps many of them, come to see the governmental nostrums promoted by Democrats as being inimical to their ambitions?¶ The demographics-is-destiny meme crosses into the preposterous in the hands of people like dyed-in-the-wool Democrat Chris Matthews, who recently questioned from his perch at MSNBC (where else?) whether Republican Sens. Ted Cruz and Marco Rubio, given their Cuban backgrounds, are "actually Hispanics."¶ Consistent with this kind of race- and ethnic-baiting, the Iowa, Connecticut, Missouri, Georgia and Maine Democratic Parties have recently decided to drop the names of Presidents Thomas Jefferson and Andrew Jackson from their decades-long Jefferson-Jackson fundraising dinners. Because both men owned slaves (at a dismal time in our history when slavery was common), Democrats are purging the names of Jefferson and Jackson from any association with their party, no matter the former presidents' contributions to American history — in Jefferson's, case as the principal author of that small matter called the Declaration of Independence.¶ It's a short distance from acts like these to the spectacles we're witnessing at universities like Princeton, Yale, Missouri and Wesleyan, where groups of students, abetted by administrators and faculty members, push for such things as "sensitivity seminars" designed to alert (or shame) Caucasian students about their so-called "white privilege."¶ Indeed, looking at the predominantly race and gender focus of much of the student activism — not to mention the amen chorus among administrators and faculty — one might infer that the people most in need of safe spaces at these institutions are white, male, heterosexual, and conservative or libertarian students who run the risk of censure, expulsion or grade deflation for alleged offenses arising out of their race, ideological affinities or gender.¶ If there's any good news in all of this, it's that campus progressives don't speak for all Democrats or all liberals. Indeed, they don't speak for the best of them, as shown in recent pieces on the subject written by people like Jonathan Chait and Nicholas Kristof, and in comments posted by the readers (if not the writers) of liberal publications like Vox.¶ Still, the campus challenge is great and growing, and will require a much more principled effort by liberals and Democrats if they are to rescue their party and their ideology from what Alan Dershowitz recently characterized, with perhaps no more than a skosh of hyperbole, as a descending "fog of fascism."¶

#### Dem Senators suffer unique divisions on free speech within senior leadership.

**Green:** The Democrats’ Free-Speech Hypocrisy, Lloyd Green (the opposition research counsel to the George H.W. Bush campaign in 1988, and served in the Department of Justice between 1990 and 1992.), 5/19/14, The Daily Beast.

Last week, the war on the First Amendment entered a new phase when Senate Majority Leader Harry Reid announced his support for S.J. Res. 19, a proposed constitutional amendment designed to “advance the fundamental principle of political equality for all, and to protect the integrity of the legislative and electoral processes.” The intent of the proposed amendment is to empower the Congress and the States to limit all categories of campaign-related spending and contributions and overturn the Supreme Court’s decision in Citizens United, which held independent political expenditures by businesses and unions alike to be protected by the First Amendment.¶ In plain English that’s called censorship. It’s also called hypocrisy, as many of the proposed amendment’s supporters—and most of its likely opponents—take a situational stance on the First Amendment.¶ More often than not, politicians think free speech is a fine thing so long as you agree with them. What do I mean? Well, in 2006 the then-Republican-controlled Senate failed by a single vote to move forward a proposed constitutional amendment that would have given Congress the legal authority to ban flag “desecration.” Fortunately, the Constitution mandates that a proposed amendment obtain the backing of two-thirds of both the House and Senate before it can be sent to the States for ratification, and the flag-burning amendment garnered only 66 of the 67 votes it needed.¶ But here’s the thing. Back then, many of the same folks who would stifle free speech if it comes in the form of money—but not in kind, as in the form of a favorable New York Times editorial—had no problem saying that it was constitutionally OK to put Old Glory to the test by putting it to the torch. The roster of Senate Democrats suffering from First Amendment schizophrenia includes former constitutional law professor and Senator Barack Obama, Joe Biden, and senior Senate Democrats Barbara Boxer, Tom Harkin, Barbara Mikulski, Patty Murray, Chuck Schumer, and Ron Wyden—who rightly took the position that free speech should not be diluted in the name of some greater good, hurt feelings, or offended sensibilities.¶

### Link – Colleges Involved in Regs [Lindsay]

#### Durable fiat shields this – the Aff can assume that colleges will allow free speech

#### This is so miscut – it’s a link to the *status quo* – it says that when colleges won’t allow free speech they intervene – the neg links in way harder

## Wall-itics

### Top Level

#### Turn -- The Aff is bipartisan and popular across various ideologies.

**Kurtz:** Kurtz, Stanley [Contributor, National Review] “A Plan to Restore Free Speech on Campus.” *The Corner.* December 2015. RP

**While it is true that a great many faculty members have rejected classic liberal values, other faculty — and especially many students — have not**. To a considerable extent, a willful faction of students and allied faculty has succeeded in intimidating the larger number of students who continue to adhere to classic liberalism. **Our goal must be to marshal support from the broader public for this weakened and wavering yet potentially powerful majority of students. We need a program that can simultaneously energize a movement of students on campus and marshal concrete support from the broader public. The greatest advantage enjoyed by supporters of free speech is that the public outside of the universities — liberals and conservatives alike — continues to uphold the ideal of intellectual freedom**. The most powerful way to activate that support is by way of state university systems. **State legislatures have the ability to establish and reinforce the core values of their respective university systems, and any such initiatives would have consequences far beyond public institutions.**

#### Fiat solves the link – there’s no bill on the docket now to pass the wall….plan goes through untouched.

#### Whoops, their impact card has tons of thumpers – NAFTA and tariffs

Andrea Jones-Rooy, assistant professor of Global China Studies and the founding director of Social Science at NYU Shanghai, 2-28-2017, "How A Weakened Mexican Economy Could Threaten U.S. Security," FiveThirtyEight, https://fivethirtyeight.com/features/how-a-weakened-mexican-economy-could-threaten-u-s-security/, AX

**President Trump has taken an aggressive stance towards Mexico, both during his campaign and in his early days in office. He has threatened to dismantle NAFTA, to build a border wall and to slap hefty tariffs on Mexican imports, all moves that could hobble Mexico’s economy. While the Trump administration may argue that these policies are more about “Making America Great Again” than hurting Mexico, there is reason for concern that they may also hurt us.**

#### Missing internal link -- Schumer has no power anyways because Trump and the republicans hold all the cards

#### No link – the Aff defends colleges, not a USFG policy – even if it’s enforced by the government, it won’t be tied to the democratics.

#### The wall is impossible to build – it’s too expensive and impossible logistically – they get no offense

**Garfield:** Garfield, Leanna [Contributor, Business Insider] “Trump's $25 billion wall would be nearly impossible to build, according to architects.” *Business Insider.* January 2017. RP

In early January, President-elect Donald Trump [revived his promise](https://www.washingtonpost.com/politics/whitehouse/the-latest-trump-revives-argument-on-wall-on-mexican-border/2017/01/08/acf8cf68-d627-11e6-a0e6-d502d6751bc8_story.html?utm_term=.7f417d328766) to build a wall along the Mexico-US border (as well as his disdain for the media). "Dishonest media says Mexico won’t be paying for the wall if they pay a little later so the wall can be built more quickly. Media is fake!" he [tweeted](https://twitter.com/realDonaldTrump/status/818307689323368448) on January 9. The incoming administration may ask US Congress (and taxpayers) to foot the wall's bill, [according to](http://www.businessinsider.com/who-will-pay-for-mexico-border-wall-us-2017-1) Republican lawmakers. Trump, however, said that Mexico would eventually pay for the project and reimburse the US. He and House Republicans are developing plans to fund the wall using taxpayer money through a 2006 law that put up 700 miles of barriers along the southern US border. A substantial part of Trump's campaign focused on "the wall" and a deportation-centric, closed immigration policy. **But now that he has won the election, it's still uncertain how anyone will actually build the 1,954-mile-long border wall. Business Insider consulted a few architects to get some perspective on this question. They say the project would be nearly impossible (or, at the very least, unrealistic and a drain on US resources).** Here are their reasons. As CityLab [points out](http://www.citylab.com/work/2016/03/lets-say-trump-wins-would-anyone-design-his-border-wall/472065/), **Trump is pledging to construct the largest infrastructure project since the US highway system and the Erie Canal. He has shared few logistic details about how it will be built, except that Mexico** [**will eventually pay for it**](http://www.businessinsider.com/donald-trump-mexico-reimburse-us-wall-2016-10) **(though, Mexican President Enrique Peña Nieto said his country**[**refuses**](http://www.businessinsider.com/donald-trump-wall-pena-nieto-mexico-trip-2016-9) **to foot** [**the estimated $25 billion**](https://www.washingtonpost.com/news/fact-checker/wp/2016/02/11/trumps-dubious-claim-that-his-border-wall-would-cost-8-billion/)**construction cost),** [**after**](https://www.nytimes.com/2017/01/06/us/politics/trump-wall-mexico.html) **the US starts the construction. This giant price tag makes the project immediately infeasible, Rosa Sheng, a senior architect at the San Francisco-based firm** [**Bohlin Cywinski Jackson,**](http://bcj.com/)**tells Business Insider. "The US [is] currently as a $19-plus trillion deficit. Rather than spending our country's resources on building a wall**, we should be focusing our energy on building bridges — both literal and figurative," she says. This includes "infrastructure improvements and transportation in major cities that support interstate supply chains, and alternative green energy production that will address not only climate change, but also challenge our dependency on fossil fuels." Historically, we have seen that building a wall requires a significant amount of money and time, Sheng adds. The Great Wall of China, for example, resulted in [400,000](http://www.history.com/topics/great-wall-of-china) deaths of the soldiers and convicts who built it.  "At such a great cost, we have to ask ourselves, 'could we be putting our country's economic and material resources to better use?'" she says. William J. Martin, a freelance architect, says Trump's wall refutes the philosophy of architecture in and of itself. "Architects design walls, not as barriers, but as a way to organize space," he tells BI. "Architects include features such as doors and windows which allow people to move through, and light to illuminate the other side." Members of the [American Institute of Architects](http://www.aia.org/index.htm) (AIA) and the [American Society of Civil Engineers](http://www.asce.org/code-of-ethics/), which include architects and engineers around the country, are both bound by [codes of ethics](http://aiad8.prod.acquia-sites.com/sites/default/files/2016-04/AIA-Ethics-Code-of-Ethics-2012_0.pdf), which might conflict with building a border-wall. The codes include statements like, "Members should uphold human rights in all their professional endeavors" and "exercise unprejudiced and unbiased judgment."  With the new year, a number of AIA members have [left](http://www.curbed.com/2017/1/11/14238178/aia-trump-architect-robert-ivy-mette-aamodt) the organization, in response to the [letter](http://www.curbed.com/2016/11/15/13640228/trump-architecture-aia-statement-organize) by the its VP, Robert Ivy. He said the AIA was "committed to working with President-elect Trump," which resulted in [widespread backlash](https://www.fastcodesign.com/3065728/aia-apologizes-for-trump-pledge-but-architects-are-still-furious) from its members. "The [American Institute of Architects] does not dictate what clients members can accept," Cornelius DuBois, chair of the AIA national ethics committee, [told](http://www.citylab.com/work/2016/03/lets-say-trump-wins-would-anyone-design-his-border-wall/472065/) CityLab. "However, there are a number of points in the Code of Ethics that should encourage [members] to think of the ethical challenges of accepting a commission or project. And it is by no means certain that an architect would even be involved in designing such a wall, which is primarily an engineering project." **Sheng believes that Trump isn't even serious about building a physical wall. She understood his frequent mentions of "the wall" as a rhetorical campaign strateg**y. "Even if we were able to temporarily suspend the philosophical arguments of what building a wall represents (i.e. if we were to pretend that everyone would be in favor of doing such a thing), other practical questions arise as well," she says. Building a wall would pose construction challenges. The US-Mexico border stretches almost 2,000 miles, and about 650 miles already have vehicle and pedestrian fencing, according to [a 2016 report](http://www.gao.gov/assets/680/675522.pdf) from the US Government Accountability Office. To build a wall on top of that would be a redundant use of resources, Sheng says. **Building Trump's wall may require about 339 million cubic feet of concrete, or three times what was used to build the Hoover Dam,** [**according to**](http://www.ibtimes.com/donald-trump-border-wall-who-will-pay-it-what-will-it-look-how-much-will-it-cost-2443883)**the IB Times. There are also reasons why certain parts of the border that don't have fences: they are rocky, uneven, and arid,** Mexican architects from Estudio 3.14 [told](http://www.businessinsider.com/mexican-designers-trumps-border-wall-cost-2016-11/#according-to-the-design-americans-would-enjoy-a-shopping-mall-thats-built-into-the-wall-too-6) BI. Added complications of the mountainous areas near the US-Mexico border mean that the wall would cost even more time and money to build in these parts. Estudio 3.14's designers estimate the construction would take 16 years, and [made renderings](http://www.businessinsider.com/mexican-designers-trumps-border-wall-cost-2016-11/#the-design-was-also-inspired-by-the-work-ofrenowned-mexican-architect-luis-barragn-who-is-famous-for-his-blunt-stucco-walls-and-use-of-bright-colors-2) of what the wall, stretching from the Pacific Coast to the Gulf of Mexico, might look like. The architects said that the physical challenges would make its construction nearly impossible. To redesign the US-Mexico border, there are better alternatives than constructing a wall. A wall is not the only option when it comes to building on the border. Many architects are thinking critically about how to design border control stations that are both secure and humane. For example, the Arizona-based firm Jones Studio designed a station along the Arizona-Mexico border, called [the Mariposa Land Port of Entry](http://jonesstudioinc.com/project/mariposa-land-port-of-entry/). "The Mariposa Land Port of Entry is a study in balancing security with a dignified welcome ... and strives to be a cultural connection – rather than a division," the designers [wrote](http://jonesstudioinc.com/project/mariposa-land-port-of-entry/).  Constructed in 2014, the 216,000-square-foot port features a vehicle and pedestrian processing station, a lush garden, and a system that allows it to collect, use, and recycle rainwater. "There's an opportunity for architects to leverage design to make more humane entry control points," Sheng says. "Just a wall by itself is not an act of humanity."

#### Their own uniqueness card gives me a thumper – says funding is low for the wall – no way they’ll build it if they can’t afford it

## Tariffs Ptx

### Top Level

#### Link irrelevant – Trump can leverage tariffs without Congress – 3 separate scenarios

**Gillespie**: Gillespie, Patrick [Contributor, CNN Money] “President Trump can levy tariffs without Congress.” January 2017. RP

**President Trump is already tapping his wide-ranging powers on U.S. trade policy. But you may be surprised by just how much Trump can do without any approval from Congress. One of his first executive orders on Monday was to** [**withdraw from the Trans-Pacific Partnership**](http://www.cnn.com/2017/01/23/politics/trans-pacific-partnership-trade-deal-withdrawal-trumps-first-executive-action-monday-sources-say/index.html?iid=EL) **(TPP).** Earlier in the morning, Trump met with CEOs and reiterated his threat to use a "border tax" against companies that move jobs outside the U.S. Slapping tariffs -- or taxes -- targeted at specific companies [would be very hard](http://money.cnn.com/2016/12/06/news/economy/nafta-trump-tariff-jobs/index.html?iid=EL) to do under current law. **But Trump has significant authority to unilaterally hit any country with a tariff. He doesn't need a green light from Congress,** [according](https://piie.com/system/files/documents/piieb16-6.pdf) to the Peterson Institute of International Economics. "A president who wants to restrict trade enjoys almost carte blanche authority," says Gary Clyde Hufbauer, a trade expert at Peterson. Here are three of the ways Trump can go after other countries on his own. 1. Trump's biggest weapon: **Unlimited tariffs 'during time of war' Trump could invoke the "Trading with the Enemy Act of 1917" to hit a nation with tariffs as high as he wants**. Under the law, the president can restrict all types of trade "during time of war." **That definition is very loose though. America doesn't have to be at war with a particular nation -- it just has to be "at war" somewhere in the world in order to apply tariffs against other countries. Experts believe U.S. special forces in Syria and Libya would suffice to meet that requirement for Trump to hit countries such as China and Mexico with tariffs**. In 1971, President Richard Nixon used this act to impose a 10% import tariff (not directed at any particular nation) citing the Korean War, which had ended nearly two decades prior. Technically, America was still in a state of emergency which had not lifted. All to say: the excuse of war has a very loose interpretation that the President can use. **2. Trump's next best weapon: unlimited tariffs during 'national emergency' If that law sounds too outdated for Trump to use, there's another -- the International Emergency Economic Powers Act of 1977.** It gives the president authority to use tariffs on another country during a "national emergency." Again, defining an emergency is vague. Losing manufacturing jobs to Mexico and China would suffice as one. Also, courts have never rejected a president's reasoning. The big difference between this Act and the one from 1917 is that Trump can't seize assets using this one. But that's not his aim anyway. This law has been invoked against Nicaragua, Panama, Sierra Leone and Somalia. It was used "in circumstances that few observers would characterize as an unusual or extraordinary threat," says Hufbauer. **3. Trump's limited options: hit specific industries or low tariffs on everyone Trump can also rely on the Trade Act of 1974, Section 122**. It gives him authority to impose across-the-board tariffs. Trump just needs to find "an adverse impact on national security from imports." Lost jobs could qualify. The caveat: There is a cap on the tariffs of 15% and it's only good for 150 days. Then Congress needs to approve it. So, it's a blunt rule that could have a severe short term impact but it expires after five months, unless it is extended by Congress. Trump can also use the Trade Expansion Act of 1962. Ronald Reagan used this one. It allows Trump to slap targeted tariffs on certain industries, like steel. It's not as broad, but Trump can raise tariffs as high as he wants on specific things. If tariffs are imposed, what comes next: **Trump would undoubtedly face resistance within his administration, from members of Congress, U.S. companies and countries. But time is on his side. Court appeals would take months, even years, to work their way through. In short order, if he wants, Trump can impose tariffs as high as 35% on Mexico and 45% on China as he has threatened in the past**. But he would need to withdraw from NAFTA before he could slap stiff tariffs on Mexico. However, if Trump hits these countries with tariffs, trade experts say Mexico and China will almost certainly retaliate with tariffs against U.S. products. That defines a trade war, which can hurt both countries and its citizens in unforeseen ways.

## ACA Ptx

### Top Level

#### Counterplan links to the disad – their second link says the plan is tied to Trump, but that’s true because it allows free speech which would be true of any agent. It would be just as true if state governments did it – 50 states can’t shield a perceptions link, policy 101.

#### No link – the Aff defends colleges, not a USFG policy – even if it’s enforced by the government, it won’t be tied to the president.

#### Uniqueness overwhelms the link – they say Republicans like free speech, but the Aff is just a drop in the bucket – free speech limits exist outside of colleges independent of the Aff and NONE OF THEIR EVIDENCE IS SPECIIFC TO COLLEGES

#### Their link evidence with Lindsay is heinous – it says that *if* colleges didn’t allow free speech, the government would step in, not that they *will.* Here it is, rehighlighted.

**Lindsay 15:** Thomas K. Lindsay, 8-25-2015, "Congress vs. Campus Speech Restrictions," No Publication, <http://www.realclearpolicy.com/blog/2015/08/25/congress_vs_campus_speech_restrictions_1399.htm> VC

With this strong move by the House committee, we witness the academic world turned upside down: Academic freedom has always been supported, and rightly, as a defense against anti-intellectual pressure brought on universities by the political branches. The deeper defense of academic freedom is its indispensability to the nonpartisan truth-seeking that defines higher education's mission. **But what happens** when **those who would deprive students and faculty of their First Amendment freedoms are within the universities themselves? This, unfortunately, is the crisis in which many universities find themselves today. For the solution, Congress has taken it upon itself to educate the educators in what those who supervise our universities should already know, namely, that when intellectual oppression rises, scientific progress and democratic deliberation decline.** Given the stakes involved, it is encouraging to see that there is growing bipartisan support for restoring freedom on our campuses. While Representative Goodlatte is a Republican, in the past year, two Democratic governors — Terry McAuliffe of Virginia and Jay Nixon of Missouri — have signed legislation banning "free-speech zones" at all public universities in their states. As I have argued previously, in America, under the First Amendment to the Constitution, everywhere should be a free-speech zone, not simply the restricted (and restrictive) spaces that the majority of universities today unconstitutionally deign to provide for students. **Although legislative action might prove necessary** in the event that universities **decline the House committee's plea to follow the Constitution, it would be heartbreaking if these institutions had to be compelled by a political branch to jettison their political agendas and return to disinterested inquiry**. It would mean that American higher education has so lost any sense of its defining — and ennobling — purpose that it now has to be guided by those outside it, rather than guiding them, as it ought.

#### Uniqueness overwhelms the link – nearly 40 percent of schools don’t even have speech codes, so the impacts would have already occurred.

**Moore:** Moore, James R. [Professor, Cleveland State University] “You Cannot Say That in American Schools: Attacks on the First Amendment.” *Social Studies Research and Practice.* Volume 11. Spring 2016. RP

The first amendment in the Bill of Rights, the foundation of individual freedom in the United States, protecting the freedoms of religion, speech, press, assembly, and petition. These basic freedoms, derived from Enlightenment philosophy and codified in the world’s oldest written constitution, have been an essential characteristic of American democracy and law since 1791. This is continuity considering “between 1971 and 1990, 110 of the world’s 162 national constitutions were either written or extensively rewritten” (Haynes, Chaltain, Ferguson, Hudson, & Thomas, 2003, p. 9). The first amendment has been the conduit employed by U.S. citizens to create an increasingly free and just society based on the constitutional ideals of equality before the law, popular sovereignty, limited government, checks and balances, federalism, and individual liberties (Center for Civic Education, 2009). Advocates for the abolition of slavery and the expansion of civil rights were able, after long struggles, to achieve their goals of expanding freedom and social justice by using their natural rights to free expression and religious liberty (Dye, 2011). Since no constitutional liberty or right is absolute, American institutions continuously debate the definitions, limitations, and exceptions to these fundamental rights based on social, political, and technological changes. This task has been exacerbated by increasing cultural diversity and technological changes (the Internet and social media) that expand communication. In addition, efforts by some people to censor language in the name of tolerance and respect for diversity have increased in recent years (Foundation for Individual Rights in Education, 2013, p.4). **The first amendment is the world’s oldest written safeguard for freedom of expression— this includes allowing blasphemy and expression that may be radical, offensive, controversial, ignorant, and militantly bigoted—and is the cornerstone of participatory democracy** (Haynes et al., 2003**). The first amendment is under constant attack from some religious organizations, political action groups, ethnically-based activist groups, and, most alarmingly, from American public universities that severely restrict freedom of expression and public debate** (Foundation for Individual Rights in Education, 2013; Haynes, 2013; Hudson, 2011). **The Foundation for Individual Rights in Education (2013) found “62% of universities (254 out of 409 universities in the survey) maintain severely restrictive red-light speech codes – policies that clearly and substantially prohibit protected speech” (p. 4). Many Americans do not understand, or do not accept, that the first amendment protects unpopular, offensive, controversial, and radical speech; this includes making hateful statements about race, gender, religion, and any other topic the speaker wishes to address** (Haynes et al., 2003; Marshall & Shea, 2011; Pew Forum on Religion and Public Life, 2010). **Many hate speech codes, thus, often are defined “as hostile or prejudicial attitudes expressed toward another person’s or group’s characteristics, notably sex, race, ethnicity, religion, or sexual orientation**” (Dye 2011, p. 508). The hate speech instituted in American universities and Kindergarten-12 schools are often, albeit well-intended, violations of the First Amendment (Foundation for Individual Rights in Education; Haynes, 2013; Saxe V. State College Area School District, 2001).

#### No link – this just says Trump likes free speech, but nowhere says he’ll be tied to the plan or why this would harm polcap.

#### Foreign policy issues thump for Trump

**Robertson:** Robertson, Nic [Contributor, CNN] “Trump is spending his political capital and costing the US friends.” *CNN.* February 26, 2017. RP

**While President Donald Trump was busy ignoring the reality of his low approval ratings by bathing in the** [**embrace of an adoring crowd last weekend**](http://edition.cnn.com/videos/politics/2017/02/18/donald-trump-melbourne-florida-rally-sot.cnn)**, his foreign policy challenges were stacking up**. He was enjoying the warm applause and sunny skies of Florida as Vice President Mike Pence was enduring darker, damper, colder skies and a somewhat chillier reception at a [diplomatic gathering in Munich, Germany.](http://edition.cnn.com/2017/02/17/politics/mike-pence-europe-trip-munich/) Pence also was on a mission to wow the crowds, but the vice president's task was far harder. Among his audience were not die-hard fans, but prime ministers, presidents and foreign and defense ministers from around the globe, all thinking about the here and now -- not a US election in four years. Staffan de Mistura, [the lead UN negotiator at the Syria talks this week](http://www.cnn.com/2017/02/19/middleeast/syria-ceasefire-un-peace-talks/), nailed the common thinking in Munich when he commented, "Where is the US in all this? Well, I can't tell you because I don't know." **Away from the crowds of diplomats, de Mistura confided to me that he would miss John Kerry, the Obama administration's secretary of state and top diplomat. He could "rely on Kerry for help on anything."** Brett McGurk, Obama's point man on Syria, was at the Munich conference, too. He was wondering out loud what the US role should be on Syria: "The United States is looking for a role to help reinforce the Syrian ceasefire brokered by Turkey and Russia," he told the gathered diplomats. That McGurk is still around is a symptom of Trump's flat-footed approach to foreign policy. Another holdover from the Obama administration is State Department spokesman Mark Toner. He is still in office more than a month after Kerry left. He still answers questions from reporters but hasn't held a press conference in a month. For the diplomats at Munich whose first port of call to the United States is often through the State Department, the inertia is surprising -- particularly given the rapid rate of executive orders. De Mistura explained to me what he would later say publicly: that Kerry's replacement, Rex Tillerson, is "a nice man," but he doesn't have any direction from Trump on Syria. It wasn't the only global issue that came to a boil in Munich. **Pence's pronouncements on behalf of Trump** [**pushed Russian President Vladimir Putin into his own chain reaction of decisions on Ukraine**](http://edition.cnn.com/2017/02/22/europe/ukraine-ceasefire-violations/)**. Pence said: "Today, on behalf of President Trump, I bring you this assurance, the United States strongly supports NATO." The same message -- support for NATO** -- was delivered by Defense Secretary James Mattis and Tillerson. Yet every diplomat I talked to at the Munich conference -- from North Africa to Australia, the Middle East to Europe and even America -- told me that he or she is still uncertain as to what Trump will do next. Will he stick to this track or reverse course again? By the time they were leaving Munich, diplomats had had a chance to weigh what they'd heard from Pence at the conference in the elegant Hotel Bayerischer Hof to what they'd heard from Trump during his Florida rally and an earlier rambling press conference. From my conversations, it was clear any illusion of clarity that Pence had brought was lost in the chaos of Trump's own making. The weekend had only added to concerns of the past month, where many believe Trump has been too erratic to give them confidence. Senior officials in the administration were so busy making amends for Trump's past comments about NATO being "obsolete" that their appearances at the conference barely amounted to fleshing out one tiny corner of what normally counts as US foreign policy. Pence, like Mattis, made clear Trump's desire that NATO members must significantly accelerate plans to pay their way in the 28-member alliance. But this point has been beaten home at the expense of so much political capital. **Indeed, Trump's handling of the NATO issue may have helped tip Russia into a far more combative posture**. Saudi Arabia's foreign minister, the reassuring Adel al-Jubeir, told me that the world must be patient and give Trump a few months. British Foreign Secretary Boris Johnson echoed his Saudi counterpart, telling me he thinks Trump will muddle through the chaos of his early days in office. In the long game they may be right. **In the short term, Putin is in no mood to wait, and that became clear in the time that we were in Munich. Last week, a watershed was reached, and Putin's patience with Trump fell a foul of pragmatic Washington politics.** Embracing the bear, for now, seems out of the question. Ousted national security adviser Mike Flynn's apparently unauthorized flirtation with Moscow proved too toxic for all but the most blinkered of Republicans. So while the Munich conference was still underway, Putin pulled the pin on his own piece of explosive foreign policy. The Russian President signed an executive order and [authorized the recognition of documents in the pro-Russian breakaway region of Luhansk and Donetsk](http://www.cnn.com/2017/02/20/europe/ukraine-ceasefire/) -- in effect taking a step closer to recognizing the pro-Russian separatist region. Russian Foreign Minister Sergey Lavrov announced a Ukrainian ceasefire, but it appeared to mask Putin's real play: to take another step toward making Russia's role inside Ukraine even more permanent. Formal recognition of breakaway documents is in many diplomats' eyes another step in the direction of formal recognition of the breakaway government. So Putin waiting for Trump to put his house in order with regard to Syria seems unlikely. Which right now is a bit of a problem. By the time delegations arrived in Geneva, Switzerland, for the Syria peace talks, the 30-day deadline Trump gave his defense chief to come up with a [new policy to tackle ISIS](http://www.cnn.com/2017/02/20/opinions/trump-isis-dangerous-weapons-andelman-opinion/) was already uncomfortably close. [The executive order](https://www.whitehouse.gov/the-press-office/2017/01/28/plan-defeat-islamic-state-iraq) explicitly authorizes the former general, whom Trump still likes to call "Mad Dog Mattis," to find new partners for the United States in the fight against ISIS. At the time the order was written, it seemed the perfect opener for tighter ties with Putin. With Putin looking less like an ally, where that leaves Trump's policy on Syria now is anyone's guess: No doubt it's one of several priorities for Flynn's replacement, Lt. Gen. H.R. McMaster. And with all these foreign policy issues stacking up, what does Trump do? Makes a statement about a terror attack in Sweden that didn't actually happen, leading to a week of confusion and confirming American allies' worst fears about the chaos blizzard currently blowing through the White House. On Sunday, Trump tried to correct himself, tweeting he'd seen a story on Fox News about "immigrants and Sweden." The next day he was backtracking further: "(M)edia is trying to say that large scale immigration is working out just beautifully. Not!" Irrespective of what he intended, Trump's comments fuel the very fears that undermine his pro-NATO message -- that he sent Pence all the way to Europe to deliver. Sweden has not been without serious issues from imported Muslim crime gangs, but **Trump's characterization of the country's problems triggered a global backlash, lampooning him for his crass and ill-informed comments** -- with suggestions of erecting an IKEA "border wall" to recalling ABBA to "stand guard." But the most cutting comment came from former Swedish Prime Minister Carl Bildt, whom I first met in Bosnia in the early '90s when he was the European Union's special envoy there. He was then and is today a pragmatic and patient diplomat. [He responded to Trump's comments](http://www.cnn.com/2017/02/19/politics/trump-rally-sweden/) with a clarity revealing the American President's falsehoods: "Sweden? Terror attack? What has he been smoking?" Bildt's strong words in the days after the Munich Security Conference were a resounding echo of the sentiments and skepticism I heard about Trump while I was there. **With so much on his foreign policy plate, Trump has little time to create more confusion -- such is the mood around the world. The United States is entering an era where losing friends may become far easier than making new ones. In diplomacy that is not usually the chosen path**.

#### Turn – the plan saps polcap – Republicans don’t support unlimited free speech on campuses when it’s critical of conservatives

**Zimmerman:** Zimmerman, Jonathan [Contributor, NY Daily News] “The threat to campus free speech comes from both sides of the political spectrum: Stop acting like this is a partisan problem.” February 27, 2017. RP

Last Thursday, U.S. Secretary of Education Betsy DeVos warned of dangers to free speech on American campuses. "The faculty, from adjunct professors to deans, tell you what to do, what to say, and more ominously, what to think," she told the Conservative Political Action Conference. "They say that if you voted for Donald Trump you're a threat to the university community. But the real threat is silencing the First Amendment rights of people with whom you disagree." She's right. **But the biggest threat to campus free speech at the moment comes from conservatives in DeVos' camp**, not from the liberals she condemned. **Indeed, there's a weird hall-of-mirrors quality to the entire debate: Each side accuses the other of intolerance, even as it seeks to suppress speech that it deems intolerable. In the guise of creating ideological "balance," Republicans in Iowa and North Carolina have proposed laws that would essentially require universities to hire more conservative professors. And in Wisconsin, GOP lawmakers threatened to withhold funding from the state's flagship university in Madison unless it canceled a course about "whiteness" that they found offensive.** Left-leaning faculty around the country have correctly denounced these proposals for imperiling the free and open exchange of ideas. So it's especially ironic to see liberals engaging in their own efforts to limit free speech, allegedly to protect listeners from bigoted and injurious remarks. Look no further than the University of California-Berkeley, where over a hundred faculty signed a letter urging the school to prevent conservative provocateur Milo Yiannopoulos from giving a scheduled speech. "We support robust debate, but we cannot abide by harassment, slander, defamation, and hate speech," the letter said. Never mind that these are just the kind of terms that Republican lawmakers have used to suppress campus speech they want to prohibit. In Wisconsin, for example, a state legislator threatening to defund the university called the planned course on whiteness "garbage." He especially objected to a tweets by the course's professor that criticized police and called supporters of President Trump the "Trump Klux Klan." But if lawmakers could withdraw funds whenever they heard something offensive at a university, academic freedom — and the university itself — would come crashing down. Nor do we want loud-mouthed politicians deciding when and whether speech has been silenced. After protests at Berkeley forced the cancellation of Yiannopolous' address, Trump threatened to withhold federal funds from the school for failing to protect open dialogue. But any such penalty would be subject to enormous abuse from elected leaders, who could invoke it to close off any dialogue they didn't like. Worst of all are the new measures that would require universities to maintain ideological balance on the faculty. An Iowa Republican proposed that no professor could be hired if doing so would "cause the percentage of the faculty belonging to one political party to exceed by 10%" the fraction of faculty belonging to the next most popular party. Since Democrats heavily outnumber Republicans on university faculties, the only way institutions could comply with this law would be by hiring more Republican professors. Ditto for a new bill in North Carolina, which would require universities to hire faculty who "reflect the ideological balance of the citizens of the state." Why should the state be conducting political litmus tests in the first place? It's hard to imagine a more brazen attack on academic freedom, which is premised on the idea that professors — and their students — should be allowed to say, think and believe whatever they want. But surely some liberal faculties enforce their own informal litmus tests, too. In a 2011 study, 30% of sociologists admitted that they would be less likely to support a faculty candidate if they knew she or he was a Republican. And over two-thirds of English professors said that if they learned that a prospective colleague was a fundamentalist Christian, her or his job prospects would decline. That's not the same kind of threat to free speech as the laws proposed by GOP lawmakers, of course. But it's a threat, nonetheless, and it weakens liberals' case against the Republican measures. How can they rebut these attacks on free speech if they're restricting it themselves? Ditto for universities which have investigated pro-Trump sidewalk chalk messages as "harassment" or "hate speech." That sends a chilling message about whose speech will be tolerated — and whose won't be — on our campuses. And it gives an easy talking point to conservatives like Betsy DeVos, who can indict liberal censors even as their own party proposes laws that would censor liberals. As John Dewey wrote nearly a century ago, the solution to the problem of democracy is more democracy. And the solution to the problem of free speech is more free speech. Not just for me, and not just for you. For all of us.

#### Uniqueness overwhelms the link – ACA repeal won’t pass – Republicans can’t agree on anything and polcap won’t be sufficient.

**Tahir:** Tahir, Darius [Contributor, Politico] “Boehner: Republicans won’t repeal and replace Obamacare.” *Politico.* February 25, 2016. RP

**Former House Speaker John Boehner predicted on Thursday that a full repeal and replace of Obamacare is “not what’s going to happen” and that Republicans will instead just make some fixes to the health care law. Boehner, who retired in 2015 amid unrest among conservatives, said at an Orlando healthcare conference that GOP lawmakers were too optimistic in their talk of quickly repealing and then replacing Obamacare. “They’ll fix Obamacare, and I shouldn’t have called it repeal and replace because that’s not what’s going to happen. They’re basically going to fix the flaws and put a more conservative box around it**,” Boehner said. The former speaker’s frank comments capture the conundrum that many Republicans find themselves in as they try to deliver on pledges to axe Obamacare but struggle to coalesce around an alternative. **Republican lawmakers across the country this week are facing angry constituents at town halls worried that Obamacare will be yanked away without a suitable replacement.** President Donald Trump has said in recent days that he will release a plan by early to mid-March on how the administration plans to move forward **on repeal-and-replace. But so far, no clear path has emerged. Earlier in the panel discussion, Boehner said he “started laughing” when Republicans started talking about moving lightning fast on repeal and then coming up with an alternative. "In the 25 years that I served in the United States Congress, Republicans never, ever, one time agreed on what a health care proposal should look like**. Not once,” Boehner said. “And all this happy talk that went on in November and December and January about repeal, repeal, repeal—yeah, we'll do replace, replace—I started laughing, because if you pass repeal without replace, first, anything that happens is your fault. You broke it.” Boehner added that he has told Republican leaders that unless a repeal is packaged with a replacement, GOP lawmakers would not likely reach a consensus about an alternative to Obamacare. "And secondly, as I told some of the Republican leaders when they asked, I said, if you pass repeal without replace you'll never pass replace, because they will never ever agree on what the bill should be. Perfect always becomes the enemy of the good,” Boehner said. Boehner said what Republicans ultimately come up with could share a lot of the same qualities with Obamacare. "Most of the Affordable Care Act, in the framework, is going to stay there: coverage for kids up to age 26, covering those with preexisting conditions. All of that's going to be there. Subsidies for those who can't afford it, who aren't on Medicaid, who I call the working poor, subsidies for them will be there," Boehner said. "What will be different is that CMS will not dictate to every single state how the plan's going to run. And if the state wants to run an exchange, the state can run an exchange. The states will control the policies that are offered like they control every other insurance product offered in their states,” he added.

## Racist Professors

#### Teachers hate speech isn’t constitutionally protected

**Delgado and Yun:** Richard Delgado and David H. Yun [Law Professors] “Pressure Valves and Blooded Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulations.” *California Law Review.* Volume 84. July 1994. RP

**In Canada, two recent decisions also upheld the power of the state to prohibit certain types of offensive expression when they cause societal harm. In Regina v. Keegstra, a teacher had described Jews in disparaging terms to his pupils and declared that the Holocaust did not take place. The Supreme Court of Canada upheld the national criminal code provision under which the defendant was charged**. The court emphasized that this type of hate speech harms its victims and society as a whole, sufficiently so to justify criminalizing it.' **In Regina v. Butler4, 1 the Supreme Court of Canada reversed a trial court dismissal of criminal pornography charges, based on the social harm caused by the speech and the minimal impairment of legitimate speech that the prohibition presented.42 Both decisions are notable because Canada's legal and free speech traditions are similar to those of the United States, and because the Canadian Charter protects speech in terms similar to those of its United States counterpart.**

#### Firing and banning racist professors causes massive public backlash and misdiagnoses the problem.

**Denver Post:** The Denver Post [Newspaper located in Colorado] “A Denver doctor’s racist comments shouldn’t have led to her firing.” *The Denver Post.* December 2016. RP

There is no doubt that the hard-fought 2016 presidential election contest, and the nasty rhetoric from the president-elect and others, has led to increased instances of and focus on hate crimes and hateful speech across the land. **In Denver this week, the poisoned atmosphere became even more noxious thanks to a Facebook post from an individual one would think would know better: a University of Colorado School of Medicine faculty member and pediatric anesthesiologist. We bring it up not to fan the flames of public outrage — although we share that outrage. Rather, we’d like to offer a word or two of caution, and to make an appeal for calmer minds. Yes, it was racist and abhorrent — and just plain stupid** — for Dr. Michelle Herren to say of First Lady Michelle Obama: “Monkey face and poor ebonic English!!! There! I feel better and am still not racist!!! Just calling it like it is!” Herren was swiftly terminated by the University of Colorado, and Friday afternoon Denver Health released a statement saying Herren had volunteered to end her employment there as well. But before we celebrate Herren’s loss as a win for common decency, let’s take a moment to mourn the other cost. **Public shaming of viral social media posts has become the new “chilling effect” of free speech that libel and defamation lawsuits were before the nation’s highest courts spoke and set strong precedents protecting all types of speech — including burning the American flag. The argument for Herren’s termination exists within case law**. Public employees, unlike private workers, fall under a different set of free speech rules that continue to evolve. As Steven Zansberg, a First Amendment attorney in Denver, who is also the president of the Colorado Freedom of Information Coalition, tells us: “Public employees do not relinquish their First Amendment right to express their views on matters of public concern, so government employers must tread lightly before punishing such speech.” However, Zansberg notes that “government employers may take appropriate employment actions against employees whose speech, expressive conduct, or other constitutionally protected activities is shown to ‘undermine the mission of the public employer.’ ” One can see how the doctor’s disgusting and ridiculous remarks (after all, the first lady is obviously beautiful and eloquent) could translate into an untenable position for the medical school. Should students not wish to take her classes, how is the public served by keeping her on the staff? Her role at Denver Health is trickier. Had they sought to terminate her, officials there would have had to argue Herren’s comments made her unable to perform her medical duties at Children’s Health, a position they oversee. But nothing Herren said about the first lady suggests she would exercise poor judgment in her role as an anesthesiologist. **But shouldn’t academic and medical professionals and students be able to handle contrary views? Even those they find abhorrent? Like all of our freedoms, the freedom of speech has a cost**. That cost is that people like Herren can have their soapbox on Facebook, or the Ku Klux Klan can march down Main Street, and those who are protesting the Dakota Access Pipeline can burn the very symbol of the freedom they are exercising. **We can condemn these actions in no uncertain terms and still respect that the right to do them is one we cherish and will not undermine in moments of disgust and anger. Herren losing her livelihood may feel like justice now, but it’s a slippery slope we hope doesn’t start to cascade.**

## Junk Science DA

### GMOs Module

#### No uniqueness – they haven’t won that speech codes currently ban people from condemning GMOs

#### No link uniqueness – people will just publish articles elsewhere and still criticize GMOs

#### Uniqueness overwhelms the link – if people always oppose GMOs, having speech codes won’t stop them from not buying them

#### GMOs are unhealthy and cause chronic illnesses

**IRT:** Institute for Reponsibile Technology [Founded in 2003 by international bestselling author and consumer advocate, [Jeffrey Smith](http://responsibletechnology.org/irtnew/jeffrey-m-smith-biography/), IRT has worked in nearly 40 countries on 6 continents, and is credited with improving government policies and influencing consumer-buying habits.] “10 Reasons to Avoid GMOs.” August 2011. RP

1. **GMOs are unhealthy. The American Academy of Environmental Medicine (AAEM) urges doctors to prescribe non-GMO diets for all patients. They cite animal studies showing organ damage, gastrointestinal and immune system disorders, accelerated aging, and infertility.** Human studies show how genetically modified (GM) food can leave material behind inside us, possibly causing long-term problems. **Genes inserted into GM soy, for example, can transfer into the DNA of bacteria living inside us, and that the toxic insecticide produced by GM corn was found in the blood of pregnant women and their unborn fetuses. Numerous health problems increased after GMOs were introduced in 1996. The percentage of Americans with three or more chronic illnesses jumped from 7% to 13% in just 9 years**; food allergies skyrocketed, and disorders such as autism, reproductive disorders, digestive problems, and others are on the rise. Although there is not sufficient research to confirm that GMOs are a contributing factor, doctors groups such as the AAEM tell us not to wait before we start protecting ourselves, and especially our children who are most at risk. **The American Public Health Association and American Nurses Association are among many medical groups that condemn the use of GM bovine growth hormone, because the milk from treated cows has more of the hormone IGF-1 (insulin-like growth factor 1)―which is linked to cancer.**

#### GMOs contaminate the environment and require herbicides

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2. **GMOs contaminate―forever. GMOs cross pollinate and their seeds can travel. It is impossible to fully clean up our contaminated gene pool. Self-propagating GMO pollution will outlast the effects of global warming and nuclear waste**. The potential impact is huge, threatening the health of future generations. GMO contamination has also caused economic losses for organic and non-GMO farmers who often struggle to keep their crops pure. 3. **GMOs increase herbicide use. Most GM crops are engineered to be “herbicide tolerant”―they deadly weed killer. Monsanto, for example, sells Roundup Ready crops, designed to survive applications of their Roundup herbicide. Between 1996 and 2008, US farmers sprayed an extra 383 million pounds of herbicide on GMOs.** Overuse of Roundup results in “superweeds,” resistant to the herbicide. **This is causing farmers to use even more toxic herbicides every year. Not only does this create environmental harm, GM foods contain higher residues of toxic herbicides. Roundup, for example, is linked with sterility, hormone disruption, birth defects, and cancer**. 4. Genetic engineering creates dangerous side effects. By mixing genes from totally unrelated species, genetic engineering unleashes a host of unpredictable side effects. **Moreover, irrespective of the type of genes that are inserted, the very process of creating a GM plant can result in massive collateral damage that produces new toxins, allergens, carcinogens, and nutritional deficiencies**.

#### The GMO industry is corrupt and isn’t monitored by the government.

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**5. Government oversight is dangerously lax. Most of the health and environmental risks of GMOs are ignored by governments’ superficial regulations and safety assessments. The reason for this tragedy is largely political. The US Food and Drug Administration (FDA), for example, doesn’t require a single safety study, does not mandate labeling of GMOs, and allows companies to put their GM foods onto the market without even notifying the agency**. Their justification was the claim that they had no information showing that GM foods were substantially different. But this was a lie. Secret agency memos made public by a lawsuit show that the overwhelming consensus even among the FDA’s own scientists was that GMOs can create unpredictable, hard-to-detect side effects. They urged long-term safety studies. But the White House had instructed the FDA to promote biotechnology, and the agency official in charge of policy was Michael Taylor, Monsanto’s former attorney, later their vice president. He’s now the US Food Safety Czar. 6. **The biotech industry uses “tobacco science” to claim product safety. Biotech companies like Monsanto told us that Agent Orange, PCBs, and DDT were safe**. They are now using the same type of superficial, rigged research to try and convince us that GMOs are safe. Independent scientists, however, have caught the spin-masters red-handed, demonstrating without doubt how industry-funded research is designed to avoid finding problems, and how adverse findings are distorted or denied. 7. Independent research and reporting is attacked and suppressed.  **Scientists who discover problems with GMOs have been attacked, gagged, fired, threatened, and denied funding.** The journal Nature acknowledged that a “large block of scientists . . . denigrate research by other legitimate scientists in a knee-jerk, partisan, emotional way that is not helpful in advancing knowledge.” Attempts by media to expose problems are also often censored.

#### GMOs increase global poverty and lower crop yield

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8. **GMOs harm the environment. GM crops and their associated herbicides can harm birds, insects, amphibians, marine ecosystems, and soil organisms**. They reduce bio-diversity, pollute water resources, and are unsustainable. For example, GM crops are eliminating habitat for monarch butterflies, whose populations are down 50% in the US. Roundup herbicide has been shown to cause birth defects in amphibians, embryonic deaths and endocrine disruptions, and organ damage in animals even at very low doses. GM canola has been found growing wild in North Dakota and California, threatening to pass on its herbicide tolerant genes on to weeds. 9. **GMOs do not increase yields, and work against feeding a hungry world. Whereas sustainable non-GMO agricultural methods used in developing countries have conclusively resulted in yield increases of 79% and higher, GMOs do not, on average, increase yields at all**. This was evident in the Union of Concerned Scientists’ 2009 report Failure to Yield―the definitive study to date on GM crops and yield. **The International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD) report, authored by more than 400 scientists and backed by 58 governments, stated that GM crop yields were “highly variable” and in some cases, “yields declined**.” The report noted, “Assessment of the technology lags behind its development, information is anecdotal and contradictory, and uncertainty about possible benefits and damage is unavoidable.” They determined that the current GMOs have nothing to offer the goals of reducing hunger and poverty, improving nutrition, health and rural livelihoods, and facilitating social and environmental sustainability. On the contrary, GMOs divert money and resources that would otherwise be spent on more safe, reliable, and appropriate technologies. 10. By avoiding GMOs, you contribute to the coming tipping point of consumer rejection, forcing them out of our food supply. Because GMOs give no consumer benefits, if even a small percentage of us start rejecting brands that contain them, GM ingredients will become a marketing liability. Food companies will kick them out. In Europe, for example, the tipping point was achieved in 1999, just after a high profile GMO safety scandal hit the papers and alerted citizens to the potential dangers. In the US, a consumer rebellion against GM bovine growth hormone has also reached a tipping point, kicked the cow drug out of dairy products by Wal-Mart, Starbucks, Dannon, Yoplait, and most of America’s dairies. NOTE: As an additional motivation to avoid GMOs, you may wish to take a lesson from the animals. Eyewitness reports from around the world describe several situations where animals, when given a choice, avoid genetically modified food. These include cows, pigs, geese, elk, deer, raccoons, mice, rats, squirrels, chicken, and buffalo. We’re pretty sure the animals didn’t read the above 10 reasons. The Campaign for Healthier Eating in America is designed to achieve a tipping point against GMOs in the US. The number of non-GMO shoppers needed is probably just 5% of the population. The key is to educate consumers about the [documented health dangers](http://responsibletechnology.org/gmo-education/health-risks/)and provide a [Non-GMO Shopping Guide](http://www.nongmoshoppingguide.com/) to make avoiding GMOs much easier.

## Court Clog

#### Turn – FIRE is filing tons of lawsuits against colleges with speech codes – eliminating codes solves that

**New:** New, Jake [Contributor, Inside Higher Ed] “Settling Over Speech.” Inside Higher Ed. January 2015. RP

**The Foundation for Individual Rights in Education’s attempt to end “the generation-long scandal of campus speech codes” by helping to file free-speech lawsuits against a number of colleges and universities has so far resulted in more than $200,000 in settlements**. The lawsuits are part of a campaign – called the [Stand Up for Speech Litigation Project](http://www.thefire.org/fire-brings-four-free-speech-lawsuits-in-one-day/) -- that [began in July with litigation](https://www.insidehighered.com/news/2014/07/02/fire-challenges-rules-four-colleges-chicago-state-citrus-iowa-state-ohio-and) against Chicago State University, Citrus College, Iowa State University and Ohio University. FIRE had previously brought lawsuits against [Modesto Junior College](https://www.insidehighered.com/quicktakes/2013/09/20/banning-constitution-constitution-day#sthash.ULWs4Wew.dpbs) and the University of Hawaii at Hilo for blocking students from passing out copies of the Constitution, and those suits were also folded into the campaign. The project has since grown to include Western Michigan University. "**More cases are in the works,” said Catherine Sevcenko, FIRE’s associate director of litigation. “We will continue to work with colleges and universities that reach out to us, as we have for the last 15 years.** But colleges and universities need to understand that when we filed four lawsuits in one day last July, it was not a publicity stunt.” In December, Citrus College settled its lawsuit by revising its free speech policy and paying a student $110,000 in court fees and damages. The student alleged that the college threatened to kick him off campus for discussing a petition while outside Citrus College’s “free speech zone” -- an area, FIRE said, that accounts for just 1.37 percent of the campus. The college was already forced to eliminate such zones [after a separate FIRE lawsuit in 2003](http://www.thefire.org/victory-speech-code-falls-at-citrus-college/). “The college later reinstated its speech quarantine when it thought no one was watching,” said Greg Lukianoff, FIRE’s president. In a statement, the Citrus Community College District said it will expand the college’s free speech zone to include “most open spaces on campus.” It maintains that its original policies were constitutional, and that the college agreed to the settlement only to avoid a costly lawsuit. “Freedom of expression is crucial in the higher education community, and the district and its Board of Trustees have done much to protect and advance this cherished right,” the college stated. “The challenged policies were written in compliance with a long line of U.S. Supreme Court cases relating to speech activities in public places, including college campuses.” As part of their settlements, the University of Hawaii at Hilo and Modesto Junior College also agreed to revise their free speech policies to allow free speech zones in open areas across campus. **The institutions agreed to pay $50,000 each in damages and legal fees. While these three cases were settled, FIRE is facing a bigger challenge in litigating murkier cases like those against Iowa State and Ohio University**. The Ohio lawsuit alleges that the university ordered members of Students Defending Students, a group that helps students accused of campus misconduct, to stop wearing shirts featuring the slogan “We get you off for free." The university said that it never directed any students not to wear the T-shirts, however, turning the lawsuit into a case of “he said, she said.” Another T-shirt fracas led to the lawsuit at Iowa State, where students and FIRE allege that administrators manipulated the university’s trademark policy to not allow the continued use of the ISU cardinal mascot on a shirt designed by the campus chapter of the National Organization for the Reform of Marijuana Laws. The university argues that the case is not about free speech, but about whether “Iowa State University should retain the right to administer its own trademarks.” On those grounds, the university motioned to dismiss the lawsuit, but an Iowa federal judge rejected the request in January, saying that “no infringement is involved in the case at hand.” It’s the first time a judge has ruled in any of the cases brought by FIRE’s litigation project. The case will now go to trial in December. Sevcenko said FIRE will continue to bring more lawsuits this year, but there’s no set timetable for when new cases will be announced (the original goal was to sue another college for every lawsuit that was completed). At least nine schools, she said, have already revised some of their speech codes in response to the project. “One of Stand Up for Free Speech’s broader goals is to change the calculus of college administrators to realize that not respecting the First Amendment rights of students and faculty carries a high monetary and reputational cost,” she said. “We have strong indications that our message is being heard.”

#### Partisan logjams and refusal to nominate judges thumps.

**Wydra:** Wydra, Elizabeth [Contributor, The Morning Call] “Justice delayed by GOP inaction on U.S. court nominees.” *The Morning Call.* October 13, 2016. RP

**Likewise, the Constitution's promise of justice and due process is being undermined by Senate Republicans' abdication of their constitutional duty to advise and consent on judicial nominations**. Despite an increasing number of vacancies since they gained control of the Senate in 2015, Republicans have confirmed just 22 nominees — a record low since the 1950s when the judiciary was half its current size. Federal courts around the country are short a total of almost 100 judges. Pennsylvania alone has six federal trial court vacancies, three of which have existed for over three years. The state is also affected by two vacancies on the Third Circuit Court of Appeals, which has jurisdiction over Pennsylvania. **Sixteen of the total pending nominees have been in the pipeline for over a year, and 35 of the pending vacancies are considered to be "judicial emergencies," which means the courts on which they exist are excessively overburdened. The refusal of Senate Republicans to hold a hearing, much less hold an up-or-down vote, on the nomination of Judge Merrick Garland to the Supreme Court is especially egregious, paralyzing the high court when the eight justices are evenly divided, and chipping away at the court's stature and credibility by injecting it with politics**. These judicial vacancies aren't just a set of numbers. They affect the lives of every man, woman and child in this country who relies on the courts for timely justice on issues, including civil rights, voting rights, clean air and water, and corporate responsibility, not to mention civil and criminal rights. President Barack Obama — elected by the majority of the people not once but twice — has fulfilled his constitutional duty by selecting qualified judicial nominees, and in many cases, nominees respected by Republicans as well as Democrats. Yet, Senate Majority Leader Mitch McConnell — with the help of his caucus, including Sen. [Pat Toomey](http://www.mcall.com/topic/politics-government/government/patrick-j.-toomey-PEPLT006645-topic.html) — is content to pervert the law to serve his partisan political ends: the hope that a Republican will be elected the next president and nominate a conservative justice to preserve the court's rightward tilt. **This intentional judicial logjam is unprecedented and dangerous,** and Sen. Toomey should reject the willingness of the Senate's Republican leadership to diminish the judicial system and flout Americans' ability to vindicate their rights. So, in honor of our Constitution, signed 229 years ago last month, and the subsequent amendments that have made it ever more faithful to our founding values, let's rededicate ourselves to its progress and promise and the system of justice we need to make it a reality.

## Violent Protest

#### No link – violent protests aren’t included in free speech – the Aff didn’t cause the Berkeley protests

**Mitchell:** Mitchell, Anne [Contributor, Stanford Review] “Let Milo Speak.” February 2017. RP

**Last week the Daily Californian absurdly**[**claimed**](http://www.dailycal.org/2017/02/03/protest-shows-presence-free-speech-campus/)**that the violent protests by students and outside activists against Milo Yiannopoulos’s speech were an exercise of “free speech.” Far from it. If students truly think that violent protests are “a grand display of the same freedom of speech Yiannopoulos uses,” they are deluding themselves. Any ten-year-old reading the First Amendment for the first time knows that there is a difference between violently inflicting $100,000 in damages and peacefully giving a talk at a university-sponsored event.**

#### Silencing speakers causes greater violence – also, most of the protesters weren’t students anyways but wanted violence.

**Mitchell:** Mitchell, Anne [Contributor, Stanford Review] “Let Milo Speak.” February 2017. RP

**Most of the violent agitators were not Berkeley students.** But nonetheless, Berkeley’s reaction to Milo’s prospective talk was troubling. After his invitation by the College Republicans, a dozen faculty members [wrote](http://www.dailycal.org/2017/01/10/uc-berkeley-professors-request-cancellation-milo-yiannopoulos-talk/) an open letter to the administration asking for the event to be canceled on grounds that his “harassment, slander, defamation and hate speech” violated Berkeley’s code of conduct. Separately, hundreds of students and faculty wrote to the administration. Even more, there’s a distinction between deciding whether to invite a controversial speaker, or silencing him once he has already been invited. Certainly the second type of speech is protected. **But Milo had already been invited by a student group and funded by the university. While peacefully protesting an event is certainly justified, attempting to prevent it from even being held is deeply troubling**. Perhaps incidents of extreme hatred that target individual students justify censorship. When Milo’s history [includes](http://nymag.com/thecut/2016/12/milo-yiannopoulos-harassed-a-trans-student-at-uw-milwaukee.html) projecting an image of and mocking a transgender student at the University of Wisconsin, threat of personal harassment was the most convincing argument for cancellation. At Berkeley, rumors (which he vehemently denied) floated that he would [release](http://www.independent.co.uk/news/world/americas/uc-berkely-protests-milo-yiannopoulos-publicly-name-undocumented-students-cancelled-talk-illegals-a7561321.html) the names of undocumented students. Such actions could ruin lives. **Even so, isolated incidents of harassment are too rare to justify the precedent of silencing a speaker. If anything, liberal campuses like Berkeley and Stanford err on the side of far too little intellectual diversity. Cancelling a speech on the vague justification of “hate speech” will set a far more dangerous precedent than allowing a bigoted speaker like Milo to spew his unreasonable hate. The more troubling trend is not hateful speakers on college campuses, but disrespect for the very institution of free speech.** Of course it is not as if the average Berkeley student attending the talk was likely to become a devoted member of the alt-right. And of course, student groups should deliberate carefully over whether to invite certain speakers in the first place. **We believe strongly that student groups should contribute to a spirit of complex, nuanced, and reasonable dialogue**. For that reason, the Review [decided](https://stanfordreview.org/why-we-said-no-749bfdf433e0#.7fj8xc5fu) not to invite Milo last year when a student asked us to sponsor.But when this right for students to engage in dialogue is questioned, ideas rise or fall not on merit, but on who writes censorship laws or has enough [Molotov cocktails](http://www.cnn.com/2017/02/01/us/milo-yiannopoulos-berkeley/). Why should a certain group of people determine what is worth hearing? Liberal students rightfully [criticize](http://www.rollingstone.com/politics/features/donald-trumps-dictatorial-approach-to-free-speech-w452918) Donald Trump for declaring that flag burning should be illegal despite constitutional protections of political dissent. But hypocritically, those students don’t seem to care about the principle of free speech on their own campuses when it protects speakers they disagree with — hence countless cancellations of controversial speakers at university campuses.

## Tuition

#### Non unique – tuition is as expensive as it’s ever been

**Siegel**: Siegel, Ethan [Contributor, Forbes] “Why College Is So Expensive, And How To Fix It.” *Forbes.* March 2016. RP

**It's no secret that a college education in America is more expensive than it's ever been. With tuitions at many Universities now exceeding $40,000 per year, even a plethora of financial aid opportunities and scholarships leave the average student approaching or upwards of six figures in debt as a result of their four-year degree**. At the same time, while tuitions have skyrocketed, the number of full-time, tenured (or tenure-track) faculty have barely increased at all, while the number of part-time adjuncts (usually without benefits) have made up the gap. You don't need to be a math professor to know that this doesn't add up: students are paying more than ever, while there hasn't been a real increase in the number or salary of full-time professors. **It's no secret where all the money has gone, though. It's gone to administrative overhead, as that's where the majority of "growth" in colleges have been.**

#### Turn – protests against student debt and tuition are effective

**Williams:** Williams, Joseph [A veteran journalist and former White House correspondent for Politico, Joseph Williams is a freelance writer, blogger, and essayist in Washington, D.C.] “Students Strike to Protest College Costs, Lack of Opportunities for Grads.”November 2015. RP

**College students from Massachusetts to Washington walked out of classrooms and took to the campus quad Thursday, pushing back against twin economic threats: the high cost of a college degree and the low starting wages paid to schools’ blue-collar employees**. The goal of the [Million Student March](http://studentmarch.org/), organizers say, is to demonstrate the need for sweeping reforms to make higher education free, forgive debt for those who owe five-figure student loans, and implement a $15-an-hour minimum salary for campus workers who landscape, prepare dining-hall meals, and generally keep things running. **Protests took place at 116 schools coast to coast, backed by local labor unions and influential liberal activists including Noam Chomsky**, said Kyle Butts, a University of California, Santa Barbara, student and member of the Million Student March’s central organizing committee. **Photos and videos** [**posted on social media**](https://storify.com/ngrymillennials/millionstudentmarch) **showed organized protesters at a broad range of campuses—public schools such Texas State University and private ones such as DePaul University in Chicago, as well as community colleges and two-year schools. Strong action is necessar**y, Butts said, because skyrocketing tuition “limits access to higher education for all students.” He **said the march on his campus drew 1,500 participants and featured a “Wall of Debt,” a wall on one of the buildings where students and graduates posted how much they owe.** The debt “was constantly above $40,000, constantly above $60,000,” Butts said. Given that college is a requirement for most jobs, he added, success “is not [based on] our drive and work ethic. It’s our inheritance.” Saddled with debt, college graduates “can’t pursue their dreams” but instead need a steady job just to repay loans, he said. Protesters at UC Santa Barbara and other campuses linked arms with members of the Fight for 15 movement, which is pushing to increase the federal minimum wage to $15 an hour from the current minimum of $7.25. “College tuition and the cost of textbooks place an inherent strain” on young people trying to get ahead, said Robert Ribaudo, a student at South Seattle College. A military veteran, Ribaudo is the college’s student body president; he helped organize the campus’ 300-person rally. Even though he gets a GI Bill stipend, Ribaudo said, the $1,000 a month the government gives him doesn’t cover the cost of his textbooks, some of which cost $300 apiece. “I cannot afford textbooks. There needs to be a change,” he said. The evidence backs him up: [Multiple studies have shown](http://www.takepart.com/article/2014/10/22/cosign-times-rich-are-borrowing-pay-college-too) that as college costs skyrocketed, state and federal tuition assistance plunged. Pell Grants, for example, once covered as much as 70 percent of a student’s tuition; now they pay for just 30 percent. At the same time, the Great Recession took a wrecking ball to family wealth, wiping out college investment plans as well as home equity—the chief source of collateral for student loans. A recent Pew Center for Research survey found that in 2012, a record 69 percent of all U.S. students borrowed money for college, and the amount borrowed more than doubled over two decades, from $12,434 for the class of 1992–93 to $26,885 for the class of 2011–12. While critics on Twitter derided the march and the notion of free college, Ribaudo said he thinks a tuition-free education is a logical step. Hundreds of years ago, state and local governments decided to make kindergarten and secondary school free for every child, an investment that paid off with an educated citizenry and workforce. The same thinking should apply with college, Ribaudo said, particularly because economists predict that most well-paying jobs will require at least some postsecondary education. Amen, said Butts, noting that some parents with kids in college are still paying off their own student-loan debt. “**It’s absolutely ridiculous,” he said. Ultimately, Butts said, the walkout delivered a “very, very clear” message to the powers that be and showed that student activism isn’t dead. “Our goal for this march is our demands had to enter the national dialogue,” he said, adding that he expects Democratic presidential hopefuls Bernie Sanders and Hillary Clinton—who have competing plans to make college affordable—to face questions about the movement in the debate on Saturday.**

#### Alt cause – bloated administrative costs – outweighs their nickle and dime link

**Siegel**: Siegel, Ethan [Contributor, Forbes] “Why College Is So Expensive, And How To Fix It.” *Forbes.* March 2016. RP

**As the government's budget changed, so did the University's funding: it was recently called on to reduce its annual expenditures**[**by just over 100 million Euros over the next few years**](https://www.helsinki.fi/en/news/the-university-of-helsinki-terminates-570-employees-overall-staff-cuts-total-980)**, or about 15% of their total budget.** The reduction in funding will escalate every year, and take full effect in the 2019-2020 academic year. If you were the University of Helsinki, what would you do? What or whom would you cut? **As it turns out -- and this isn't abnormal -- a full two thirds of the University's annual expenditures are spent on salary for employees, including faculty, staff and administration. So it's no surprise that the majority of the cuts will affect employees: by the end of 2020, the University is anticipating a total reduction in its workforce of 980 people. But here's the good news and the smart lesson: how those 980 employees are broken down. 200 employees will retire, with no one hired to take their place**. Of the retiring employees, only 60 are teaching and research positions; the other 140 are non-academic (support and administration) positions. 210 fixed-term (adjunct, visiting or other year-to-year) positions will be eliminated and not renewed, 160 of which are academic (teaching and research) positions with 50 non-academic ones. And 570 employees will be terminated, which include 75 teaching and research staff and 495 non-academic administration and staff. This means that of the 980 positions to be reduced, only 135 of them -- or 14% -- are full-time, long-term academic faculty, nearly half of whom are retiring. On the other hand, 635 long-term support and administration staff members are being reduced: 65% of the total workforce reduction. While many will claim that it's always a negative when support for education is cut, I look at the silver lining here: the workforce reduction that University of Helsinki chose showcases exactly what makes a college or university great.

## Campaign Expenditures

#### The right to give unlimited money to student elections isn’t protected constitutionally.

**Powers:** Powers, David M. [Contributor, College Student Affairs Journal] “The Constitutional Implications of Expenditure Limits in Student Government Elections.” January 2009. RP

**The first amendment to the Unites States Constitution protects the right of free speech. Of course, this freedom is not absolute. This is particularly true on college campuses. The U.S. Supreme Court has held that universities and colleges have the right to "control activity which may be detrimental to the sacred provision of higher education**" (Willis, 1997). **Further, universities have a right "to make academic judgments as how to best allocate scarce resources** [and] to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study" (Widmar v. Vincent, 1981, p. 276). **Because these rights sometimes conflict, the courts must seek to balance them with one another.** Widmar, 1981, p. 276).

#### Discount evidence that’s not about student governments – SCOTUS rulings in other contexts don’t apply – their speech isn’t protected constitutionally.

**Powers:** Powers, David M. [Contributor, College Student Affairs Journal] “The Constitutional Implications of Expenditure Limits in Student Government Elections.” January 2009. RP

**In this paper, I will examine this conflict in the context of spending limits placed by universities on candidates running for positions in student government. Most, if not all, universities place some limits on the campaign activities of their students. While the U.S. Supreme Court held in Buckley v. Valeo that the first amendment protects unlimited campaign expenditures in civil politics,** the courts have thus far declined to extend this principle to student government elections in several pivotal cases**. The most recent case to address this issue was Flint v. Dennison, decided in June 2007**. In that case, the Ninth Circuit was only the second Federal Appeals Court to examine the issue, the other being the Eleventh Circuit. This paper will analyze those holdings, as well as the rationale that those courts used to reach their decisions.

#### Campaign spending is key to helping the economy and educating the public.

**Dorfman:** Dortman, Jeffrey [Contributor, Forbes] “Campaign Spending Freedom Is Great For Speech and The Advertising-Media Sector.” *Forbes.* October 2014. RP

Many voices on the left complained vociferously each time in the past few years that the Supreme Court rolled back unconstitutional campaign finance restrictions. **Yet the loosening of the rules on campaign donations and campaign spending are showing positive signs in both the political arena and in an economic one: the advertising sector**. In terms of politics, it should be self-evident that more speech is better than less. The first amendment really only had two points as the Founding Fathers saw it: protect the press so they could expose any government wrongdoing and ensure freedom of speech for political arguments. [Nude dancing](http://www.forbes.com/sites/jeffreydorfman/2013/10/08/the-1st-amendment-protects-nude-dancing-so-why-not-political-speech/) was not on their minds. Read the history of the revolutionary period and the early presidential campaigns and you will realize that the campaigns were wild, often dirty, free-wheeling affairs. Today’s negative campaigners have nothing on their forefathers of two centuries ago. Yet, beginning with a perhaps natural reaction to Watergate, a few incumbent politicians who wanted to protect their own reelections by making it harder for non-incumbents to raise money pushed through a series of restrictions on campaign financing, effectively reducing freedom of speech. **We should all be glad that we are moving back in the direction of freedom of political speech. And no one has more to be glad about than the political operatives who design and buy advertising time and the corporations who sell the media slots to them. According to** [**Ashley Parker**](http://www.nytimes.com/2014/07/28/us/politics/deluge-of-political-ads-is-driven-by-outside-money.html) **in The New York Times, spending on political advertising for the 2014 elections is up 70 percent over the last midterm elections in 2010. That will add up to about $2 billion in advertising buys** just on House and Senate races with gubernatorial and local races added to that. Media consultants and campaign advisors who help design their candidate’s media strategy and place the advertising buys commonly earn high salaries and [commissions](http://www.slate.com/articles/news_and_politics/explainer/2008/02/how_much_do_campaign_staffers_make.html) equal to as much as 7 percent of the advertising spending. That means that media consultants could stand to make $50 million off the increased spending just in the Congressional races. Freedom of speech appears to be excellent for media consultants. The Supreme Court’s ruling in Citizens United might have been one of the best stimulus actions of the entire Obama presidency. For media companies that are selling the advertising space, the increased political advertising is a bit of a mixed bag. Political candidates must be offered time or space for their ads at the lowest rates the outlet has charged to any other advertisers for equivalent spots. That means that more political ads could mean lower revenues for the media companies. However, there is good news for the media companies as well. In this election cycle, [an increased share](http://www.nytimes.com/2014/10/11/us/politics/ads-paid-for-by-secret-money-flood-the-midterm-elections.html?_r=0) of the political ads is being bought by outside groups. Outside groups do not benefit from the same preferential pricing, so media companies can charge them higher rates. Thus, the Supreme Court rulings like Citizens United that have made it easier for such groups to operate is a boon to those selling space for political ads. **Political speech is a good thing. When all sides and parties are free to express their opinions and make their case in favor of their causes and candidates, we get better, more informed elections and hopefully better election results**. Beyond the political benefits of more free speech, there are also economic benefits to more political speech. **Media companies selling advertising space and the media consultants purchasing those ads both stand to make more money this election cycle thanks to the Supreme Court’s loosening restrictions on campaign financing and spending. Whatever their political beliefs about campaign finance law, the current rules are fattening their wallets while they educate the voters.**

#### Unlimited campaign spending isn’t constitutionally protected speech.

**Demos:** Demos [Organization and activist group] “SUPREME COURT ALLOWS SPENDING LIMITS FOR STUDENT GOVERNMENT ELECTIONS AT UNIVERSITY OF MONTANA, REJECTING FIRST AMENDMENT CHALLENGE.” January 2008. RP

**The Supreme Court today turned back a constitutional challenge to spending limits for student government campaigns at the University of Montana**, denying review of a June 2007 ruling by the Ninth Circuit that upheld the limits. **The Supreme Court's action is a victory for the Associated Students of the University of Montana ("ASUM") and the University, which argued that the limits on campaign spending serve to assure all students, regardless of their financial circumstances, an equal opportunity to win election to student government**. Brenda Wright, Legal Director of Demos, a non-profit organization that assisted in defending the University's spending limits, called the ruling '"a victory for fair elections and educational opportunity," stating "**the** **First Amendment was never designed to make student government participation a function of a student's wealth**." The case was brought in 2004 by former UM student Aaron Flint, who exceeded the $100 spending cap in his effort to win a seat on the ASUM Senate and was disqualified from taking his seat as a result of the violation. A nationally prominent opponent of campaign finance regulation, James Bopp, Jr., represented Flint and argued that the First Amendment guaranteed Flint the right to spend unlimited sums in his quest for a student government seat. The Ninth Circuit, however, found ample justification for ASUM's campaign limits, observing: "**Imposing limits on candidate spending requires student candidates to focus on desirable qualities such as the art of persuasion, public speaking, and answering questions face-to-face with one's potential constituents**. Students are forced to campaign personally, wearing out their shoe-leather rather than wearing out a parent's--or an activist organization's--pocketbook." **The Supreme Court's ruling today means that the Ninth Circuit's decision will stand as the leading appellate precedent on the constitutionality of rules designed to foster fair access to student government participation**. The Ninth Circuit includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington. Demos attorneys Brenda Wright and Lisa J. Danetz joined David Aronofsky, University of Montana Legal Counsel, in defending the University's campaign spending limits in the Supreme Court.

#### No link uniqueness – they haven’t shown that speech codes are currently preventing campaign expenditures

#### No link – their evidence is absolutely atrocious – no reason why allowing free speech would increase campaign speech – they haven’t shown that people even desire this speech in the status quo

#### Citizens United thumps – that means that corporations can always outspend individuals anyway even if they’re on a level playing field and crowd ot voices on campus

## Title IX – Harassment

#### Non Unique – backlog is growing and cases aren’t being investigated because of a lack of funding which thumps

**Kingkade:** Kingkade, Tyler [Contributor, Huffington Post] “There Are Far More Title IX Investigations Of Colleges Than Most People Know.” *Huffington Post.* June 2016. RP

**The backlog of Title IX probes, which** [**has frustrated some U.S. senators**](http://www.huffingtonpost.com/2015/05/05/sexual-assault-backlog-education-department_n_7215748.html)**, can leave complainants wondering for years if they will see any remedy. By her own count, the former Notre Dame graduate student has already waited 1,011 days to find out whether the Education Department agrees that the university violated Title IX in her case**. “I’m very frustrated with how long my complaint has been open,” she said. But she added, “I do think they’re doing, if not the best they can, close to the best they can, with the resources they have. **They don’t have enough investigators.”** Besides the simple fact of 315 ongoing cases, the Education Department noted that these investigations are complicated. “Harassment investigations tend to be highly complex and often involve systemic issues, in addition to issues pertaining to specific students,” the department said in a statement. “As part of its investigation process, OCR gathers information through a variety of methods such as data requests, interviews and site visits and analyzes all relevant evidence from the parties involved in the case to develop its findings.” The Education Department has repeatedly requested [an increase in funding](http://www.huffingtonpost.com/entry/federal-funding-campus-rape-investigations_us_568af080e4b014efe0db5f76) to add personnel. **The Office for Civil Rights staff** [**has shrunk**](http://www.huffingtonpost.com/entry/obama-office-for-civil-rights-budget_us_56ba34d5e4b08ffac122d747)**since the 1980s, while the number of complaints it receives has shot up dramatically in recent years**. (In the chart below, “FTE usage” refers to the number of “full-time equivalent” workers.) It might be “one of the few places where throwing money at a problem” would actually fix things, said Nancy Chi Cantalupo, a Barry University law professor who has closely monitored Title IX investigations.  “**The main solution is really to just get OCR more money and more staff,” Cantalupo said. “If they don’t get more money and more staff, then this backlog is never going to be fixed.”**

#### Title IX hurts students of color and perpetuates racism.

**Gersen:** Gersen, Jeannie Suk [Contributoring writer for New Yorker and Professor, Harvard Law School.] “SHUTTING DOWN CONVERSATIONS ABOUT RAPE AT HARVARD LAW.” DECEMBER 2015. RP

The ironclad principle that you must always believe the accuser comes as a corrective to hundreds of years in which rape victims were systematically disbelieved and painted as liars, sluts, or crazies. This history, along with the facts that sexual assault is notoriously underreported and that the crime suffers no more false reports than other crimes—and the related idea that only those actually assaulted would take on the burden of coming forward—leads many advocates today to the “always believe” orthodoxy. We have seen recent high-profile instances in which that article of faith has led to damaging errors, as in Rolling Stone’s reporting of a rape at the University of Virginia, or the prosecution of the Duke lacrosse case. **The extent of the damage comes out of the fact that “always believe” unwittingly renders the stakes of each individual case impossibly high, by linking the veracity of any one claim to the veracity of all claims. When the core belief is that accusers never lie, if any one accuser has lied, it brings into question the stability of the entire thought system, rendering uncertain all allegations of sexual assault. But this is neither sensible nor necessary: that a few claims turn out to be false does not mean that all, most, or even many claims are wrongful. The imperative to act as though every accusation must be true—when we all know some number will not be—harms the over-all credibility of sexual assault claims**. Sexual assault is a serious and insidious problem that occurs with intolerable frequency on college campuses and elsewhere. **Fighting it entails, among other things, dismantling the historical bias against victims, particularly black victims—and not simply replacing it with the tenet that an accuser must always and unthinkingly be fully believed.** It is as important and logically necessary to acknowledge the possibility of wrongful accusations of sexual assault as it is to recognize that most rape claims are true. And if we have learned from the public reckoning with the racial impact of over-criminalization, mass incarceration, and law enforcement bias, we should heed our legacy of bias against black men in rape accusations. **The dynamics of racially disproportionate impact affect minority men in the pattern of campus sexual-misconduct accusations, which schools, conveniently, do not track, despite all the campus-climate surveys. Administrators and faculty who routinely work on sexual-misconduct cases, including my colleague Janet Halley, tell me that most of the complaints they see are against minorities, and that is consistent with what I have seen at Harvard. The “always believe” credo will aggravate and hide this context, aided by campus confidentiality norms that make any racial pattern difficult to study and expose**. Let’s challenge it. Particularly in this time of student activism around structural and implicit racial bias pervading campuses, examination of the racial impact of Title IX bureaucracy is overdue. We are all fallible—professors, students, and administrators—and disagreement and competing narratives will abound. But equating critique with a hostile environment is neither safe nor helpful for victims. We should be attentive to our history and context, and be open to believing, disbelieving, agreeing, or disagreeing, in individual instances, based on evidence.

#### Harassment isn’t even considered speech, so the Aff doesn’t affect it.

**The ACLU:** The American Civil Liberties Union [Organization that sues for justice and writes about the law] “Hate Speech on Campus.” *ACLU.* 2016. RP

A: Yes. **The ACLU believes that hate speech stops being just speech and becomes conduct when it targets a particular individua**l, and when it forms a pattern of behavior that interferes with a student's ability to exercise his or her right to participate fully in the life of the university. **The ACLU isn't opposed to regulations that penalize acts of violence, harassment or intimidation, and invasions of privacy**. On the contrary, we believe that kind of conduct should be punished. **Furthermore, the ACLU recognizes that the mere presence of speech as one element in an act of violence, harassment, intimidation or privacy invasion doesn't immunize that act from punishment**. For example, threatening, bias-inspired phone calls to a student's dorm room, or white students shouting racist epithets at a woman of color as they follow her across campus -- these are clearly punishable acts. Several universities have initiated policies that both support free speech and counter discriminatory conduct. Arizona State, for example, formed a "Campus Environment Team" that acts as an education, information and referral service. **The team of specially trained faculty, students and administrators works to foster an environment in which discriminatory harassment is less likely to occur, while also safeguarding academic freedom and freedom of speech.**

#### No Link – harassment is not protected.

**McClellan:** McClellan, Cara [J.D., Yale Law. Judicial Law Clerk at United States District Court] “Discrimination as Disruption: Addressing Hostile Environments Without Violating the Constitution.” November 2015. RP

\*title VI: PROHIBITS DISCRIMINATION BASED ON RACE, COLOR OR NATIONAL ORIGIN IN PROGRAMS OR ACTIVITIES WHICH RECEIVE FEDERAL FINANCIAL ASSISTANCE.

Universities that act to address a hostile environment can defend their actions against First Amendment challenges based upon the interest of students in attending a safe and orderly school where “the work and discipline of the school” is not “materially and substantially disrupted.”[37] **The Supreme Court has long recognized that “First Amendment rights must be analyzed ‘in light of the special characteristics of the school environment.’**”[38] “A university’s mission is education” and the Supreme Court [SCOTUS] has never “denied a university’s authority to impose reasonable regulations compatible with that mission,” even when the restricted speech would be protected in other settings.[39] **Supreme Court cases addressing academic freedom permit schools to restrict speech that would offend “reasonable campus rules, interrupt classes, or substantially interfere with the opportunity of other[s] students to obtain an education.”[40 Healy] While the Court recognized the right of students to express their political beliefs through protest in Tinker v. Des Moines Independent Community School District, the Court simultaneously affirmed that schools can prohibit speech “which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities.”[41] [and] In Healy v. James,[42] the Court affirmed that universities may require reasonable regulations for the “interest of the entire academic[s] community.**”[43] Free expression and debate in the university are protected to the extent “consonant with the maintenance of order.”[44] While the justification for pedagogical oversight is less compelling in the university setting than in elementary and high schools, university officials still have deference to “prescribe and control conduct in the schools.”[45] Of course, an “‘undifferentiated fear or apprehension of disturbance’”[46] without any particularized reason as to why the school anticipates substantial disruption would not be sufficient to restrict speech under Title VI. The Tenth Circuit’s decision in West v. Derby Unified School District No. 260[47] illustrates this point. In this case a middle school student was suspended for drawing a Confederate flag in math class. The Court upheld the suspension under Tinker’s substantial disruption standard, finding that the school had demonstrated a concrete threat of substantial disruption: “The district experienced a series of racial incidents [including ‘hostile confrontations’ and at least one fight] in 1995, some of which were related to the Confederate flag.”[48] The Tenth Circuit held that the “history of racial tension in the district made administrators’ concerns . . . reasonable.”[49] But even when facts do not suggest a disruption in the sense of an uproar, evidence of a hostile environment is proof of the disruption of a university’s mission in the most fundamental sense of Tinker. **When harassment based on race rises to a level of severity and pervasiveness that qualifies for Title VI protection, minority students have, by definition, been prevented from accessing educational programing. In such cases, schools are justified in intervening under the First Amendment’s recognition of pedagogical interests.** Simply because hostile environment disruptions happen quietly when a student is too distracted to learn, or in ways that most intensely affect minority students who are few in number, or in ways that become invisible because the students who are affected withdraw from the hostile environment, this does not mean that the interference does not occur. In fact, this kind of disruption is precisely what hostile environment discrimination law is concerned with: a disruption in the education of minority students that leads these students to feel unwelcome and quietly disappear. Hostile environment conduct “intrudes upon . . . the rights of other students”[50] to learn—a legitimate justification for regulation of speech under Tinker.

#### Non unique – Trump will rollback all sexual harassment legislation on campuses.

**Van Syckle:** Van Syckle, Katie [Contributor, The Cut] “Here’s What a Trump Administration Could Mean for Campus Sexual Assault.” *The Cut.* January 2017. RP

**During Betsy DeVos’s Senate confirmation hearing yesterday afternoon, Trump’s nominee for Department of Education secretary dodged questions about how she would address college sexual assault** — a top concern under the Obama administration. Over the last eight years, the White House took bold steps to combat high rates of sexual violence and harassment on college campuses. In 2011, the Obama administration issued [Title IX guidance](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html), which said that schools were responsible for protecting students from sexual harassment and sexual violence on their campuses. In response, the Department of Education’s Office of Civil Rights [launched investigations](http://www.huffingtonpost.com/entry/title-ix-investigations-sexual-harassment_us_575f4b0ee4b053d433061b3d) into more than 300 schools for failing to comply. During the hearing, DeVos said it would be “[premature](https://www.theguardian.com/us-news/2017/jan/17/betsy-devos-hearing-prompts-fears-for-campus-sexual-assault-protections)” to commit to upholding Obama’s Title IX guidance, and she wanted to know more about the issue, setting off alarm bells for sexual-assault activists and educators. Andrea Pino, co-founder of End Rape on Campus, co-wrote a letter with the group Know Your IX to DeVos, calling on the nominee to support survivors. “[The Obama] administration has been so influential in getting the things we once thought of as dreams to be a reality. I think there is a lot of fear and uncertainty now,” Pino said. “**We can still step backwards.” How far can Trump and DeVos go in rolling back initiatives protecting college students on campus? And what would the consequences be?** We unpacked the fine print. What is Title IX?  Title IX is one part of the Educational Amendments of 1972, which prohibits discrimination on the basis of sex, and applies to all schools, public and private, that receive federal funding. (Almost every educational institution from kindergarten through graduate school receives federal funding.) Why did the Obama administration send a letter in 2011 telling colleges how to interpret Title IX? [According](http://www.nsvrc.org/saam/campus-resource-list) to data from National Institute of Justice, one in five women experienced completed or attempted rape while in college, and the Obama administration felt this impacted a student’s right to an equal education as guaranteed under Title IX. Many students who experienced sexual violence while in school said when they reported these incidents to their schools, their cases were often ignored or mishandled. As a result, these students, who may have had to face a perpetrator in their classes, were often at risk of dropping out of school, or developing mental-health issues like anxiety, depression, and PTSD. What did the 2011 Title IX guidance letter do?  The Title IX guidance, also known as the “Dear Colleague” letter, interpreted Title IX more broadly than ever before. The letter told schools it was their responsibility under Title IX to guarantee an educational atmosphere free of gender-based violence and take “immediate and effective” steps to respond. Students began bringing complaints against their universities, and the Department of Education’s Office of Civil Rights has since launched more than 340 investigations into how colleges across the country have mishandled reports of sexual violence. How could a Trump administration undo these efforts? **Because Obama’s 2011 guidance letter is just his administration’s interpretation of Title IX, a Trump administration could ignore this interpretation and instead encourage the police to handle these crimes, and tell colleges these reports are not their responsibility to address. This could discourage survivors from reporting assaults, and remove the pressure from high schools, colleges, and universities to address and reduce sexual violence on their campuses. Between Betsy DeVos not committing to uphold Obama’s guidance letter, and Trump’s own distaste for the Department of Education, anything is possible. (Trump has said, he would like to eliminate the Department of Education entirely, calling it “massive and largely unnecessary**” — although his nomination of DeVos suggests the Department of Education will be around for a little bit longer.) One of Trump’s advisers during the presidential campaign, New York state co-chairman, Carl Paladino, said the Office for Civil Rights is also unnecessary and “self-perpetuating absolute nonsense.” He argued that all discrimination cases should be handled by U.S. attorneys. Republican leaders have repeatedly argued that Obama’s interpretation of Title IX is too broad, and college sexual-assault cases should be handled by the criminal-justice system. The GOP platform, released at the RNC this year, said sexual assault is a “terrible crime,” but cases should be “investigated by civil authorities and prosecuted in a courtroom, not a faculty lounge.” The Foundation for Individual Rights in Education has also expressed concern that leaving these cases to the schools to adjudicate could violate a student’s right to due process. (DeVos and her husband have donated $10,000 to FIRE.) FratPAC, the lobbying arm of fraternities and sororities, is also concerned that students accused of sexual assault are treated unfairly, and in the past has called for schools to turn to the criminal-justice system. It is unclear. Currently, more than 200 investigations are still ongoing, and staff say they are already overwhelmed by the caseload. (The Chronicle for Higher Education has a full [database](http://projects.chronicle.com/titleix/) of the complaints and their status.) In the 2017 budget, Congress will allocate funds for crisis hotlines, shelters, rape-kit testing, courts, law enforcement, rape crisis centers, and community outreach through the Violence Against Women Act, the Family Violence Prevention and Services Act, and the Victims of Crime Act. These laws could all face cuts under a Republican administration. Yes. The [Campus Accountability and Safety Act](https://www.congress.gov/bill/114th-congress/senate-bill/590), a bill co-sponsored by Senators Claire McCaskill and Kirsten Gillibrand, has nine bipartisan backers, including Sen. Marco Rubio and Senator Lindsay Graham, and is currently working its way through the Senate. The bill aims to improve how public colleges and universities handle sexual assault and other violent crimes by requiring colleges to publish their crime stats on their websites, participate in a campus climate surveys, make confidential advisers available to students, and work closely with local police departments.

#### Normal means entails universities self-regulating harassment, and they circumvent.

**Thomas:** Thomas, Katie [Contributor, The New York Times] “Review Shows Title IX Is Not Significantly Enforced.” *The New York Times.* July 2011. RP

“**Unfortunately what we see is that many schools are getting away with providing fewer opportunities to girls because they don’t do what they’re supposed to unless made to**,” said Neena Chaudhry, senior counsel at the National Women’s Law Center. Current and former enforcement officials insist they have worked hard to mount meaningful investigations, and they defended the policy of allowing schools to investigate themselves. Most schools, they said, want to correct their problems once they learn they are violating the law. For every Ball State or U.S.C., there are also examples of cases in which investigations by the office yielded significant results. Earlier this year, Lincoln Land Community College in Illinois added a practice field for the women’s softball team, installed two new bullpens, and agreed to give softball and baseball players equal access to batting cages. And Southeastern Community College in Iowa agreed to expand the size of its women’s basketball court, and to give the baseball and softball team equal access to lighted fields. Complaints involving Title IX — and athletics in particular — make up a tiny minority of cases for the Office for Civil Rights, but because of the political weight they often carry, they are among the most time-consuming and closely scrutinized that the office handles, according to interviews with several former civil rights office employees. “**The arena is remarkably politicized**,” said Arthur Coleman, who served as senior policy adviser at the Office for Civil Rights during the Clinton administration. The U.S.C. inquiry illustrates how a complex case and a reluctance to cooperate translated into the longest-running Title IX athletics investigation in the office’s caseload. Linda Joplin, a member of the California chapter of the National Organization for Women, made national headlines when she filed a complaint in 1998 against U.S.C., an athletic powerhouse whose football team is a perennial contender for the national title. The university is private but is subject to Title IX because it receives federal assistance in the form of grants and student aid. Joplin alleged that female athletes at U.S.C. lagged significantly behind men, and women were being denied their fair share of scholarship dollars and other sports spending. After the Office for Civil Rights began its investigation, U.S.C. dug in its heels, recalled Patricia Shelton, the longtime lead investigator on the case, who has since retired. U.S.C. insisted it was doing right by its female students, offering them, for example, the maximum number of athletic scholarships permitted under the rules. But Shelton, the agency’s investigator, said the university also declined to turn over key financial data that would have shown whether it was spending equal amounts of money on men’s and  women’s teams. Kelly Bendell, a lawyer for U.S.C. who has worked on the case since 2000, said the university had complied with all requests for information after initially resisting because of concerns about turning over proprietary financial data. Disputes over basic information explain only parts of the nearly endless case. Bendell, the lawyer for the university, said the agency conducting the investigation “seemed to drop the matter” for five years, with no contact between it and U.S.C. from 2003 to 2008. Shelton, the lead investigator, said responsibility for delays rested with her superiors in Washington. She said she repeatedly wrote up her findings, only to be told they were out of date and needed to be resubmitted. She said she suspected that Washington officials were reluctant to criticize a major athletic program like U.S.C.’s. “There would have been a lot of political fallout,” she said. “Why would they want that?” Over the years, U.S.C has improved its offerings to women, increasing its scholarship aid to female athletes and announcing plans to add [women’s lacrosse](http://www.usctrojans.com/sports/w-lacros/usc-w-lacros-body.html) and [sand volleyball](http://www.usctrojans.com/sports/w-volley/spec-rel/101509aaa.html) teams. The university says its actions have resolved any dispute with the Office for Civil Rights. Ali, the head of O.C.R., acknowledged the case could be closed as soon as this fall. But she did not defend how long it had taken. “This administration has a responsibility to both students and institutions not to let the cloud of these open cases hang over their head,” she said. Joplin, the woman who first brought the case, said the office’s slow response has hurt uncounted female students. **And she questioned whether the knowledge that an institution has never lost its funds for violating Title IX played a role in U.S.C.’s past failure to comply**. “They’re willing to take the funding from the federal government,” she said, “but they’re not willing to abide by federal law.” The Ball State case did not last 13 years. But it has upset many for other reasons. In 2008, federal investigators looking into a complaint about sex discrimination in the athletic department at Ball State discovered that a large number of coaches of women’s teams had recently resigned or been fired. The detail caught the investigators’ attention, but rather than look into the issue, the office asked Ball State to run its own inquiry into whether the departures were part of a discriminatory pattern. **Schools that find themselves the subject of a complaint can cut an investigation short by signing an agreement with the Office for Civil Rights. In many cases, the agreements do not include specific changes to the programs. Instead, the office asks the schools to investigate themselves and report their findings months, and sometimes years, later**. In the case of Ball State, the office asked the university to investigate itself even though it was being sued by a former tennis coach, Kathy Bull, who was making similar allegations. According to Bull’s lawyers, 12 head coaches of Ball State’s 11 women’s teams have left since 2005, compared with five head coaches of men’s teams in the same period. Less than two weeks after the Office for Civil Rights asked the university to investigate the issue, it reported back that it had found “no evidence” of discrimination. Ball State used the same law firm that was representing the university in Bull’s lawsuit to prepare its report to the Office for Civil Rights. **The university did not conduct any new research into the firings, and none of the former coaches were interviewed, according to a deposition of** [**Jo Ann Gora**](http://cms.bsu.edu/About/AdministrativeOffices/President/Bio.aspx)**, the university president, by Bull’s lawyers.** “I did not think that was necessary,” she said. A spokeswoman for Ball State said that the university does not comment on active litigation and that it is cooperating with the Office for Civil Rights. She said the law firm that prepared the university’s report, did not violate any rules of professional conduct by representing the university in both the Bull lawsuit and the O.C.R. inquiry. Ali said her office had not approved Ball State’s report and added that federal investigators returned to the campus earlier this year to look into the matter. They plan to make another trip during the fall semester. She said the office prodded the university to provide locker rooms to several women’s teams after it was discovered that female athletes were changing in their cars and a storage shed. Still, she defended the practice of allowing universities to conduct their own investigations. “The university is in the best position to know — assuming good will — to know what its needs are for hiring and terminating,” she said. “And it’s their obligation to ensure that that doesn’t happen in a discriminatory manner.” But Marissa Pollick, Bull’s lawyer, questioned whether the office should always assume such good will. “**You’re relying on the universities to comply when they have very strong interests not to,” she said.**

#### Sexual harassment codes are overbroad and violate freedom

**Brown:** Brown, Elizabeth Nolan [Elizabeth Nolan Brown is an associate editor for Reason.com. She currently lives in Washington, D.C.] “How Sexual Harrassment Codes Threaten Academic Freedom.” *Hit and Run.* October 2015. RP

**In its zeal to spread "gender justice," the Department of Education's Office of Civil Rights (OCR) threatens to stifle academic freedom and infantilize women**, says feminist legal expert and New York Law School Professor Nadine Strossen. **At a recent talk at Harvard's Shorenstein Center on Media, Politics and Public Policy, the former American Civil Liberties Union head warned that current campus policies to curb sexual harassment are overbroad and dangerous.** And while "safety"-mongering students deserve some of the blame, bureaucrats are the biggest progenitors of this paranoid style in American academia. "By threatening to pull federal funds, the OCR has forced schools, even well-endowed schools like Harvard, to adopt sexual misconduct policies that violate many civil liberties," Strossen said. Sexual misconduct is an umbrella term under which fall school rules against sexual assault, sexual harassment, intimate-partner violence, voyeurism, and stalking. While much of the recent focus in this realm has been on sexual violence, school sexual harassment policies also deserve some scrutiny. "Over the years, there have been many types of overly broad sexual harassment policies," explains Samantha Harris, director of policy research for the Foundation for Individual Rights in Education (FIRE). "FIRE has actually had some success in getting schools to roll these back over the years." But in 2013, an OCR and Justice Department investigation into sexual misconduct at the University of Montana yielded "a findings letter which they made public and which they described as a blueprint for colleges and universities," says Harris. "And that blueprint contained a very broad definition of sexual harassment." **As defined by the OCR, sexual harassment is "any unwelcome conduct of a sexual nature." This leaves out two major elements of standard sexual harassment definitions: that the conduct be offensive to a "reasonable person," and that the conduct be severe and pervasive. Under the OCR definition, therefore, any mention of something sexual could be deemed sexual harassment if anyone at all takes offense. In practice, this has resulted in colleges cracking down on professors and lecturers for offering even the mildest sexual content in their classrooms— even in courses specifically about sex.** "Anecdotally, I see this current moral panic over sexual harassment ... playing out more on the faculty side," says Harris. "**We see a lot of faculty whose speech has been chilled**." In her Harvard speech, Strossen laid out several recent examples of the "sexual harassment" that's been targeted by colleges: **The Naval War College placed a professor on administrative leave and demanded that he apologize because during a lecture that critically described Machiavelli's views about leadership he paraphrased Machiavelli's comments about raping the goddess Fortuna**. In another example, the University of Denver suspended a tenured professor and found him guilty of sexual harassment for teaching about sexual topics in a graduate-level course in a course unit entitled Drugs and Sin in American Life From Masturbation and Prostitution to Alcohol and Drugs. A sociology professor at Appalachian State University was suspended because she showed a documentary film that critically examined the adult film industry. A sociology professor at the University of Colorado was forced to retire early because of a class in her course on deviance in which volunteer student assistants played roles in a scripted skit about prostitution. A professor of English and Film Studies at San Bernardino Valley College was punished for requiring his class to write essays defining pornography. And yes, that was defining it, not defending it. This summer, Louisiana State University fired a tenured professor of early childhood education who has received multiple teaching awards because she occasionally used vulgar language and humor about sex when she was teaching about sexuality and also to capture her student's attention. And I could go on. As you can see, this overzealous enforcement of anti-harassment policies comes with serious academic freedom concerns. "Teachers at Harvard, alarmed by the policy’s expansive scope, are jettisoning teaching tools that make any reference to human sexuality," writes Harvard Law Professor Janet Halley.

#### Speech codes on sexual harassment are paternalizing and offensive to women – they portray women as too weak to stand up for themselves

**Brown:** Brown, Elizabeth Nolan [Elizabeth Nolan Brown is an associate editor for Reason.com. She currently lives in Washington, D.C.] “How Sexual Harrassment Codes Threaten Academic Freedom.” *Hit and Run.* October 2015. RP

**Halley and Strossen also worry that these problems are a step in the wrong direction for feminism, with Halley warning that "women’s quest for sexual autonomy is undercut by protectionist images of our sexuality, mandatory reporter requirements, and the newly robust obligation of schools to pursue sexual harassment claims even when the alleged victims don’t want them to." Strossen said "OCR's flawed sexual harassment concept reflects sexist stereotypes that are equally insulting to women and men. For women, it embodies the archaic, infantilizing notion that we're inherently demeaned by any expression with sexual content**." She thinks the goal should be "that classical liberal concept of gender justice," with a focus of "liberation" and "liberty"—not that battle cry of today's campus feminists: safety. Alas, freedom from government offiicals and censorious administrators used to be the goal of progressive students; now they clamor for the state and the staff to step in. Freddie de Boer lamented this turn in a recent New York Times magazine piece, though he, too, places more blame on bureaucratic culture than some sort of uniquely sensitive student populace: If students have adopted a litigious approach to regulating campus life, they are only working within the culture that colleges have built for them. When your environment so deeply resembles a Fortune 500 company, it makes sense to take every complaint straight to H.R. I don’t excuse students who so zealously pursue their vision of campus life that they file Title IX complaints against people whose opinions they don’t like. But I recognize their behavior as a rational response within a bureaucracy. It’s hard to blame people within a system — particularly people so young — who take advantage of structures they’ve been told exist to help them. The problem is that these structures exist for the institutions themselves, and thus the erosion of political freedom is ultimately a consequence of the institutions. When we identify students as the real threat to intellectual freedom on campus, we’re almost always looking in the wrong place. De Boer said he wishes that today's committed campus activists would "remember that the best legacy of student activism lies in shaking up administrators, not in making appeals to them." But college students today have no experience with and seemingly no knowledge about pre-liberalized campuses, official school policies that limited women and minorities, campus administrators colluding with law enforcement to suppress student activism.... And unlike boomers and Gen X, millennials tend to get along well with their parents and have little generalized anti-authority feels. From a certain millennial viewpoint, appealing to campus administrators and federal agents to solve social problems is a no brainer. The good news is that these officials are certain to start cracking down on things that students do support, too—that's the nature of giving bureaucrats broad authority. As more campus SlutWalk organizers get cited for sexual harassment (certainly someone must be offended by a parade of half naked people, no?) and pro-gay t-shirt slogans are deemed too offensive and anti-police speakers are kept off campus... well, at least we can hope that students activists will start to reconsider their tacks. I have much more optimism that the kids will come around than I do for fixing this mess with the Office of Civil Rights, which has only been increasing its micromanagement of campus sexual-misconduct policies in recent years. But perhaps the push-back from elite professors like Strossen and Halley signals the beginning of the demise of this OCR overreach?

## Title IX - Funding

#### A lack of free speech risks a loss in federal funds – Trump is threatening it now.

**Savransky February 2017:** Savransky, Rebecca [Contributor, The Hill] “Trump Threatens Funding Cut If UC Berkeley ‘Does Not Allow Free Speech’.” *The Hill.* February 2, 2017. RP

**President Trump early Thursday threatened to cut federal funding to the University of California, Berkeley after violent protests broke out on its campus Wednesday in response to a planned appearance by a far-right commentator. "If U.C. Berkeley does not allow free speech and practices violence on innocent people with a different point of view — NO FEDERAL FUNDS?**" the president tweeted Thursday morning. Rep. Barbara Lee (D-Calif.) on Thursday released a statement calling the president's apparent threat an "abuse of power." “President Donald Trump cannot bully our university into silence. Simply put, President Trump’s empty threat to cut funding from UC Berkeley is an abuse of power," she said in the statement. "As a senior member of the education funding subcommittee, I will continue to stand up to President Trump’s overreach and defend the rights of our students and faculty**.” A scheduled appearance by right-wing commentator Milo Yiannopoulos was canceled Wednesday night, about two hours before the Breitbart editor was scheduled to speak.** The university said in a statement the violence was "instigated by a group of about 150 masked agitators who came onto campus and interrupted an otherwise non-violent protest," according to NPR. "This was a group of agitators who were masked up, throwing rocks, commercial grade fireworks and Molotov cocktails at o icers," U.C. Berkeley Police Chief Margo Bennet told The Associated Press. More than 1,500 people had showed up to protest Yiannopoulos's appearance on campus. At least six people were injured, according to CNN. Yiannopoulos called what happened "an expression of political violence," according to CNN. "I'm just stunned that hundreds of people ... were so threatened by the idea that a conservative speaker might be persuasive, interesting, funny and might take some people with him, they have to shut it down at all costs," he said in a Facebook Live video.

#### Non Unique – backlog is growing and cases aren’t being investigated because of a lack of funding which thumps

**Kingkade:** Kingkade, Tyler [Contributor, Huffington Post] “There Are Far More Title IX Investigations Of Colleges Than Most People Know.” *Huffington Post.* June 2016. RP

**The backlog of Title IX probes, which** [**has frustrated some U.S. senators**](http://www.huffingtonpost.com/2015/05/05/sexual-assault-backlog-education-department_n_7215748.html)**, can leave complainants wondering for years if they will see any remedy. By her own count, the former Notre Dame graduate student has already waited 1,011 days to find out whether the Education Department agrees that the university violated Title IX in her case**. “I’m very frustrated with how long my complaint has been open,” she said. But she added, “I do think they’re doing, if not the best they can, close to the best they can, with the resources they have. **They don’t have enough investigators.”** Besides the simple fact of 315 ongoing cases, the Education Department noted that these investigations are complicated. “Harassment investigations tend to be highly complex and often involve systemic issues, in addition to issues pertaining to specific students,” the department said in a statement. “As part of its investigation process, OCR gathers information through a variety of methods such as data requests, interviews and site visits and analyzes all relevant evidence from the parties involved in the case to develop its findings.” The Education Department has repeatedly requested [an increase in funding](http://www.huffingtonpost.com/entry/federal-funding-campus-rape-investigations_us_568af080e4b014efe0db5f76) to add personnel. **The Office for Civil Rights staff** [**has shrunk**](http://www.huffingtonpost.com/entry/obama-office-for-civil-rights-budget_us_56ba34d5e4b08ffac122d747)**since the 1980s, while the number of complaints it receives has shot up dramatically in recent years**. (In the chart below, “FTE usage” refers to the number of “full-time equivalent” workers.) It might be “one of the few places where throwing money at a problem” would actually fix things, said Nancy Chi Cantalupo, a Barry University law professor who has closely monitored Title IX investigations.  “**The main solution is really to just get OCR more money and more staff,” Cantalupo said. “If they don’t get more money and more staff, then this backlog is never going to be fixed.”**

#### Funding cuts aren’t enforced – investigations take decades

**Thomas:** Thomas, Katie [Contributor, The New York Times] “Review Shows Title IX Is Not Significantly Enforced.” *The New York Times.* July 2011. RP

**In 1998, the University of Southern California was accused of denying its female students a fair chance at participating in sports. Thirteen years later, the federal agency charged with investigating sex discrimination in schools has not completed its inquiry of U.S.C. In 2008, the same federal agency, the Office for Civil Rights, came across evidence that Ball State University in Indiana was losing a disproportionate number of women’s coaches**. But the agency opted to let [Ball State investigate itself](http://www2.ed.gov/about/offices/list/ocr/docs/investigations/05096001.html). After a two-week inquiry, during which Ball State failed to interview a single coach, the university concluded that there was no evidence that any of the coaches had been unfairly treated or let go. **The federal law known as Title IX — requiring schools at all levels across the country to offer girls and women equal access to athletics — has produced a wealth of progress since it was enacted almost four decades ago. Almost no one disputes that. But scores of schools, year in and year out, still fail to abide by the law. For those schools, almost no one disputes this: There is little chance their shortcomings will ever be investigated, and even if they are, few will be meaningfully punished.** According to a review by The New York Times, the Office for Civil Rights allows cases of suspected discrimination to drag on for years, long after the affected athletes have graduated. **The office — whose staff of 600 full-time employees at its Washington headquarters and 12 regional offices must juggle a variety of cases, including those for disability, age and race discrimination — routinely asks schools to investigate themselves and to develop their own plans for fixing problems. Not surprisingly, the process can lead to further delays and little change.**

#### No link uniqueness – people can say offensive slurs in the status quo, but would just be punished for it – if people saying stuff cuts funding, the impact would have already occurred.

#### No quantification of the impact – they don’t show how much money is lost

#### Non unique – college funding is low now

**Mitchell 16:** Mitchell, Michael [Contributor, Center on Budget and Policy Priorities] “Funding Down, Tuition Up.” *Center on Budget and Policy Priorities.* August 2016. RP

**Years of cuts in state funding for public colleges and universities have driven up tuition and harmed students’ educational experiences by forcing faculty reductions**, fewer course offerings, and campus closings.  These choices have made college less affordable and less accessible for students who need degrees to succeed in today’s economy. Though some states have begun to restore some of the deep cuts in financial support for public two- and four-year colleges since the recession hit, their support remains far below previous levels.  In **total, after adjusting for inflation, funding for public two- and four-year colleges is nearly $10 billion below what it was just prior to the recession.  As states have slashed higher education funding, the price of attending public colleges has risen significantly faster than the growth in median income**.  For the average student, increases in federal student aid and the availability of tax credits have not kept up, jeopardizing the ability of many to afford the college education that is key to their long-term financial success. States that renew their commitment to a high-quality, affordable system of public higher education by increasing the revenue these schools receive will help build a stronger middle class and develop the entrepreneurs and skilled workers that are needed in the new century. Of the states that have finalized their higher education budgets for the current school year, after adjusting for inflation: **Forty-six states — all except Montana, North Dakota, Wisconsin, and Wyoming — are spending less per student in the 2015-16 school year than they did before the recession. States cut funding deeply after the recession hit.  The average state is spending $1,598, or 18 percent,** less per student than before the recession. Per-student funding in nine states — Alabama, Arizona, Idaho, Illinois, Kentucky, Louisiana, New Hampshire, Pennsylvania, and South Carolina — is down by more than 30 percent since the start of the recession. In 12 states, per-student funding fell over the last year.  Of these, four states — Arkansas, Illinois, Kentucky, and Vermont — have cut per-student higher education funding for the last two consecutive years. **In the last year, 38 states increased funding per student**.  Per-student funding rose $199, or 2.8 percent, nationally. Deep state funding cuts have had major consequences for public colleges and universities.  States (and to a lesser extent localities) provide roughly 54 percent of the costs of teaching and instruction at these schools.[4]  Schools have made up the difference with tuition increases, cuts to educational or other services, or both. Since the recession took hold, higher education institutions have: Increased tuition.  Public colleges and universities across the country have increased tuition to compensate for declining state funding and rising costs.  Annual published tuition at four-year public colleges has risen by $2,333, or 33 percent, since the 2007-08 school year.[5]  In Arizona, published tuition at four-year schools is up nearly 90 percent, while in six other states — Alabama, California, Florida, Georgia, Hawaii, and Louisiana — published tuition is up more than 60 percent. These sharp tuition increases have accelerated longer-term trends of college becoming less affordable and costs shifting from states to students.  Over the last 20 years, the price of attending a four-year public college or university has grown significantly faster than the median income.[6]  Although federal student aid and tax credits have risen, on average they have fallen short of covering the tuition increases. Diminished academic opportunities and student services.  Tuition increases have compensated for only part of the revenue loss resulting from state funding cuts.  Over the past several years, public colleges and universities have cut faculty positions, eliminated course offerings, closed campuses, and reduced student services, among other cuts. A large and growing share of future jobs will require college-educated workers.[7]  Sufficient public investment in higher education to keep quality high and tuition affordable, and to provide financial aid to students who need it most, would help states develop the skilled and diverse workforce they will need to compete for these jobs.  Sufficient public investment can only occur, however, if policymakers make sound tax and budget decisions.  State revenues have improved significantly since the depths of the recession but are still only modestly above pre-recession levels.[8]  To make college more affordable and increase access to higher education, many states need to supplement that revenue growth with new revenue to fully make up for years of severe cuts. But just as the opportunity to invest is emerging, lawmakers in a number of states are jeopardizing it by entertaining tax cuts that in many cases would give the biggest breaks to the wealthiest taxpayers.  In recent years, states such as Wisconsin, Louisiana, and Arizona have enacted large-scale tax cuts that limit resources available for higher education.  And in Illinois and Pennsylvania ongoing attempts to find necessary resources after large tax cuts threaten current and future higher education funding. State and local tax revenue is a major source of support for public colleges and universities.  **Unlike private institutions, which rely more heavily on charitable donations and large endowments to help fund instruction, public two- and four-year colleges typically rely heavily on state and local appropriations**.  In 2015, state and local dollars constituted 54 percent of the funds these institutions used directly for teaching and instruction.[9] While states have begun to restore funding, resources are well below what they were in 2008 — 18 percent per student lower — even as state revenues have returned to pre-recession levels.  (See Figures 1 and 2.)  In the states that have finalized their higher education budgets for the current 2015-16 school year compared with the 2007-08 school year, when the recession hit, adjusted for inflation: State spending on higher education nationwide is down an average of $1,598 per student, or 18 percent. In only four states ― Montana, North Dakota, Wisconsin, and Wyoming ― is per-student funding now above its 2008 pre-recession levels. 26 states have cut funding per student by more than 20 percent. Nine states have cut funding per student by more than 30 percent Arizona and Illinois have cut funding by more than half.[10]

#### Squo disproves the impact – nearly half of all schools don’t have speech codes but haven’t had the terrible impacts they discuss

#### Funding has been slashed approximately ZERO times

**Thomas:** Thomas, Katie [Contributor, The New York Times] “Review Shows Title IX Is Not Significantly Enforced.” *The New York Times.* July 2011. RP

**The Office for Civil Rights certainly has the power to enforce the law: any school that is found to be violating Title IX risks losing its federal funds. But that punishment has never been used since Congress passed the law in 1972. And the office cannot cite any instance in which a case of suspected discrimination against female athletes was referred to the justice department for additional action.** The situation has led many to ask how a federal law can be effective if it is not significantly enforced.

#### This links to the Aff – refusing to help people have a voice on campus because rich white people in government don’t want us to is the same logic of not ending slavery because it helped the economy

#### Normal means entails universities self-regulating harassment, and they circumvent.

**Thomas:** Thomas, Katie [Contributor, The New York Times] “Review Shows Title IX Is Not Significantly Enforced.” *The New York Times.* July 2011. RP

“**Unfortunately what we see is that many schools are getting away with providing fewer opportunities to girls because they don’t do what they’re supposed to unless made to**,” said Neena Chaudhry, senior counsel at the National Women’s Law Center. Current and former enforcement officials insist they have worked hard to mount meaningful investigations, and they defended the policy of allowing schools to investigate themselves. Most schools, they said, want to correct their problems once they learn they are violating the law. For every Ball State or U.S.C., there are also examples of cases in which investigations by the office yielded significant results. Earlier this year, Lincoln Land Community College in Illinois added a practice field for the women’s softball team, installed two new bullpens, and agreed to give softball and baseball players equal access to batting cages. And Southeastern Community College in Iowa agreed to expand the size of its women’s basketball court, and to give the baseball and softball team equal access to lighted fields. Complaints involving Title IX — and athletics in particular — make up a tiny minority of cases for the Office for Civil Rights, but because of the political weight they often carry, they are among the most time-consuming and closely scrutinized that the office handles, according to interviews with several former civil rights office employees. “**The arena is remarkably politicized**,” said Arthur Coleman, who served as senior policy adviser at the Office for Civil Rights during the Clinton administration. The U.S.C. inquiry illustrates how a complex case and a reluctance to cooperate translated into the longest-running Title IX athletics investigation in the office’s caseload. Linda Joplin, a member of the California chapter of the National Organization for Women, made national headlines when she filed a complaint in 1998 against U.S.C., an athletic powerhouse whose football team is a perennial contender for the national title. The university is private but is subject to Title IX because it receives federal assistance in the form of grants and student aid. Joplin alleged that female athletes at U.S.C. lagged significantly behind men, and women were being denied their fair share of scholarship dollars and other sports spending. After the Office for Civil Rights began its investigation, U.S.C. dug in its heels, recalled Patricia Shelton, the longtime lead investigator on the case, who has since retired. U.S.C. insisted it was doing right by its female students, offering them, for example, the maximum number of athletic scholarships permitted under the rules. But Shelton, the agency’s investigator, said the university also declined to turn over key financial data that would have shown whether it was spending equal amounts of money on men’s and  women’s teams. Kelly Bendell, a lawyer for U.S.C. who has worked on the case since 2000, said the university had complied with all requests for information after initially resisting because of concerns about turning over proprietary financial data. Disputes over basic information explain only parts of the nearly endless case. Bendell, the lawyer for the university, said the agency conducting the investigation “seemed to drop the matter” for five years, with no contact between it and U.S.C. from 2003 to 2008. Shelton, the lead investigator, said responsibility for delays rested with her superiors in Washington. She said she repeatedly wrote up her findings, only to be told they were out of date and needed to be resubmitted. She said she suspected that Washington officials were reluctant to criticize a major athletic program like U.S.C.’s. “There would have been a lot of political fallout,” she said. “Why would they want that?” Over the years, U.S.C has improved its offerings to women, increasing its scholarship aid to female athletes and announcing plans to add [women’s lacrosse](http://www.usctrojans.com/sports/w-lacros/usc-w-lacros-body.html) and [sand volleyball](http://www.usctrojans.com/sports/w-volley/spec-rel/101509aaa.html) teams. The university says its actions have resolved any dispute with the Office for Civil Rights. Ali, the head of O.C.R., acknowledged the case could be closed as soon as this fall. But she did not defend how long it had taken. “This administration has a responsibility to both students and institutions not to let the cloud of these open cases hang over their head,” she said. Joplin, the woman who first brought the case, said the office’s slow response has hurt uncounted female students. **And she questioned whether the knowledge that an institution has never lost its funds for violating Title IX played a role in U.S.C.’s past failure to comply**. “They’re willing to take the funding from the federal government,” she said, “but they’re not willing to abide by federal law.” The Ball State case did not last 13 years. But it has upset many for other reasons. In 2008, federal investigators looking into a complaint about sex discrimination in the athletic department at Ball State discovered that a large number of coaches of women’s teams had recently resigned or been fired. The detail caught the investigators’ attention, but rather than look into the issue, the office asked Ball State to run its own inquiry into whether the departures were part of a discriminatory pattern. **Schools that find themselves the subject of a complaint can cut an investigation short by signing an agreement with the Office for Civil Rights. In many cases, the agreements do not include specific changes to the programs. Instead, the office asks the schools to investigate themselves and report their findings months, and sometimes years, later**. In the case of Ball State, the office asked the university to investigate itself even though it was being sued by a former tennis coach, Kathy Bull, who was making similar allegations. According to Bull’s lawyers, 12 head coaches of Ball State’s 11 women’s teams have left since 2005, compared with five head coaches of men’s teams in the same period. Less than two weeks after the Office for Civil Rights asked the university to investigate the issue, it reported back that it had found “no evidence” of discrimination. Ball State used the same law firm that was representing the university in Bull’s lawsuit to prepare its report to the Office for Civil Rights. **The university did not conduct any new research into the firings, and none of the former coaches were interviewed, according to a deposition of** [**Jo Ann Gora**](http://cms.bsu.edu/About/AdministrativeOffices/President/Bio.aspx)**, the university president, by Bull’s lawyers.** “I did not think that was necessary,” she said. A spokeswoman for Ball State said that the university does not comment on active litigation and that it is cooperating with the Office for Civil Rights. She said the law firm that prepared the university’s report, did not violate any rules of professional conduct by representing the university in both the Bull lawsuit and the O.C.R. inquiry. Ali said her office had not approved Ball State’s report and added that federal investigators returned to the campus earlier this year to look into the matter. They plan to make another trip during the fall semester. She said the office prodded the university to provide locker rooms to several women’s teams after it was discovered that female athletes were changing in their cars and a storage shed. Still, she defended the practice of allowing universities to conduct their own investigations. “The university is in the best position to know — assuming good will — to know what its needs are for hiring and terminating,” she said. “And it’s their obligation to ensure that that doesn’t happen in a discriminatory manner.” But Marissa Pollick, Bull’s lawyer, questioned whether the office should always assume such good will. “**You’re relying on the universities to comply when they have very strong interests not to,” she said.**

## Sexual Harassment

#### Non unique – Trump will rollback all sexual harassment legislation on campuses.

**Van Syckle:** Van Syckle, Katie [Contributor, The Cut] “Here’s What a Trump Administration Could Mean for Campus Sexual Assault.” *The Cut.* January 2017. RP

**During Betsy DeVos’s Senate confirmation hearing yesterday afternoon, Trump’s nominee for Department of Education secretary dodged questions about how she would address college sexual assault** — a top concern under the Obama administration. Over the last eight years, the White House took bold steps to combat high rates of sexual violence and harassment on college campuses. In 2011, the Obama administration issued [Title IX guidance](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html), which said that schools were responsible for protecting students from sexual harassment and sexual violence on their campuses. In response, the Department of Education’s Office of Civil Rights [launched investigations](http://www.huffingtonpost.com/entry/title-ix-investigations-sexual-harassment_us_575f4b0ee4b053d433061b3d) into more than 300 schools for failing to comply. During the hearing, DeVos said it would be “[premature](https://www.theguardian.com/us-news/2017/jan/17/betsy-devos-hearing-prompts-fears-for-campus-sexual-assault-protections)” to commit to upholding Obama’s Title IX guidance, and she wanted to know more about the issue, setting off alarm bells for sexual-assault activists and educators. Andrea Pino, co-founder of End Rape on Campus, co-wrote a letter with the group Know Your IX to DeVos, calling on the nominee to support survivors. “[The Obama] administration has been so influential in getting the things we once thought of as dreams to be a reality. I think there is a lot of fear and uncertainty now,” Pino said. “**We can still step backwards.” How far can Trump and DeVos go in rolling back initiatives protecting college students on campus? And what would the consequences be?** We unpacked the fine print. What is Title IX?  Title IX is one part of the Educational Amendments of 1972, which prohibits discrimination on the basis of sex, and applies to all schools, public and private, that receive federal funding. (Almost every educational institution from kindergarten through graduate school receives federal funding.) Why did the Obama administration send a letter in 2011 telling colleges how to interpret Title IX? [According](http://www.nsvrc.org/saam/campus-resource-list) to data from National Institute of Justice, one in five women experienced completed or attempted rape while in college, and the Obama administration felt this impacted a student’s right to an equal education as guaranteed under Title IX. Many students who experienced sexual violence while in school said when they reported these incidents to their schools, their cases were often ignored or mishandled. As a result, these students, who may have had to face a perpetrator in their classes, were often at risk of dropping out of school, or developing mental-health issues like anxiety, depression, and PTSD. What did the 2011 Title IX guidance letter do?  The Title IX guidance, also known as the “Dear Colleague” letter, interpreted Title IX more broadly than ever before. The letter told schools it was their responsibility under Title IX to guarantee an educational atmosphere free of gender-based violence and take “immediate and effective” steps to respond. Students began bringing complaints against their universities, and the Department of Education’s Office of Civil Rights has since launched more than 340 investigations into how colleges across the country have mishandled reports of sexual violence. How could a Trump administration undo these efforts? **Because Obama’s 2011 guidance letter is just his administration’s interpretation of Title IX, a Trump administration could ignore this interpretation and instead encourage the police to handle these crimes, and tell colleges these reports are not their responsibility to address. This could discourage survivors from reporting assaults, and remove the pressure from high schools, colleges, and universities to address and reduce sexual violence on their campuses. Between Betsy DeVos not committing to uphold Obama’s guidance letter, and Trump’s own distaste for the Department of Education, anything is possible. (Trump has said, he would like to eliminate the Department of Education entirely, calling it “massive and largely unnecessary**” — although his nomination of DeVos suggests the Department of Education will be around for a little bit longer.) One of Trump’s advisers during the presidential campaign, New York state co-chairman, Carl Paladino, said the Office for Civil Rights is also unnecessary and “self-perpetuating absolute nonsense.” He argued that all discrimination cases should be handled by U.S. attorneys. Republican leaders have repeatedly argued that Obama’s interpretation of Title IX is too broad, and college sexual-assault cases should be handled by the criminal-justice system. The GOP platform, released at the RNC this year, said sexual assault is a “terrible crime,” but cases should be “investigated by civil authorities and prosecuted in a courtroom, not a faculty lounge.” The Foundation for Individual Rights in Education has also expressed concern that leaving these cases to the schools to adjudicate could violate a student’s right to due process. (DeVos and her husband have donated $10,000 to FIRE.) FratPAC, the lobbying arm of fraternities and sororities, is also concerned that students accused of sexual assault are treated unfairly, and in the past has called for schools to turn to the criminal-justice system. It is unclear. Currently, more than 200 investigations are still ongoing, and staff say they are already overwhelmed by the caseload. (The Chronicle for Higher Education has a full [database](http://projects.chronicle.com/titleix/) of the complaints and their status.) In the 2017 budget, Congress will allocate funds for crisis hotlines, shelters, rape-kit testing, courts, law enforcement, rape crisis centers, and community outreach through the Violence Against Women Act, the Family Violence Prevention and Services Act, and the Victims of Crime Act. These laws could all face cuts under a Republican administration. Yes. The [Campus Accountability and Safety Act](https://www.congress.gov/bill/114th-congress/senate-bill/590), a bill co-sponsored by Senators Claire McCaskill and Kirsten Gillibrand, has nine bipartisan backers, including Sen. Marco Rubio and Senator Lindsay Graham, and is currently working its way through the Senate. The bill aims to improve how public colleges and universities handle sexual assault and other violent crimes by requiring colleges to publish their crime stats on their websites, participate in a campus climate surveys, make confidential advisers available to students, and work closely with local police departments.

#### Censorship doesn’t solve the root cause, increases the power of dominant elites, and suppresses valuable information that’s key to activism

**York:** York, Jillian C. [Writer and contributor for several news sources] “Harassment Hurts Us All. So Does Censorship.” *Medium.* September 2013. RP

**The crux of the interview, and the issue at hand, is whether or not censorship is a good solution to the problem of online harassment and bul- lying. It has become a fairly commonplace response to certain “undesirable” speech—be it misogynistic, racist, homophobic, etc—to call for bans on it, either from government or from online platforms themselves**. I sympathize with the sentiment behind those calls—who amongst us hasn’t wished a certain racist or sexist commentator would just disappear?—but in the end, I just can’t abide. **You see, I don’t see censorship as a solution to anything.** I see it as a band-aid slapped carelessly over a gaping, septic wound. **That is not to deny the effects of harassment, or even “hate speech” (click the link to understand why I use quotes around that term), but to say that the problem is institutional, systemic, and in need of a better solution. It makes me very frustrated when arguments are made to ban a certain type of speech, but seem to go no further, as if ridding our spaces of that speech is the be-all end-all to solving the problem.** Hint: it’s not. Most of all, I don’t believe that censorship offers lasting benefits. **If this were a perfect world, in which we could draw a very solid red line be- tween speech that should be banned and speech that should not, and we were all able to have a voice in making those determinations, and that blocking was done with the utmost oversight, transparency, and accountability, you might be able to convince me. The truth, however, is that efforts to censor hate speech, or obscenity, or pornography, are far too often overreaching, creating a chilling ef- fect on other, more innocuous speech. Microsoft Bing, which I men- tioned in my article, is not the first nor the last platform to block “breast” and with it, “breast cancer” and “chicken breast.” In my years of research, I’ve spoken to doctors whose workplace network blocked important health terms, to women in Saudi Arabia whose ISPs did the same, to queer youth whose schools or public libraries used pornogra- phy filters that took down non-obscene LGBTQ content with it, and so on.** And as such, I’m convinced that the imperfect technologies we put so much stock in to make our world a little better and brighter actually make it darker. I**’ve also talked to activists and others around the world whose content has been taken down from Facebook and YouTube because it doesn’t meet the yes, patriarchal terms of service set forth by the mostly-male teams that design them.** Breastfeeding=bad, violence against women=good, they tell us. They take down important pages (like ‘We Are All Khaled Said’) because their moderator, likely an at-risk activist in an unsafe space, dares use a pseudonym. **And yet you want to trust them to regulate speech even more?** No, thanks. I am not deaf to the argument that in some contexts, removing certain types of speech creates a safer and more inclusive space. To be clear, I want those spaces to exist. That’s the same reason I moderate comments on my blog and block trolls on Twitter. But I view that as very different from a major online platform with more than one billion users making those decisions for me. But I also realize that something I said in that interview was, while rep- resentative of my personal experience, pretty callous. I have dedicated a substantial amount of my time to finding and culti- vating platforms for women’s voices, based on my belief that a solution to the widespread harassment and bullying of women online is to keep pushing women’s voices into the mainstream, louder and stronger. I recognize that this solution doesn’t work for everyone, and therefore acknowledge that it’s a mere piece of the puzzle, rather than a solution on its own. So when I say, “I get really tired of [the argument that women are bullied out of public discussions] because I’m a woman and I don’t feel that way,” the point I’m trying to make is that, while I feel bullied, I’m not going anywhere. No way, no how. I want to be clear: I am not denying that women are frequently “bullied off the Internet,” and I can see why it appears from the interview that I feel that way. Rather, I believe that that refrain ignores the experiences of those of us who would prefer to respond to hate speech with more speech, prefer to shout louder over the din. I’ve been accused many times of upholding the patriarchy for my ideal that sunlight and resolve are even a solution, and I’m tired of it. And so I stand by my position, reflected in the words of the great Jus- tice Louis Brandeis, that the best remedy to “bad” speech is more speech, not enforced silence. I believe this, but I also believe we need to fight to ensure that women—as well as other marginalized groups and individuals—have the opportunity to engage in counter speech. If we are to fight for free expression, we must also fight for greater op- portunity, and we must have each other’s backs. We must call out misogyny where we see it, and we must have zero tolerance for it in the workplace. We must commit to inclusivity, and we must raise up those around us who might not have the same privilege that we do. It is possible to be dedicated to freedom of speech and to the advance- ment of women. I’ve worked at the EFF for a little over two years and have found it to be the most inclusive space in which I’ve had the plea- sure of working. Not to mention, eight out of eleven staffers here with the word “director” in their title are women, and on the whole, we’re very balanced in terms of gender. In the often privi- leged field that is digital rights, this is notable. Interviews are less than ideal in getting one’s point across; quotes are shortened, context is left out, and terrible titles are added for link bait. But while I intend to make no excuses for what I’ve said, I feel compelled to elaborate on my beliefs and how I came to them. I expect disagreement, but I’d prefer it be with my ideas, rather than a context- less shell of them. **I believe that free expression is compatible with a better society**, and I will continue to fight for both.

#### Sexual harassment laws aren’t unconstitutional – it’s just a minor issue of wording

**Schuster**: Schuster, Saundra K. [Esq., Partner, NCHERM] “Sexual Harassment and the First Amendment: Will Your Policies Hold Up In Court?” The National Center for Higher Education Risk Management, Winter 2011. CH

Discussion of the Conflict **The conflict of harassment policies with First Amendment freedoms generally stems from two factors. First, institutions frequently apply workplace language related to sexual harassment to their student sexual harassment policies. Restrictions on expression in the workplace are far more expansive and legal than the restrictions on student expression. Second, many institutions do not create clear distinctions about expression versus conduct, thus overreaching through their sexual harassment policies to limit verbal or written interaction among and toward students. Title VII of the Civil Rights Act of 1964 set forth the standard prohibiting gender discrimination in the workplace. In** a 1986 U.S. Supreme Court case, Meritor Savings Bank, FSB v. Vinson, 477 U.S. 5, the Court stated that sexual harassment was a form of gender discrimination, subject to Title VII regulations. Subsequent cases established the framework for holding an employer liable for sexual harassment in the workplace. 2 The standard for sexual harassment in the workplace includes a prohibition of “quid pro quo” behavior that involves a power differential, and of a “hostile environment”. The standard for liability for hostile environment-based sexual harassment includes behavior that “alters the conditions of one’s employment and creates an abusive work environment”. The Equal Employment Opportunity Commission (EEOC) is the governmental agency charged with overseeing workplace discrimination issues, including sexual harassment. The EEOC publishes language adopted by institutions to describe sexual harassment. Many public institutions have adopted the sexual harassment language prescribed by the EEOC as the standard for prohibited conduct by students. **Sexual harassment behavior related to students is governed by Title IX.** Title IX of the Educational Amendments of 1972 is a Federal law that prohibits gender discrimination in the education context. Like Title VII, Title IX was interpreted by the U. S. Supreme Court to apply gender discrimination to sexual harassment (Franklin v. Gwinnet Cty. Public Schools, 503 U.S.60 (1992). The Court further established the contextual parameters of hostile environment sexual harassment under Title IX in Davis v. Monroe County Board of Education, 526 U.S. 629 (1999). The Court stated that the conduct or expression must be so “severe, pervasive and objectionably offensive such that it undermines the victim’s educational experience and denies equal access to an institution’s resources and opportunities”. Although Title VII and Title IX are similar, in that they both prohibit discrimination based on gender, they are not identical laws, and the scope and context to which they are applied are distinctly different. **Unfortunately, many public institutions begin with publication of their student sexual harassment policy using the broader language of sexual harassment from the employment context, and then they embellish the context to incorporate prohibition of expression that reinforces the institutional mission related to civility and respect**. Freedom of Expression Issues Certainly civility, respect and support for diversity are important institutional values, and most institutions strive to reinforce these aspirations. However, using institutional policies that incorporate campus conduct and discipline to enforce these values make the institution vulnerable to challenge by prohibiting forms of expression that are protected under the First Amendment. The U.S. Supreme Court, in Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969) stated, “a school may not prohibit speech unless the speech will materially and substantially interfere with the requirements of appropriate discipline on the operation of the school, and further, the Court stated Healy v. James, 408 U.S. 169 (1972) that, “the 3 vigilant protection of constitutional freedom is nowhere more vital than in the community of American schools”. These cases underscore the Court’s adherence to the principles of free expression in the educational context. **In order to avoid First Amendment challenges, institutions should also ensure that their student sexual harassment policies contain language that clearly articulates what behavior or expression is prohibited and the context within which this prohibited behavior will rise to the level of sexual harassment. Incorporating words such as “offends”, “denigrates”, “belittles an individual” in a sexual harassment policy makes the institution vulnerable to challenges of having a policy that is vague (the student must guess at how this would translate to their actions), and overbroad (the language encompasses a substantial amount of protected speech along with prohibited speech).** A successful challenge to the language of a sexual harassment policy could result in a court issuing an injunction against application of the policy or even an outright declaration that the language of the policy is unconstitutional. In extreme cases, it might lead to personal liability under §1983 for administrators who implement unconstitutional policies. Recent Cases Saxe v. State College Area School District, 240 F. 3d 200 206 (3rd Cir. 2001). The 3rd Circuit Court of Appeals struck down the school’s sexual harassment policy because it was overbroad and encompassed expression the court stated was constitutionally protected. The court stated that the free speech clause of the First Amendment protects a wide variety of speech that listeners may consider deeply offensive”. DeJohn v. Temple University, 537 F. 3d 301 (3d Cir. 2008). The 3rd Circuit Court of Appeals held that Temple’s use of broad terms such as “hostile” and “offensive” without qualifying language rendered its sexual harassment policy sufficiently overbroad and subjective that it could conceivably be applied to cover any speech of a gender motivated nature. The court issued a permanent injunction against Temple, from applying its sexual harassment policy as originally written and from re-implementing its originally challenged policy. Lopez, et al. v. Candaele, et al., U.S. Dist. Ct. Central Dist. of Calif, (2009). In July, a federal district court issued an injunction against the school, prohibiting it from applying parts of its sexual harassment policy. The court, finding the school’s policy was too broad and vague and prohibited a substantial amount of protected speech, held that a school may not prohibit speech unless the speech will “materially and substantially” interfere with the requirements of appropriate discipline in the operation of the school”. 4 Summary **Colleges and universities must carefully review sexual harassment policies to ensure that language specifying prohibited expression is clearly articulated, consistent with the standard established in Davis. In addition, institutions must analyze the language of sexual harassment policies to ensure the prohibited language is not unconstitutionally vague, ambiguous or overbroad. As the court in Saxe emphasized, school administrators must avoid careless expansion of institutional harassment policies to include protected expression.**

#### Sexual harassment laws hurts students of color and perpetuates racism.

**Gersen:** Gersen, Jeannie Suk [Contributoring writer for New Yorker and Professor, Harvard Law School.] “SHUTTING DOWN CONVERSATIONS ABOUT RAPE AT HARVARD LAW.” DECEMBER 2015. RP

The ironclad principle that you must always believe the accuser comes as a corrective to hundreds of years in which rape victims were systematically disbelieved and painted as liars, sluts, or crazies. This history, along with the facts that sexual assault is notoriously underreported and that the crime suffers no more false reports than other crimes—and the related idea that only those actually assaulted would take on the burden of coming forward—leads many advocates today to the “always believe” orthodoxy. We have seen recent high-profile instances in which that article of faith has led to damaging errors, as in Rolling Stone’s reporting of a rape at the University of Virginia, or the prosecution of the Duke lacrosse case. **The extent of the damage comes out of the fact that “always believe” unwittingly renders the stakes of each individual case impossibly high, by linking the veracity of any one claim to the veracity of all claims. When the core belief is that accusers never lie, if any one accuser has lied, it brings into question the stability of the entire thought system, rendering uncertain all allegations of sexual assault. But this is neither sensible nor necessary: that a few claims turn out to be false does not mean that all, most, or even many claims are wrongful. The imperative to act as though every accusation must be true—when we all know some number will not be—harms the over-all credibility of sexual assault claims**. Sexual assault is a serious and insidious problem that occurs with intolerable frequency on college campuses and elsewhere. **Fighting it entails, among other things, dismantling the historical bias against victims, particularly black victims—and not simply replacing it with the tenet that an accuser must always and unthinkingly be fully believed.** It is as important and logically necessary to acknowledge the possibility of wrongful accusations of sexual assault as it is to recognize that most rape claims are true. And if we have learned from the public reckoning with the racial impact of over-criminalization, mass incarceration, and law enforcement bias, we should heed our legacy of bias against black men in rape accusations. **The dynamics of racially disproportionate impact affect minority men in the pattern of campus sexual-misconduct accusations, which schools, conveniently, do not track, despite all the campus-climate surveys. Administrators and faculty who routinely work on sexual-misconduct cases, including my colleague Janet Halley, tell me that most of the complaints they see are against minorities, and that is consistent with what I have seen at Harvard. The “always believe” credo will aggravate and hide this context, aided by campus confidentiality norms that make any racial pattern difficult to study and expose**. Let’s challenge it. Particularly in this time of student activism around structural and implicit racial bias pervading campuses, examination of the racial impact of Title IX bureaucracy is overdue. We are all fallible—professors, students, and administrators—and disagreement and competing narratives will abound. But equating critique with a hostile environment is neither safe nor helpful for victims. We should be attentive to our history and context, and be open to believing, disbelieving, agreeing, or disagreeing, in individual instances, based on evidence.

#### Harassment isn’t even considered speech, so the Aff doesn’t affect it.

**The ACLU:** The American Civil Liberties Union [Organization that sues for justice and writes about the law] “Hate Speech on Campus.” *ACLU.* 2016. RP

A: Yes. **The ACLU believes that hate speech stops being just speech and becomes conduct when it targets a particular individua**l, and when it forms a pattern of behavior that interferes with a student's ability to exercise his or her right to participate fully in the life of the university. **The ACLU isn't opposed to regulations that penalize acts of violence, harassment or intimidation, and invasions of privacy**. On the contrary, we believe that kind of conduct should be punished. **Furthermore, the ACLU recognizes that the mere presence of speech as one element in an act of violence, harassment, intimidation or privacy invasion doesn't immunize that act from punishment**. For example, threatening, bias-inspired phone calls to a student's dorm room, or white students shouting racist epithets at a woman of color as they follow her across campus -- these are clearly punishable acts. Several universities have initiated policies that both support free speech and counter discriminatory conduct. Arizona State, for example, formed a "Campus Environment Team" that acts as an education, information and referral service. **The team of specially trained faculty, students and administrators works to foster an environment in which discriminatory harassment is less likely to occur, while also safeguarding academic freedom and freedom of speech.**

#### Sexual harassment codes are overbroad and violate freedom

**Brown:** Brown, Elizabeth Nolan [Elizabeth Nolan Brown is an associate editor for Reason.com. She currently lives in Washington, D.C.] “How Sexual Harrassment Codes Threaten Academic Freedom.” *Hit and Run.* October 2015. RP

**In its zeal to spread "gender justice," the Department of Education's Office of Civil Rights (OCR) threatens to stifle academic freedom and infantilize women**, says feminist legal expert and New York Law School Professor Nadine Strossen. **At a recent talk at Harvard's Shorenstein Center on Media, Politics and Public Policy, the former American Civil Liberties Union head warned that current campus policies to curb sexual harassment are overbroad and dangerous.** And while "safety"-mongering students deserve some of the blame, bureaucrats are the biggest progenitors of this paranoid style in American academia. "By threatening to pull federal funds, the OCR has forced schools, even well-endowed schools like Harvard, to adopt sexual misconduct policies that violate many civil liberties," Strossen said. Sexual misconduct is an umbrella term under which fall school rules against sexual assault, sexual harassment, intimate-partner violence, voyeurism, and stalking. While much of the recent focus in this realm has been on sexual violence, school sexual harassment policies also deserve some scrutiny. "Over the years, there have been many types of overly broad sexual harassment policies," explains Samantha Harris, director of policy research for the Foundation for Individual Rights in Education (FIRE). "FIRE has actually had some success in getting schools to roll these back over the years." But in 2013, an OCR and Justice Department investigation into sexual misconduct at the University of Montana yielded "a findings letter which they made public and which they described as a blueprint for colleges and universities," says Harris. "And that blueprint contained a very broad definition of sexual harassment." **As defined by the OCR, sexual harassment is "any unwelcome conduct of a sexual nature." This leaves out two major elements of standard sexual harassment definitions: that the conduct be offensive to a "reasonable person," and that the conduct be severe and pervasive. Under the OCR definition, therefore, any mention of something sexual could be deemed sexual harassment if anyone at all takes offense. In practice, this has resulted in colleges cracking down on professors and lecturers for offering even the mildest sexual content in their classrooms— even in courses specifically about sex.** "Anecdotally, I see this current moral panic over sexual harassment ... playing out more on the faculty side," says Harris. "**We see a lot of faculty whose speech has been chilled**." In her Harvard speech, Strossen laid out several recent examples of the "sexual harassment" that's been targeted by colleges: **The Naval War College placed a professor on administrative leave and demanded that he apologize because during a lecture that critically described Machiavelli's views about leadership he paraphrased Machiavelli's comments about raping the goddess Fortuna**. In another example, the University of Denver suspended a tenured professor and found him guilty of sexual harassment for teaching about sexual topics in a graduate-level course in a course unit entitled Drugs and Sin in American Life From Masturbation and Prostitution to Alcohol and Drugs. A sociology professor at Appalachian State University was suspended because she showed a documentary film that critically examined the adult film industry. A sociology professor at the University of Colorado was forced to retire early because of a class in her course on deviance in which volunteer student assistants played roles in a scripted skit about prostitution. A professor of English and Film Studies at San Bernardino Valley College was punished for requiring his class to write essays defining pornography. And yes, that was defining it, not defending it. This summer, Louisiana State University fired a tenured professor of early childhood education who has received multiple teaching awards because she occasionally used vulgar language and humor about sex when she was teaching about sexuality and also to capture her student's attention. And I could go on. As you can see, this overzealous enforcement of anti-harassment policies comes with serious academic freedom concerns. "Teachers at Harvard, alarmed by the policy’s expansive scope, are jettisoning teaching tools that make any reference to human sexuality," writes Harvard Law Professor Janet Halley.

#### Speech codes on sexual harassment are paternalizing and offensive to women – they portray women as too weak to stand up for themselves

**Brown:** Brown, Elizabeth Nolan [Elizabeth Nolan Brown is an associate editor for Reason.com. She currently lives in Washington, D.C.] “How Sexual Harrassment Codes Threaten Academic Freedom.” *Hit and Run.* October 2015. RP

**Halley and Strossen also worry that these problems are a step in the wrong direction for feminism, with Halley warning that "women’s quest for sexual autonomy is undercut by protectionist images of our sexuality, mandatory reporter requirements, and the newly robust obligation of schools to pursue sexual harassment claims even when the alleged victims don’t want them to." Strossen said "OCR's flawed sexual harassment concept reflects sexist stereotypes that are equally insulting to women and men. For women, it embodies the archaic, infantilizing notion that we're inherently demeaned by any expression with sexual content**." She thinks the goal should be "that classical liberal concept of gender justice," with a focus of "liberation" and "liberty"—not that battle cry of today's campus feminists: safety. Alas, freedom from government offiicals and censorious administrators used to be the goal of progressive students; now they clamor for the state and the staff to step in. Freddie de Boer lamented this turn in a recent New York Times magazine piece, though he, too, places more blame on bureaucratic culture than some sort of uniquely sensitive student populace: If students have adopted a litigious approach to regulating campus life, they are only working within the culture that colleges have built for them. When your environment so deeply resembles a Fortune 500 company, it makes sense to take every complaint straight to H.R. I don’t excuse students who so zealously pursue their vision of campus life that they file Title IX complaints against people whose opinions they don’t like. But I recognize their behavior as a rational response within a bureaucracy. It’s hard to blame people within a system — particularly people so young — who take advantage of structures they’ve been told exist to help them. The problem is that these structures exist for the institutions themselves, and thus the erosion of political freedom is ultimately a consequence of the institutions. When we identify students as the real threat to intellectual freedom on campus, we’re almost always looking in the wrong place. De Boer said he wishes that today's committed campus activists would "remember that the best legacy of student activism lies in shaking up administrators, not in making appeals to them." But college students today have no experience with and seemingly no knowledge about pre-liberalized campuses, official school policies that limited women and minorities, campus administrators colluding with law enforcement to suppress student activism.... And unlike boomers and Gen X, millennials tend to get along well with their parents and have little generalized anti-authority feels. From a certain millennial viewpoint, appealing to campus administrators and federal agents to solve social problems is a no brainer. The good news is that these officials are certain to start cracking down on things that students do support, too—that's the nature of giving bureaucrats broad authority. As more campus SlutWalk organizers get cited for sexual harassment (certainly someone must be offended by a parade of half naked people, no?) and pro-gay t-shirt slogans are deemed too offensive and anti-police speakers are kept off campus... well, at least we can hope that students activists will start to reconsider their tacks. I have much more optimism that the kids will come around than I do for fixing this mess with the Office of Civil Rights, which has only been increasing its micromanagement of campus sexual-misconduct policies in recent years. But perhaps the push-back from elite professors like Strossen and Halley signals the beginning of the demise of this OCR overreach?

#### No Link – harassment is not protected.

**McClellan:** McClellan, Cara [J.D., Yale Law. Judicial Law Clerk at United States District Court] “Discrimination as Disruption: Addressing Hostile Environments Without Violating the Constitution.” November 2015. RP

\*title VI: PROHIBITS DISCRIMINATION BASED ON RACE, COLOR OR NATIONAL ORIGIN IN PROGRAMS OR ACTIVITIES WHICH RECEIVE FEDERAL FINANCIAL ASSISTANCE.

Universities that act to address a hostile environment can defend their actions against First Amendment challenges based upon the interest of students in attending a safe and orderly school where “the work and discipline of the school” is not “materially and substantially disrupted.”[37] **The Supreme Court has long recognized that “First Amendment rights must be analyzed ‘in light of the special characteristics of the school environment.’**”[38] “A university’s mission is education” and the Supreme Court [SCOTUS] has never “denied a university’s authority to impose reasonable regulations compatible with that mission,” even when the restricted speech would be protected in other settings.[39] **Supreme Court cases addressing academic freedom permit schools to restrict speech that would offend “reasonable campus rules, interrupt classes, or substantially interfere with the opportunity of other[s] students to obtain an education.”[40 Healy] While the Court recognized the right of students to express their political beliefs through protest in Tinker v. Des Moines Independent Community School District, the Court simultaneously affirmed that schools can prohibit speech “which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities.”[41] [and] In Healy v. James,[42] the Court affirmed that universities may require reasonable regulations for the “interest of the entire academic[s] community.**”[43] Free expression and debate in the university are protected to the extent “consonant with the maintenance of order.”[44] While the justification for pedagogical oversight is less compelling in the university setting than in elementary and high schools, university officials still have deference to “prescribe and control conduct in the schools.”[45] Of course, an “‘undifferentiated fear or apprehension of disturbance’”[46] without any particularized reason as to why the school anticipates substantial disruption would not be sufficient to restrict speech under Title VI. The Tenth Circuit’s decision in West v. Derby Unified School District No. 260[47] illustrates this point. In this case a middle school student was suspended for drawing a Confederate flag in math class. The Court upheld the suspension under Tinker’s substantial disruption standard, finding that the school had demonstrated a concrete threat of substantial disruption: “The district experienced a series of racial incidents [including ‘hostile confrontations’ and at least one fight] in 1995, some of which were related to the Confederate flag.”[48] The Tenth Circuit held that the “history of racial tension in the district made administrators’ concerns . . . reasonable.”[49] But even when facts do not suggest a disruption in the sense of an uproar, evidence of a hostile environment is proof of the disruption of a university’s mission in the most fundamental sense of Tinker. **When harassment based on race rises to a level of severity and pervasiveness that qualifies for Title VI protection, minority students have, by definition, been prevented from accessing educational programing. In such cases, schools are justified in intervening under the First Amendment’s recognition of pedagogical interests.** Simply because hostile environment disruptions happen quietly when a student is too distracted to learn, or in ways that most intensely affect minority students who are few in number, or in ways that become invisible because the students who are affected withdraw from the hostile environment, this does not mean that the interference does not occur. In fact, this kind of disruption is precisely what hostile environment discrimination law is concerned with: a disruption in the education of minority students that leads these students to feel unwelcome and quietly disappear. Hostile environment conduct “intrudes upon . . . the rights of other students”[50] to learn—a legitimate justification for regulation of speech under Tinker.

#### Normal means entails universities self-regulating harassment, and they circumvent.

**Thomas:** Thomas, Katie [Contributor, The New York Times] “Review Shows Title IX Is Not Significantly Enforced.” *The New York Times.* July 2011. RP

“**Unfortunately what we see is that many schools are getting away with providing fewer opportunities to girls because they don’t do what they’re supposed to unless made to**,” said Neena Chaudhry, senior counsel at the National Women’s Law Center. Current and former enforcement officials insist they have worked hard to mount meaningful investigations, and they defended the policy of allowing schools to investigate themselves. Most schools, they said, want to correct their problems once they learn they are violating the law. For every Ball State or U.S.C., there are also examples of cases in which investigations by the office yielded significant results. Earlier this year, Lincoln Land Community College in Illinois added a practice field for the women’s softball team, installed two new bullpens, and agreed to give softball and baseball players equal access to batting cages. And Southeastern Community College in Iowa agreed to expand the size of its women’s basketball court, and to give the baseball and softball team equal access to lighted fields. Complaints involving Title IX — and athletics in particular — make up a tiny minority of cases for the Office for Civil Rights, but because of the political weight they often carry, they are among the most time-consuming and closely scrutinized that the office handles, according to interviews with several former civil rights office employees. “**The arena is remarkably politicized**,” said Arthur Coleman, who served as senior policy adviser at the Office for Civil Rights during the Clinton administration. The U.S.C. inquiry illustrates how a complex case and a reluctance to cooperate translated into the longest-running Title IX athletics investigation in the office’s caseload. Linda Joplin, a member of the California chapter of the National Organization for Women, made national headlines when she filed a complaint in 1998 against U.S.C., an athletic powerhouse whose football team is a perennial contender for the national title. The university is private but is subject to Title IX because it receives federal assistance in the form of grants and student aid. Joplin alleged that female athletes at U.S.C. lagged significantly behind men, and women were being denied their fair share of scholarship dollars and other sports spending. After the Office for Civil Rights began its investigation, U.S.C. dug in its heels, recalled Patricia Shelton, the longtime lead investigator on the case, who has since retired. U.S.C. insisted it was doing right by its female students, offering them, for example, the maximum number of athletic scholarships permitted under the rules. But Shelton, the agency’s investigator, said the university also declined to turn over key financial data that would have shown whether it was spending equal amounts of money on men’s and  women’s teams. Kelly Bendell, a lawyer for U.S.C. who has worked on the case since 2000, said the university had complied with all requests for information after initially resisting because of concerns about turning over proprietary financial data. Disputes over basic information explain only parts of the nearly endless case. Bendell, the lawyer for the university, said the agency conducting the investigation “seemed to drop the matter” for five years, with no contact between it and U.S.C. from 2003 to 2008. Shelton, the lead investigator, said responsibility for delays rested with her superiors in Washington. She said she repeatedly wrote up her findings, only to be told they were out of date and needed to be resubmitted. She said she suspected that Washington officials were reluctant to criticize a major athletic program like U.S.C.’s. “There would have been a lot of political fallout,” she said. “Why would they want that?” Over the years, U.S.C has improved its offerings to women, increasing its scholarship aid to female athletes and announcing plans to add [women’s lacrosse](http://www.usctrojans.com/sports/w-lacros/usc-w-lacros-body.html) and [sand volleyball](http://www.usctrojans.com/sports/w-volley/spec-rel/101509aaa.html) teams. The university says its actions have resolved any dispute with the Office for Civil Rights. Ali, the head of O.C.R., acknowledged the case could be closed as soon as this fall. But she did not defend how long it had taken. “This administration has a responsibility to both students and institutions not to let the cloud of these open cases hang over their head,” she said. Joplin, the woman who first brought the case, said the office’s slow response has hurt uncounted female students. **And she questioned whether the knowledge that an institution has never lost its funds for violating Title IX played a role in U.S.C.’s past failure to comply**. “They’re willing to take the funding from the federal government,” she said, “but they’re not willing to abide by federal law.” The Ball State case did not last 13 years. But it has upset many for other reasons. In 2008, federal investigators looking into a complaint about sex discrimination in the athletic department at Ball State discovered that a large number of coaches of women’s teams had recently resigned or been fired. The detail caught the investigators’ attention, but rather than look into the issue, the office asked Ball State to run its own inquiry into whether the departures were part of a discriminatory pattern. **Schools that find themselves the subject of a complaint can cut an investigation short by signing an agreement with the Office for Civil Rights. In many cases, the agreements do not include specific changes to the programs. Instead, the office asks the schools to investigate themselves and report their findings months, and sometimes years, later**. In the case of Ball State, the office asked the university to investigate itself even though it was being sued by a former tennis coach, Kathy Bull, who was making similar allegations. According to Bull’s lawyers, 12 head coaches of Ball State’s 11 women’s teams have left since 2005, compared with five head coaches of men’s teams in the same period. Less than two weeks after the Office for Civil Rights asked the university to investigate the issue, it reported back that it had found “no evidence” of discrimination. Ball State used the same law firm that was representing the university in Bull’s lawsuit to prepare its report to the Office for Civil Rights. **The university did not conduct any new research into the firings, and none of the former coaches were interviewed, according to a deposition of** [**Jo Ann Gora**](http://cms.bsu.edu/About/AdministrativeOffices/President/Bio.aspx)**, the university president, by Bull’s lawyers.** “I did not think that was necessary,” she said. A spokeswoman for Ball State said that the university does not comment on active litigation and that it is cooperating with the Office for Civil Rights. She said the law firm that prepared the university’s report, did not violate any rules of professional conduct by representing the university in both the Bull lawsuit and the O.C.R. inquiry. Ali said her office had not approved Ball State’s report and added that federal investigators returned to the campus earlier this year to look into the matter. They plan to make another trip during the fall semester. She said the office prodded the university to provide locker rooms to several women’s teams after it was discovered that female athletes were changing in their cars and a storage shed. Still, she defended the practice of allowing universities to conduct their own investigations. “The university is in the best position to know — assuming good will — to know what its needs are for hiring and terminating,” she said. “And it’s their obligation to ensure that that doesn’t happen in a discriminatory manner.” But Marissa Pollick, Bull’s lawyer, questioned whether the office should always assume such good will. “**You’re relying on the universities to comply when they have very strong interests not to,” she said.**

## NoKo Withdrawal

#### Their uniqueness is *embarrassing* – it’s from 2010 – they haven’t won that the US will actually stay in North Korea.

#### No link uniqueness – protests happen all the time and they haven’t won free speech is the key internal link

#### Non unique -- Trump is threatening withdrawal

**Sang-Hun:** Sang-Hun, Choe [Contributor, The New York Times] “North Korea Applauds Donald Trump’s Threat to Pull Troops From South.” June 2016. RP

SEOUL, South Korea — [**Donald J. Trump**](http://www.nytimes.com/interactive/2016/us/elections/donald-trump-on-the-issues.html?inline=nyt-per)**’s proposals for upending American policy toward the Korean Peninsula have found a receptive audience in at least one place:** [**North Korea**](http://topics.nytimes.com/top/news/international/countriesandterritories/northkorea/index.html?inline=nyt-geo)**. On Wednesday, the official newspaper of North Korea’s ruling Workers’ Party published a commentary praising Mr. Trump’s threat to pull American troops out of** [**South Korea**](http://topics.nytimes.com/top/news/international/countriesandterritories/southkorea/index.html?inline=nyt-geo) **if elected president, unless Seoul pays more for their presence.** It said the threat had shocked South Korean policy makers, who it characterized as servants of America, a standard theme of the North’s propaganda. “The tragedy is that the South’s authorities are incapable of feeling any national shame, no matter how their American masters subject them to an unbearable humiliation,” read the commentary in the newspaper, Rodong Sinmun. “Their attitude is best shown by the way they got scared by Trump’s comments and groveled.” In a March interview with The New York Times, **Mr. Trump accused South Korea of not contributing enough toward the cost of keeping tens of thousands of American troops in the country,** [**suggesting he might withdraw them**](http://www.nytimes.com/2016/03/27/us/politics/donald-trump-transcript.html) **if elected.** He further unsettled South Korean officials by declaring in May, during an interview with Reuters, that he would be willing to [negotiate directly with Kim Jong-un](http://www.nytimes.com/2016/05/18/us/politics/kim-jong-un-donald-trump.html), the North Korean leader, to try to stop the North’s nuclear arms program. “I would have no problem speaking to him,” Mr. Trump said. At first, Mr. Trump’s remarks were largely dismissed in South Korea, but the news media here sounded a growing alarm about them as it became clearer that he would become the Republican nominee. “It is scary just to imagine Trump, who often doesn’t remember what he has said, getting elected president and manipulating Korean Peninsula issues by drastically shifting his positions,” a South Korean newspaper, Kyunghyang Shinmun, wrote in an editorial in May.

#### Their uniqueness cuts in the opposite direction – they say protests are on the rise right now

#### Private colleges thump –half the colleges in the US will be unaffected by the plan

## Cyberbullying DA

#### Counterspeech is better than bans on cyberbullying – empirics go Aff.

**Collier:** Collier, Anne [Contributor, Net Family News] “Counterspeech: New online safety tool with huge potential.” December 2015. RP

Susan Benesch, founder of The Dangerous Speech project, tells the story of how worried people in Kenya were in the run-up to their national election in 2013. **Dangerous, inflammatory speech around the previous election in 2007 had led to widespread violence involving more than 1,000 deaths and hundreds of thousands of people being displaced, she said in a** [**talk at Harvard’s Berkman Center**](https://cyber.law.harvard.edu/events/luncheon/2014/03/benesch)**, where she is a faculty associate. But in 2013, Kenyan activists were able to counter the violent speech, especially on Twitter, which is extremely popular there. “When inflammatory speech was posted on Twitter, prominent Kenyan Twitter users (often members of the #KOT, Kenyans on Twitter, community) responded,” Benesch said, “often invoking the need to keep discourse in the country civil and productive.”** It turned out to be a far more peaceful election than the 2007 one. What the #KOT peacemakers were tapping into in that very volatile situation was the power of social norms. “**People’s behavior shifts dramatically in response to community norms,”** Benesch said in her talk, explaining that 80% of people are likely to conform their speech or behavior to the norms of their community – “even trolls,” she said. [For more on social norms, see [this](http://www.netfamilynews.org/?s=%22social+norms%22).] **In one example she gives, a Kenyan Twitter user “posted that he would be okay with the disappearance of another ethnic group and was immediately called out by other Twitter users. Within a few minutes, he had tweeted, ‘Sorry, guys, what I said wasn’t right and I take it back’.” Think about that in the context of young people’s online speech. Acts of kindness like that of** [**this US high school student**](http://abcnews.go.com/Lifestyle/washington-valedictorians-secret-instagram-reveals-tear-jerking-thoughts/story?id=31689197) **and** [**these Canadian students**](http://www.netfamilynews.org/pink-shirts-in-canada-ultimate-social-norms-model)**) are demonstrations of counterspeech that not only increases students’ safety, online and offline, but also inspires and challenges their peers’ own creative civic engagement.** So you might think of this as the “new kid on the block” of Internet safety – though it’s a safety tool for people of all ages. **Counterspeech is not new in terms of social change, but we’re at the start of its being used, consciously, as a tool for addressing and turning around destructive online behavior.** In other words, it’s a tool with enormous potential for bottom-up or peer-driven (P2P) safety and social change in both digital and physical environments – including school environments. And I hypothesize that it will be lasting because it isn’t limited to either online or offline spaces or any particular interest group, culture or nationality**. I can think of two other examples of powerful counterspeech, one in the US, the other in Myanmar. In the latter country, there’s a counterspeech movement called Panzagar, which translates to “Flower Speech,” and Facebook is its main platform** because, as Benesch put it in a [blog post](https://medium.com/internet-monitor-2014-public-discourse/flower-speech-new-responses-to-hatred-online-d98bf67735b7#.a8vtba8j1), “Facebook so dominates online life in Myanmar that some of its users believe Facebook is the Internet, and have not heard of Google.”

#### It’s not constitutionally protected speech – tons of different statutes don’t allow it.

**Citron:** Citron, Danielle Keats [Professor of Law, University of Maryland] “Free Speech Does Not Protect Cyberharrassment.” *The New York Times.* December 2014. RP

Trolling — like the kind of exploitative [abuse spewed against](http://www.9news.com/story/news/health/2014/08/14/cyberbullying-pushes-zelda-williams-to-leave-social-media/14041089/) Zelda Williams on Twitter after her father’s death last week — is often nasty and hurtful. But it is routinely protected expression. Internet users are free to use words and images to get a rise out of others, even at their most vulnerable. In this case, two individuals tweeted photographs of dead bodies to a young woman and wrote that her deceased father would be “ashamed” of her — forcing her to quit the service altogether. These acts are offensive, disturbing and mean-spirited, and yet, they are examples of constitutionally protected speech. **Hateful, offensive and distasteful ideas enjoy constitutional protection, so debate on public issues can be “**[**uninhibited, robust and wide open**](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/nytvsullivan.html)” under the First Amendment. **But there is a point when trolling escalates beyond the offensive and shocking into cyberharassment or cyberstalking — actions that are not protected. Intermediaries — usually the websites where trolls post comments — can step in to revoke the privilege of anonymity, or even remove abusive speech that violates their community guidelines but when trolling turns into cyberharassment or cyberstalking, the law can and should intervene. Online perpetrators can be criminally prosecuted for** [**criminal threats**](https://casetext.com/case/us-v-grob#.U_J9WlbbcpE)**,** [**cyberstalking**](http://www.stltoday.com/news/local/crime-and-courts/man-sentenced-in-st-louis-to-years-for-cyberstalking-wife/article_88b15634-5805-11e1-914a-001a4bcf6878.html)**,** [**cyberharassment**](http://law.justia.com/cases/federal/appellate-courts/ca1/12-2489/12-2489-2014-05-02.html)**,** [**sexual invasions of privacy**](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2368946) **and** [**bias intimidation**](http://cliffviewpilot.com/nj-devilfish-gets-5-years-in-federal-prison-for-threatening-latino-civil-rights-groups/)**. They can be** [**sued**](http://blogs.wsj.com/law/2007/06/12/students-file-suit-against-autoadmit-director-others/) **for defamation and intentional infliction of emotional distress. In a few states, they can also be held to account for** [**bias-motivated stalking**](https://www.bu.edu/law/central/jd/organizations/journals/bulr/volume89n1/documents/CITRON.pdf) **that interferes with victims’ important life opportunities, such as employment and education. Law enforcement should be able to use** [**forensic expertise**](https://freedom-to-tinker.com/blog/harlanyu/traceability-anonymous-online-comment/) **and warrants to track down individuals who engage in this conduct anonymously.** Of course, the law can only do so much: some abuse is left untouched, perpetrators can be hard to identify if they employ certain technologies and, ultimately, lawsuits require significant resources. This is an opportune moment to educate teenagers about the suffering caused by online abuse. As parents, let’s put talking about cyberharassment on par with discussions about drunk driving. And if we discover that our kids are caught up in trolling or more extreme cyberbullying, [no tool is more powerful](http://www.theatlantic.com/magazine/archive/2013/03/how-to-stop-bullies/309217/) in changing teenagers’ behavior than the possibility that they might lose their cellphones, computers or social network accounts. We should not squander this chance to reinforce the importance of respect as a baseline norm for online interaction.

#### Cyberbullying laws are the worst form of biopolitical control – they extend beyond the schools and censor students.

**Hayward:** Hayward, John O. [Senior lecturer in law, Bentley University] “Anti-Cyberbullying Laws Are a Threat to Free Speech.” *Gale.* 2013. RP

While forty-three states have anti-bullying statutes, only twenty-one prohibit cyber bullying, which usually is defined as "bullying" conducted by electronic means. Additionally, the laws can be grouped into prohibitions that explicitly include off-campus cyber bullying or implicitly include or exclude it. Typical legislative language is "immediately adjacent to school grounds," "directed at another student or students," "at a school activity," or "at school-sponsored activities or at a school-sanctioned event." **The statutes also usually contain language prohibiting cyber bullying if it results in one or more of the following: (1) causes "substantial disruption" of the school environment or orderly operation of the school, (2) creates an "intimidating," "threatening" or "hostile" learning environment, (3) causes actual harm to a student or student's property or places a student in reasonable fear of harm to self or property, (4) interferes with a student's educational performance and benefits**, (5) includes as a target school personnel or references "person" rather than "student," and (6) incites third parties to carry out bullying behavior. Five states prohibit cyber bullying if it is motivated by an actual or perceived characteristic or trait of a student. Presumably this protects gay and lesbian students and school personnel from criticism because of their sexual orientation but it could also shield obese, bulimic, short and tall students from disparagement due to their weight or height. **While many applaud anti-cyber bullying legislation, some are concerned that it gives school officials unbridled authority that will be used to burnish their image, not protect bullying victims, or that it threatens student free speech. Furthermore, if their authority is unleashed beyond the school yard, it is essentially limitless. Thus no student, even in the privacy of their home, can write about controversial topics of concern to them without worrying that it may be "disruptive" or cause a "hostile environment" at school**. In effect, students will be punished for off-campus speech based on the way people *react* to it at school. **Many of the terms are so vague that they offer no guidance to distinguish permissible from impermissible speech**. In this sense, they are akin to campus speech codes that courts invalidated in the 1990s for vagueness and overbreadth. Consequently, these laws don't simply "chill" student free speech, they plunge it into deep freeze. **This [viewpoint] argues that for these reasons, some anti-cyber bullying laws violate the First Amendment** and should be struck down as unconstitutional....

#### Targets won’t come forward

**Citron:** Citron, Danielle. [Lois K. Macht Research Professor & Professor of Law, University of Maryland Francis King Carey School of Law] “Criminalizing Revenge Porn.” Wake Forest Law Review, 2014. AG

What is more, **[S]ince plaintiffs in civil court** generally **have to proceed under their real names, victims may be reluctant to sue for fear of** unleashing more **unwanted publicity. Generally, courts disfavor pseudonymous litigation because it is assumed to** interfere with the transparency of the judicial process, to **deny a defendant’s constitutional right to confront his or her accuser, and** to **encourage frivolous claims from being asserted by those whose names and reputations would not be on the line.** Arguments in favor of Jane Doe lawsuits are considered against the presumption of public opennessa heavy presumption that often works against plaintiffs asserting privacy invasions.81 **Even in ideal circumstances, where pseudonymous litigation is permitted[,]** and where a lawyer is willing to take the case, **it may be hard to recover much in the way of damages.** Defendants often do not have deep pockets. **Victims may be hard pressed to expend their time and money on lawsuits if defendants are effectively judgment proof.** Then too**, [A]n award of damages is no assurance that websites will comply with requests to take down the images. The removal of images is the outcome that** most **victims desire above all else, and civil litigation may be unable to make that happen**

#### Victims lack the resources to file civil suits, and lawyers are unwilling to take their cases.

**Citron:** Citron, Danielle. [Lois K. Macht Research Professor & Professor of Law, University of Maryland Francis King Carey School of Law] “Criminalizing Revenge Porn.” Wake Forest Law Review, 2014. AG

One major problem, however, is that **[M]ost victims lack resources to bring civil suits.** As we have heard from countless victims, **[M]any cannot afford to sue their perpetrators. Having lost their jobs due to the online posts, they cannot** pay their rent, let alone **cover lawyer’s fees**. It may also be hard to **[or] find lawyers willing to take their cases. Most lawyers do not know this area of law and are not prepared to handle the trickiness of online harassment evidence.** **This reduces the deterrent effect of civil litigation, as would-be perpetrators are unlikely to fear a course of action that is unlikely to materialize.**

## Black Safe Spaces DA

#### No link – safe spaces are *content neutral* so they’re included in reasonable time place manner restrictions.

#### Safe spaces for minorities make coalitions on campus worse, and are a tool of neosegregation.

**Airaksinen:** Airaksinen, Toni [Contributor, The College Fix] “Black Harvard professor: Giving minorities safe spaces does more harm than good.” *The College Fix.* October 2016. RP

Increased sense of ethnic victimization and a decreased sense of common identity …’ **Accommodating students of color by giving them a safe space doesn’t work — it actually has a harmful effect on their relationships with other ethnic groups on campus**. So says James Sidanius, a Harvard University professor of psychology and African American Studies and the [author](http://scholar.harvard.edu/sidanius/home) of more than 330 scientific papers on race, oppression, diversity and other topics. In 2004, long before the mainstream media started extensively covering the safe space and self-segregation trends in higher education, Professor Sidanius co-authored a [paper](https://dash.harvard.edu/bitstream/handle/1/3205411/Sidanius_EthnicEnclaves.pdf?sequence=1) titled “Ethnic Enclaves and the Dynamics of Social Identity on the College Campus: The Good, the Bad, and the Ugly.” Reached for comment this month by The College Fix, Sidanius said his research can be applied to today’s trends, but it’s nothing really new. “I don’t see any signs that [ethnic enclaves have] gotten worse, it’s probably remained relatively constant, we’re just paying more attention to it now,” he said. Sidanius investigated the effects of membership in “ethnic organizations,” otherwise known as “ethnic enclaves,” in his research. Examples of such ethnic organizations could include, for example, a Black Student Organization or a Chinese Cultural Association. **For students who are members of these types of ethnic-themed organizations, Sidanius discovered during his research that “effects included an increased sense of ethnic victimization and a decreased sense of common identity and social inclusiveness**.” These ethnic organizations are often very in line with today’s “safe space” ideology — the notion that being segregated from what oppresses you or makes you feel uncomfortable is beneficial. Students of color today frequently demand — [and receive](http://www.thecollegefix.com/post/28168/) — ethnic enclaves of various sorts, seen in everything from housing and social gatherings to protests and grief sessions. While they are not exactly the same as “ethnic organizations” Sidanius’ research looked at, the impact of segregation can still apply. Sidanius’ research points out that “among minority students the evidence suggested that membership in ethnically oriented student organizations actually increased the perception that ethnic groups are locked into zero-sum competition with one another and the feeling of victimization by virtue of one’s ethnicity.” He reiterated those findings in his interview with The Fix. “**Once having joined these [ethnic] organizations, the more likely [students] were to feel that they were in this zero-sum relationship with other ethnic groups on campus, and the greater level of hostility they had towards other members on campus, the greater the degree to which they felt ethnically victimized by other ethnic groups on campus**,” he said. But while his research discovered ethnic segregation actually has a negative effect on its stated goals of multiculturalism, diversity and inclusion, administrations at thousands of colleges continue to justify these groups as having an overall positive effect on the campus community. Sidanius, in his interview, elaborated on what he believes is a better fix for racial tensions: **Cross-ethnic exposure and communication help soothe tensions—not safe spaces and self-segregation**—he explained. In another [study](https://www.washingtonpost.com/opinions/want-greater-diversity-on-college-campuses-increase-the-number-of-interracial-roommates/2016/07/01/d5bcdad6-3d5a-11e6-80bc-d06711fd2125_story.html?utm_term=.09e7feb46f68) he said he found that students who were randomly assigned to roommates who were a different racial category than themselves “had lower levels of hostility towards other ethnic groups” and that increased contact between students of different backgrounds “increased the level of positive interchange.” When asked whether his research had any effect on college diversity programming, Sidanius said it’s complicated. “They were in a bind about what to do with the ethnic student organizations, because they didn’t want to forbid or outlaw fraternities, sororities, or ethnic organizations, so they didn’t do much of anything,” he said. **Sidanius told The College Fix that if administrators wanted to help improve race-relations on campus, that they could try to offer programming that brings students of different racial backgrounds together, not pulls them apart.**

#### Restrictions and safe spaces depoliticize oppression, fracturing coalitions that are key to solve.

Halberstam Jack Halberstam, You Are Triggering me! The Neo-Liberal Rhetoric of Harm, Danger and Trauma, Bully Bloggers, 5/7/16.

**What does it mean when younger people who are benefitting from several generations now of queer social activism** by people in their 40s and 50s (who in their childhoods had no recourse to anti-bullying campaigns or social services or multiple representations of other queer people building lives) **feel abused, traumatized, abandoned, misrecognized, beaten, bashed and damaged?** These **younger folks**, with their gay-straight alliances, their supportive parents and their new right to marry regularly **issue calls for “safe space**.” However, as Christina Hanhardt’s Lambda Literary award winning book, Safe Space: Neighborhood History and the Politics of Violence, shows, **the safe space agenda has worked in tandem with urban initiatives to increase the policing of poor neighborhoods and the gentrification of others.** Safe Space: Gay Neighborhood History and the Politics of Violence traces the development of LGBT politics in the US from 1965-2005 and explains how **LGBT activism was transformed from a multi-racial coalitional grassroots movement with strong ties to anti-poverty groups and anti-racism organizations to a mainstream, anti-violence movement with aspirations for state recognition. And, as LGBT communities make “safety” into a top priority** (and that during an era of militaristic investment in security regimes) **and ground their quest for safety in competitive narratives about trauma, the fight against aggressive new forms of exploitation, global capitalism and corrupt political systems falls by the way side. Is this the way the world ends? When groups that share common cause, utopian dreams and a joined mission find fault with each other instead of tearing down the banks and the bankers, the politicians and the parliaments, the university presidents and the CEOs? Instead of realizing**, as Moten and Hearny put it in The Undercommons, **that “we owe each other everything,” we** enact punishments on one another and stalk away from projects that should unite us, and **huddle in small groups feeling** erotically **bonded through our self-righteousness**. I want to call for a time of accountability and specificity: not all LGBT youth are suicidal, not all LGBT people are subject to violence and bullying, and indeed class and race remain much more vital factors in accounting for vulnerability to violence, police brutality, social baiting and reduced access to education and career opportunities. **Let’s call an end to the finger snapping moralism, let’s question contemporary desires for immediately consumable messages of progress, development and access; let’s all take a hard long look at the privileges that often prop up public performances of grie**f and outrage; let’s acknowledge that being queer no longer automatically means being brutalized and let’s argue for much more situated claims to marginalization, trauma and violence. **Let’s not fiddle while Rome** (or Paris) **burns,** trigger while the water rises, weep while trash piles up; **let’s recognize these internal wars for the distraction they have become. Once upon a time, the appellation “queer” named an opposition to identity politics, a commitment to coalition, a vision of alternative worlds. Now it has become a weak umbrella term for a confederation of identitarian concerns. It is time to move on, to confuse the enemy, to become illegible, invisible, anonymous** (see Preciado’s Bully Bloggers post on anonymity in relation to the Zapatistas). In the words of José Muñoz, “we have never been queer.” In the words of a great knight from Monty Python and the Holy Grail, “we are now no longer the Knights who say Ni, we are now the Knights who say “Ekki-ekki-ekki-ekki-PTANG. Zoom-Boing, z’nourrwringmm.”

#### Authenticity tests for blackness get misapplied to oppress students in other ways.

**Johnson 03**: Johnson, E. Patrick. Appropriating blackness: Performance and the politics of authenticity. Duke University Press, 2003.

**The title of this book suggests that ‘‘blackness’’ does not belong to any one individual or group. Rather, individuals or groups appropriate this complex and nuanced racial signifier in order to circumscribe its boundaries or to exclude other individuals or groups.** When blackness is appropriated to the exclusion of others, identity becomes politi- cal. Inevitably, when one attempts to lay claim to an intangible trope that manifests in various discursive terrains, identity claims become embattled, or as noted in the quotation above by Baldwin, ‘‘color’’ or ‘‘blackness’’ becomes a ‘‘dangerous phenomenon.’’ Because the con- cept of blackness has no essence, ‘‘black authenticity’’ is overdeter- mined—contingent on the historical, social, and political terms of its production. Moreover, in the words of Regina Bendix: ‘‘the notion of [black] authenticity implies the existence of its opposite, the fake, and this dichotomous construct is at the heart of what makes authenticity problematic.’’4 **Authenticity, then, is yet another trope manipulated for cultural capital.¶ That said, I do not wish to place a value judgment on the notion of authenticity, for there are ways in which authenticating discourse enables marginalized people to counter oppressive representations of themselves. The key here is to be cognizant of the arbitrariness of authenticity, the ways in which it carries with it the dangers of fore- closing the possibilities of cultural exchange and understanding.** As Henry Louis Gates Jr. reminds us: ‘‘No human culture is inaccessible to someone who makes the effort to understand, to learn, to inhabit another world.’’5¶ **When black Americans have employed the rhetoric of black au- thenticity, the outcome has often been a political agenda that has ex- cluded more voices than it has included.**6 The multiple ways in which we construct blackness within and outside black American culture is contingent on the historical moment in which we live and our ever- shifting subject positions. For example, black Americans, whose vo- cality, leadership, and rhetoric flourished at the historical moment in which they lived, contested popular constructions of blackness in order to further their own political agendas and occasionally to stake out a space from which to argue for the inclusion of other signs of ‘‘blackness.’’¶ Indeed, if one were to look at blackness in the context of black American history, one would find that, even in relation to national- ism, the notion of an ‘‘authentic’’ blackness has always been contested: the discourse of ‘‘house niggers’’ vs. ‘‘field niggers’’; Sojourner Truth’s insistence on a black female subjectivity in relation to the black polity; Booker T. Washington’s call for vocational skill over W. E. B. Du Bois’s ‘‘talented tenth’’; Richard Wright’s critique of Zora Neale Hurston’s focus on the ‘‘folk’’ over the plight of the black man; Eldridge Cleaver’s caustic attack on James Baldwin’s homosexuality as ‘‘anti-black’’ and ‘‘anti-male’’; urban northerners’ condescending attitudes toward rural southerners and vice versa; Malcolm X’s militant call for black Ameri- cans to fight against the white establishment ‘‘by any means nec- essary’’ over Martin Luther King Jr.’s reconciliatory ‘‘turn the other cheek’’; and Jesse Jackson’s ‘‘Rainbow Coalition’’ over Louis Farra- khan’s ‘‘Nation of Islam.’’ All of these examples belong to the long- standing tradition in black American history of certain black Ameri- cans critically viewing a definition of blackness that does not validate their social, political, and cultural worldview. As Wahneema Lubiano suggests, ‘‘**the resonances of [black] authenticity depend on who is doing the evaluating.’’7¶ White Americans also construct blackness.8 Of course, the power relations maintained by white hegemony have different material ef- fects for blacks than for whites. When white Americans essentialize blackness, for example, they often do so in ways that maintain ‘‘white- ness’’ as the master trope of purity, supremacy, and entitlement, as a ubiquitous, fixed, unifying signifier that seems invisible.9 Alter- nately, the tropes of blackness that whites circulated in the past— Mammy, Sapphire, Jezebel, Jim Crow, Sambo, Zip Coon, pickaninny, and Stepin Fetchit, and now enlarged to include welfare queen, pros- titute, rapist, drug addict, prison inmate, etc.—have historically in- sured physical violence, poverty, institutional racism, and second- class citizenry for blacks.¶ An even more complicated dynamic occurs when whites appro- priate blackness. History demonstrates that cultural usurpation has been a common practice of white Americans and their relation to art forms not their own. In many instances, whites exoticize and/or fetishize blackness,** what bell hooks calls ‘‘eating the other.’’10 Thus, when white-identified subjects perform ‘‘black’’ signifiers—norma- tive or otherwise—the effect is always already entangled in the dis- course of otherness; the historical weight of white skin privilege nec- essarily engenders a tense relationship with its Others.

#### Safe spaces are never safe for black people – tough racial dialogue is key – even if hate speech occurs, the discussion is important.

**Leonardo and Porter:** Leonardo, Zeus and Porter, Ronald K.(2010) 'Pedagogy of fear: toward a Fanonian theory of 'safety' in race dialogue', Race Ethnicity and Education, 13: 2, 139 — 157

It **is apparent that both whites and people of color want to avoid violence from being enacted against them. They enter race dialogue from radically different locations – intellectual for the former, lived for the latter – and an unevenness that the critical race pedagogue must accept and becomes the constitutive condition of any progressive dialogue on race. It is the risk that comes with violence but one worth taking if educators plan to shift the standards of humanity. In an apparently common quest for mutual racial understanding, whites and people of color participate in a violence that becomes an integral part of the process and seeking a ‘safe space’ is itself a form of violence insofar as it fails to recognize the myth of such geography in interracial exchange. As it concerns people of color within the current regime, safe space in racial dialogue is a projection rather than a reality. This is the myth that majoritarian stories in education replay and retell in order to perpetuate an understanding of race that maintains white supremacy. Safe spaces are violent to people of color and only by enacting a different form of violence, of shifting the discourse, will race dialogue ultimately become a space of mutual recognition between whites and people of color**. If people of color observe the current call for safety, this process defaults to white understandings and comfort zones, which have a well-documented history of violence against people of color. It is a point of entry that is characterized by denials, evasions, and falsehoods (Frankenberg 1993; Mills 1997). Its shell is non-violent for in public most whites prize self-control. Race dialogue within a white framework is rational, if by that we mean a situation that preserves, as Angela Davis (1998) mentioned, peace and order. This procedural arrangement has much to recommend it if we want to avoid uprisings and outright violence. But its kernel is already violent to people of color because a certain irrational rationality is at work. Both parties leave the interaction relatively ‘intact’, which should not be equated with the absence of violence. Whites depart the situation with their worldview and value systems unchallenged and affirmed, and people of color remain fractured in theirs. Whites would need to experience violence if they expect to change. But this is different from a hegemonic understanding that violence is always a form of dehumanization. In our appropriation of Fanon’s dialectics of violence, we find transformative possibilities in violence depending on the political project to which it is attached. Moreover, in this framework violence is not so much a description of this or that act qualifying as a form of violence, but a theoretical prescription of a different state of affairs, a response to oppression that equals its intensity. Thus, we do not describe what violence looks like, but assess its consequences.

#### A culture of safety has swallowed our campuses. It locks out hard conversations about race which dooms any efforts at effective change.

**Shulevitz:** Judith Shulevitz, In College and Hiding From Scary Ideas, The New York Times, March 21, 2015

**Safe spaces are an expression of the conviction, increasingly prevalent among college students, that their schools should keep them from being “bombarded” by discomfiting or distressing viewpoints**. Think of the safe space as the live-action version of the better-known trigger warning, a notice put on top of a syllabus or an assigned reading to alert students to the presence of potentially disturbing material. Some people trace safe spaces back to the feminist consciousness-raising groups of the 1960s and 1970s, others to the gay and lesbian movement of the early 1990s. In most cases, safe spaces are innocuous gatherings of like-minded people who agree to refrain from ridicule, criticism or what they term microaggressions — subtle displays of racial or sexual bias — so that everyone can relax enough to explore the nuances of, say, a fluid gender identity. As long as all parties consent to such restrictions, these little islands of self-restraint seem like a perfectly fine idea. **But the notion that ticklish conversations must be scrubbed clean of controversy has a way of leaking out and spreading. Once you designate some spaces as safe, you imply that the rest are unsafe. It follows that they should be made safer.** This logic clearly informed a campaign undertaken this fall by a Columbia University student group called Everyone Allied Against Homophobia that consisted of slipping a flier under the door of every dorm room on campus. The headline of the flier stated, “I want this space to be a safer space.” The text below instructed students to tape the fliers to their windows. The group’s vice president then had the flier published in the Columbia Daily Spectator, the student newspaper, along with an editorial asserting that “making spaces safer is about learning how to be kind to each other.” A junior named Adam Shapiro decided he didn’t want his room to be a safer space. He printed up his own flier calling it a dangerous space and had that, too, published in the Columbia Daily Spectator. “Kindness alone won’t allow us to gain more insight into truth,” he wrote. In an interview, Mr. Shapiro said, “If the point of a safe space is therapy for people who feel victimized by traumatization, that sounds like a great mission.” **But a safe-space mentality has begun infiltrating classrooms, he said, making both professors and students loath to say anything that might hurt someone’s feelings. “I don’t see how you can have a therapeutic space that’s also an intellectual space**,” he said. I’m old enough to remember a time when college students objected to providing a platform to certain speakers because they were deemed politically unacceptable. Now students worry whether acts of speech or pieces of writing may put them in emotional peril. Two weeks ago, students at Northwestern University marched to protest an article by Laura Kipnis, a professor in the university’s School of Communication. Professor Kipnis had criticized — O.K., ridiculed — what she called the sexual paranoia pervading campus life. The protesters carried mattresses and demanded that the administration condemn the essay. One student complained that Professor Kipnis was “erasing the very traumatic experience” of victims who spoke out. An organizer of the demonstration said, “we need to be setting aside spaces to talk” about “victim-blaming.” Last Wednesday, Northwestern’s president, Morton O. Schapiro, wrote an op-ed article in The Wall Street Journal affirming his commitment to academic freedom. But plenty of others at universities are willing to dignify students’ fears, citing threats to their stability as reasons to cancel debates, disinvite commencement speakers and apologize for so-called mistakes. At Oxford University’s Christ Church college in November, the college censors (a “censor” being more or less the Oxford equivalent of an undergraduate dean) canceled a debate on abortion after campus feminists threatened to disrupt it because both would-be debaters were men. “I’m relieved the censors have made this decision,” said the treasurer of Christ Church’s student union, who had pressed for the cancellation. “It clearly makes the most sense for the safety — both physical and mental — of the students who live and work in Christ Church.” A year and a half ago, a Hampshire College student group disinvited an Afrofunk band that had been attacked on social media for having too many white musicians; the vitriolic discussion had made students feel “unsafe.” **Last fall, the president of Smith College, Kathleen McCartney, apologized for causing students and faculty to be “hurt” when she failed to object to a racial epithet uttered by a fellow panel member at an alumnae event in New York. The offender was the free-speech advocate Wendy Kaminer, who had been arguing against the use of the euphemism “the n-word” when teaching American history or “The Adventures of Huckleberry Finn**.” In the uproar that followed, the Student Government Association wrote a letter declaring that “if Smith is unsafe for one student, it is unsafe for all students.” “**It’s amazing to me that they can’t distinguish between racist speech and speech about racist speech, between racism and discussions of racism,”** Ms. Kaminer said in an email. T**he confusion is telling, though. It shows that while keeping college-level discussions “safe” may feel good to the hypersensitive, it’s bad for them and for everyone else.** People ought to go to college to sharpen their wits and broaden their field of vision. **Shield them from unfamiliar ideas, and they’ll never learn the discipline of seeing the world as other people see it. They’ll be unprepared for the social and intellectual headwinds that will hit them as soon as they step off the campuses** whose climates they have so carefully controlled. What will they do when they hear opinions they’ve learned to shrink from? **If they want to change the world, how will they learn to persuade people to join them?** Only a few of the students want stronger anti-hate-speech codes. Mostly they ask for things like mandatory training sessions and stricter enforcement of existing rules. Still, it’s disconcerting to see students clamor for a kind of intrusive supervision that would have outraged students a few generations ago. But those were hardier souls. Now students’ needs are anticipated by a small army of service professionals — mental health counselors, student-life deans and the like. This new bureaucracy may be exacerbating students’ “self-infantilization,” as Judith Shapiro, the former president of Barnard College, suggested in an essay for Inside Higher Ed. But why are students so eager to self-infantilize? Their parents should probably share the blame. Eric Posner, a professor at the University of Chicago Law School, wrote on Slate last month that although universities cosset students more than they used to, that’s what they have to do, because today’s undergraduates are more puerile than their predecessors. “Perhaps overprogrammed children engineered to the specifications of college admissions offices no longer experience the risks and challenges that breed maturity,” he wrote. But “if college students are children, then they should be protected like children.” Another reason students resort to the quasi-medicalized terminology of trauma is that it forces administrators to respond. Universities are in a double bind. They’re required by two civil-rights statutes, Title VII and Title IX, to ensure that their campuses don’t create a “hostile environment” for women and other groups subject to harassment. However, universities are not supposed to go too far in suppressing free speech, either. If a university cancels a talk or punishes a professor and a lawsuit ensues, history suggests that the university will lose. But if officials don’t censure or don’t prevent speech that may inflict psychological damage on a member of a protected class, they risk fostering a hostile environment and prompting an investigation. As a result, students who say they feel unsafe are more likely to be heard than students who demand censorship on other grounds.

#### Backlash disad – whites being excluded from speaking in Black safe spaces causes increases in white nationalism – Trump proves.

Tumulty and Johnson: Karen Tumulty and Jenna Johnson, “Why Trump may be winning the war on ‘political correctness’” 1-4-16 <https://www.washingtonpost.com/politics/why-trump-may-be-winning-the-war-on-political-correctness/2016/01/04/098cf832-afda-11e5-b711-1998289ffcea_story.html?utm_term=.db9bc85e5b87>

“Driving powerful sentiments underground is not the same as expunging them,” said William A. Galston, a Brookings Institution scholar who advised President Bill Clinton. “**What we’re learning from Trump is that a lot of people have been biting their lips, but not changing their minds**.” One thing is clear: **Trump is channeling a very mainstream frustration**. **In an October** poll by Fairleigh Dickinson University, **68 percent agreed** with the proposition that “**a big problem this country has is being politically correct**.” It was a sentiment felt strongly across the political spectrum, by 62 percent of Democrats, 68 percent of independents and 81 percent of Republicans. Among whites, 72 percent said they felt that way, but so did 61 percent of nonwhites. “**People feel tremendous cultural condescension directed at them**,” and that their values are being “smirked at, laughed at” by the political and media elite, said GOP strategist Steve Schmidt. “‘Political correctness’ are the two words that best respond to everything that a conservative feels put upon,” added pollster Frank Luntz, who has advised Republicans. The label is, he said, a validation that what many on the right see as legitimate policy and cultural differences are not the same as racism, sexism or heartlessness. “**Allegations of racism and sexism have turned into powerful silencing devices**,” Galston agreed. “You can be opposed to affirmative action without being a racist.” The PC backlash does not necessarily mean that people support the kinds of things that Trump is saying, or the way he says them. When the Fairleigh Dickinson pollsters added his name to the same question — prefacing it with “Donald Trump said recently . . . ” — the numbers dropped sharply. Only 53 percent said they agree that political correctness is a major problem. This is not a new debate. It has raged since at least the early 1990s, when college campuses began adopting speech codes. Some went well beyond obvious slurs — with animal rights activists contending, for instance, that the word “pet”was disrespectful and should be changed to “companion animal.” **More recently, the PC wars have flared again in academia, where there is an ongoing argument over whether campuses should be a “safe space” where students are protected from upsetting ideas, and receive “trigger warnings” when course material contains distressing information**. Few would argue that it is wrong to confront and eliminate prejudice. But even some liberals have called political correctness a form of McCarthyism aimed at stifling free expression. **Trump has brought the question from the university quad to the political arena** in a way that no leading candidate has in the past. For many, “it’s satisfying to have a loud tribune like Trump,” said David Axelrod, who was President Obama’s top campaign adviser. “But I don’t think the hunger for authentic plain speech is Trump-specific. One of the appeals of [Democratic presidential candidate] Bernie Sanders is that people think he says exactly what he thinks and is not passing it through a filter. **There is a fundamental yearning for authenticity** that is probably felt more broadly.” The edgy liberal comedian Bill Maher, who for nearly a decade hosted a talk show called “Politically Incorrect,” has said that Trump’s ideas sound “a little ­Hitler-adjacent.” But he has also noted a yearning for “somebody to say, ‘You know what, I just don’t bend to your bull----.’ And Donald Trump, I’ve got to say, I don’t agree with him on a lot, but I kind of get him. We’ve been doing the same thing.” Trump sounded the anti-PC clarion call at the first Republican debate in August, when moderator ­Megyn Kelly of Fox News challenged him on comments that he had made disparaging women. “I think the big problem this country has is being politically correct,” he said. “I’ve been challenged by so many people, and I don’t frankly have time for total political correctness. And to be honest with you, this country doesn’t have time either. This country is in big trouble. We don’t win anymore. We lose to China. We lose to Mexico both in trade and at the border. We lose to everybody.” **It is hard to follow the logic of an argument that insulting women could somehow make the country stronger overseas. But the sentiment behind it came through clearly**. **And it has been picked up by other GOP contenders**. “Political correctness is killing people,” said Sen. Ted Cruz (R-Tex.), because it prevents the Obama administration from focusing on the communications and activities of potential terrorists who are Muslims. “Political correctness is ruining our country,” said former neurosurgeon Ben Carson, after he was criticized for saying a Muslim should not be president. It is corrosive, Carson said in an interview, because “many people will not say what they believe because someone will look askance at them, call them a name. Somebody will mess with their job, their family. This was not supposed to be the way it was in America.” Last month’s terrorist attack in San Bernardino, Calif., carried out by a Muslim couple who appear to have been inspired by the Islamic State, also known as ISIS, has become a case in point for many conservatives. They say political correctness has made the Obama administration too timid in calling it what it is — which is why Cruz and other Republicans taunt the president for not uttering the phrase “radical Islamic terrorism.” “What animates ISIS is an ­apocalyptic religious philosophy. People look at that and don’t understand the unwillingness to say red is red and blue is blue,” Schmidt said. “We live in a post-fact America, where the facts are subordinate to the advancement of an ideology.” Political strategists and others say a number of other forces are behind the backlash. It has both a cultural and an economic component, and it also reflects the continuing polarization that has grown deeper during Obama’s presidency. “For many of these people, they played the game by the rules, and essentially, they got shafted,” Democratic pollster Peter Hart said. **Trump is “the voice of an aggrieved cohort in our society — lower-middle-income working whites who have taken the hit from the big changes in the economy, and are angry about it,” Axelrod said. “He creates a permission structure for others.”**

#### This leads to forms of segregation that makes dialogue about racial issues impossible – people run away and hide instead of engaging, retreating to their own private zones

**Pullan:** Pullan, Wendy [Contributor, Saferworld] “Just cities: the role of public space and everyday life.” January 2016. RP

**Recent years have seen private citizens flocking to their city centres in order to protest against abuses and violence, to call for more or better forms of justice and democracy, to make their rights and wishes apparent.** Tahrir Square, Gezi Park, Place de Republique have become synonymous with public demonstrations in Cairo, Istanbul and Paris. **Much has been written about the importance of mobile phones and social networking in forming these events, yet along with effective means of communication, occupying urban space was equally necessary and significant. Without dwelling upon the success or failure of such movements, ‘being in the place’ was a way of establishing civic participation**. To better understand the wider background of such events, I would like to make two observations: first of all, conflicts across the world are becoming increasingly pervasive and complex. In the words of the International Crisis Group’s Jean-Marie Guéhenno, they are more ‘fragmented’. **Rarely are today’s conflicts declared wars with clear beginnings and ends; increasingly, they take the form of prolonged strife with intermittent periods of violence and of relative peace. Many are deeply embedded in ethno-national and religious hostilities as well as economic inequality and class tensions**. Secondly, such conflicts are increasingly played out in urban settings; a 2011 World Bank Report notes that ‘in many cases, the scale of urban violence can eclipse that of open warfare’. Today, cities have become the arena for conflict. The conflicts may originate in national or transnational disputes, but they are played out in cities like Belfast, Baghdad and Jerusalem. Such cities may be targeted as in the siege of Sarajevo during the Yugoslavian civil war or the state-sponsored barrel bombs attacking Syrian cities. But conflicts may also be generated from within by hostile sectors of the population. Whether generated by outside or inside forces, or both, these conflicts increasingly represent cracks in the continuity of urban society. In considering ethno-national and religious conflicts, we find a high level of longevity and uncertainty that is proving resistant to traditional peace processes and political negotiations. Solutions are elusive and we may simply have to learn how to live with certain levels of conflict. Such a realisation affects the place of justice and the role of legal solutions. The dispensing of justice only through policy and official channels may be insufficient, biased or ineffective. One reason for this is because conflicts in cities often concern everyday institutions and practices, played out in ordinary urban life. Examples of everyday life affected by conflict are varied and pervasive: no-go streets in the city; neighbourhood domination by local strong men; regular and sometimes violent demonstrations and parades; streetscapes of graffiti, slogans and other ethnic identifiers; or, more subtle practices that dictate where one chooses to live, work or shop. In the divided cities of the Middle East, urban quarters are increasingly associated with particular ethnic or religious groups; in parts of Belfast, Republicans and Nationalists can be identified by the side of the street on which they walk. Often personal choice is absent; exclusion is pre-determined by religio-political identity and security. The ancient idea of nomos, understood as law and legal order, also has a second and related meaning of convention or custom. Justice, or lack of it, can be played out through customary practice in daily activities. It has to do with how we manage our daily interactions and the urban scenarios that determine where human exchange exists and where not. This is usually a delicate balance. Philosopher Peter Sloterdijk has noted that ‘more communication means above all more conflict’. Understanding each other needs to be supplemented by tactics, actually a ‘code of discretion’, of ‘getting out of each other’s way’. If it were one defined code, legislation would be useful. However, throughout everyday life in urban situations, many codes of behaviour play a role and skills and discretion are necessary to navigate throughout such a complex territory. Protocols shift and respond to a myriad of different powerful forces. Whilst this may be fine when there is good will, it is easy to see how such a delicate series of balances and reactions break down in times of trouble or conflict. Explicit legislation will have an effect at only a very superficial level, but most transactions are rooted in fundamental yet complex forms of praxis, effectively, as architect Peter Carl puts it, ‘in what people do’. Much of this has to do with human activity and the interaction between people, or their ability to ignore each other. **But it is worth noting that the environment also plays a major role in forming a place for these events. In other words, praxis must be located, and customs develop in physical contexts. In cities, public space, as the physical space that diverse peoples share in some way, provides critical environments**. Cities have been built on the fault lines of culture – places of trade and exchange, the coming together of religious individuals and groups, sites to make proclamations, utter judgements, build major structures – and these are inherently the places of diversity and difference. A city is only a city when it encompasses diversity, yet, returning to Sloterdijk’s statement, this, on a grand scale, is a recipe for conflict. **Thus urban public space is inherently diverse, often conflictual and sometimes contested. Many of our most important urban institutions are based upon adversarial relations – parliaments, judicial courts, debating chambers. Debate and disagreement have also traditionally taken place in other less formal bodies: markets, cafes, theatres, demonstrations and protests. In all of these, no absolute agreement is normally expected**. Rather they act as a means of moving forward, with difference and even conflict, as part of the culture, becoming embedded in everyday life. These institutions are physically situated in cities and, effectively, adversarial relations become integral parts of the urban topography. **However, when heavy conflict arises, we see changes in cities, particularly in public space. People tend to shrink back into their own neighbourhoods and communities where they do not have to contend with the ‘other’**. If violence develops, mixed populations become afraid of each other, and everyday life, with all of its ordinary customs and protocols, becomes truncated. Above all, public space becomes a casualty. Public places and facilities – like markets and malls, bus stops and train stations, busy streets and squares – may become magnets for violence and thus closed down and hidden away from public use. In some ways this is not surprising: if violence emerges with threats to safety and human life, you get rid of the places where this is happening**. Yet, I should like to suggest, that whilst this might be effective in the short term, in the medium to long term, public space and the renewal of everyday activities that take place there is key to viable urban relations and the life of a diverse city. We need our urban public space. There are a number of problems with closing down public space and severe disruptions of customary life and practice. Restrictive measures in an emergency often linger on to focus on certain racial or ethnic groups**. So-called temporary measures, like building inner city walls and barricades – prominent features in Jerusalem, Nicosia, Baghdad – have the nasty habit of becoming permanent. In the long term, in very seriously divided cities like Mostar, Beirut or Jerusalem, the possibility of seeing a face that doesn’t look like yours, or hearing a language that is local to the place but you do not understand, becomes increasingly rare and, I would argue, increasingly precious. In examining the effects of conflict in public places, the Centre for Urban Conflicts Research has found two seemingly contradictory phenomena. **In periods of intense violence people from different ethnicities avoid each other but when times are more peaceful, at least some of the populations gravitate back toward mixed areas**. At the same time, entrenched conflicts result in long term or permanent urban changes, often embedded in the physical divisions. So in Nicosia, divided by an uninhabited buffer zone running through the city centre since 1974, it is difficult and may be impossible to rejuvenate this formerly public and shared part of the city. People’s customary practices have been disrupted by what I would call ‘conflict infrastructures’, most visibly in walls and imposed barriers. A tipping point is passed and what has been relatively easy to fracture is almost impossible to knit back together. **Along with such public spaces the customary practices of urban life and the civic rights associated with them also disappear**. Thus we see that cities are both robust and delicate at the same time. If we wish to address the problem of conflict in cities, we must recognise and play to the strengths of both these qualities. **Getting rid of public space, even in times of violence, is clearly not the answer.**

#### Their legal separation of people based on race based categories kills coalitions

Mike **Cole 9**, “Critical Race Theory and Education: A Marxist Response” 2009. p. 33

**Antiracists have made some progress, in the United Kingdom at least, after years of ‘establishment’ opposition, in making antiracism a mainstream rallying point, and this is reflected, in part, in legislation (e.g., the (2000) Race Relations Amendment Act).11 Even if it were a good idea, the chances of making ‘the abolition of whiteness’ a successful political unifier and rallying point against racism are virtually non-existent.** For John Preston (2007, p. 13), ‘[t]he abolition of whiteness is . . . not just an optional extra in terms of defeating capitalism (nor something which will be necessarily abolished post-capitalism) but fundamental to the Marxist educational project as praxis’. Indeed, for Preston (2007, p. 196) ‘[t]he abolition of capitalism and whiteness seem to be fundamentally connected in the current historical circumstances of Western capitalist development’. **From a Marxist perspective, coupling the ‘abolition of whiteness’ to the ‘abolition of capitalism’ is a worrying development which, if it gained ground in Marxist theory in any substantial way would most certainly undermine the Marxist project, even more than it has been undermined already (for an analysis of the success of the Ruling Class in forging consensus to capitalism in the United Kingdom, see Cole, 2008g, 2008h).** Implications of bringing the ‘abolition of whiteness’ into schools are discussed in chapter 7 of this volume. As is argued in this volume, racism, xeno-racism, racialization, and xeno-racialization, when informed by Marxism, are far more conducive to understanding racism in contemporary societies than is the CRT concept of ‘white supremacy’. ‘White supremacy’, I believe, should be restricted to its conventional usage.

## Warming DA

#### No uniqueness – there are literally *no bans* on climate denialism in the status quo – name a single school that has them. There’s no counterplan for uniqueness and they defend the status quo, which means their impacts are inevitable – they probably stop like one denier.

#### Bans on climate denialism cause backlash against movements to stop climate change.

**Watts:** Watts, Anthony [Blogger and writer about climate change problems] “They’ve lost the argument: Petition to ban ‘climate deniers’ from Facebook.” Watts Up With That? June 2015. RP

**Breitbart** [**brought**](http://climatenexus.us4.list-manage1.com/track/click?u=d1f5797e59060083034310930&id=eb5560593d&e=9de57176c0) **our attention to a petition that calls on Facebook to ban climate change denial pages. With only 3,326 signatories out of a goal of 500,000, it doesn’t seem like the petition is going to accomplish its goal—and probably for good reason. As bad as climate denial is, shutting them out of Facebook would justify their persecution complex, and might engender more sympathy for their position**. Really, who treats Facebook as a place to discuss science? **For the most part, we think denier groups are small enough that they pretty much serve as something to point and laugh at, because they’re not likely to be gain many converts when compared to the audience of Murdoch’s media empire**. That said, the petition actually has a point. Facebook doesn’t have [too many rules,](http://climatenexus.us4.list-manage.com/track/click?u=d1f5797e59060083034310930&id=58567fd45a&e=9de57176c0) but the very last one reads that, “Pages must not contain false, misleading, fraudulent or deceptive claims or content.” The question then, is whether or not claims that say global warming has stopped and an ice age is imminent, that climate scientists are fudging the data, or that Climategate showed wrongdoing would all fall under false, misleading and deceptive claims. We don’t know what else you would call them, so perhaps a ban would be warranted after all. Though surprising, Facebook wouldn’t be the first social media site to crack down on climate deniers. In 2013, the science page of the social media giant reddit [announced](http://climatenexus.us4.list-manage.com/track/click?u=d1f5797e59060083034310930&id=c58a9c2bf3&e=9de57176c0) that any claims contradicting the consensus on climate change, evolution and vaccines must be supported by a peer-reviewed citation. Given that climate denial is almost never peer-reviewed, this resulted in a de facto ban on posts from climate change deniers. Will Facebook follow suit? Probably not. But under their rules, it sounds like they could.

#### Non unique – climate change denialism low now

**Saad and Jones:** Lydia Saad and Jeffrey M. Jones [Contributors, Gallup] “U.S. Concern About Global Warming at Eight-Year High.” *Gallup.* March 2016. RP

PRINCETON, N.J. -- **Americans are taking global warming more seriously than at any time in the past eight years, according to several measures in Gallup's annual environment poll. Most emblematic is the rise in their stated concern about the issue. Sixty-four percent of U.S. adults say they are worried a "great deal" or "fair amount" about global warming, up from 55% at this time last year and the highest reading since 2008.** Mirroring this, the March 2-6 survey -- conducted at the close of what has reportedly been the warmest winter on record in the U.S. -- documents a slight increase in the percentage of Americans who believe the effects of global warming have already begun. **Nearly six in 10 (59%) today say the effects have already begun, up from 55% in March 2015.** Another 31%, up from 28% in 2015, believe the effects are not currently manifest but will be at some point in the future. **That leaves only 10% saying the effects will never happen**, down from 16% last year and the lowest since 2007. A third key indicator of public concern about global warming is the percentage of U.S. adults who believe the phenomenon will eventually pose a serious threat to them or their way of life. Forty-one percent now say it will, up from 37% in 2015 and, by one point, the highest in Gallup's trend dating back to 1997. Americans' clear shift toward belief in global warming follows a winter that most described in the same poll as being [unusually warm](http://www.gallup.com/poll/189920/americans-attribute-warm-winter-weather-climate-change.aspx?g_source=winter%20warm&g_medium=search&g_campaign=tiles). Sixty-three percent say they experienced an unusually warm winter, and the majority of this group ascribes the warm weather pattern to human-caused climate change.

#### Debating and challenging climate deniers is more effective than suppressing them – it makes them look foolish.

**Nye:** Nye, Bill [Scientist, engineer, comedian, author, legend and inventor] “Why I Choose to Challenge Climate Change Deniers.” *The Huffington Post.* May 2016. RP

As you may know, I am very concerned about global warming and global climate change. **The science of global warming is long settled**, and one may wonder why the United States, nominally the most technologically advanced country in the world, is not the world leader in addressing the threats enumerated by the U.S. military, the United Nations’ Intergovernmental Panel on Climate Change (IPCC), and others. I hope people will take the facts we face into account as they head to the polls this year. The ocean is warming and expanding. This effect alone will displace millions of people. The effects on agriculture, water supplies, and weather patterns will create a great many problems for a great many of us. By my reckoning, our delay, and the reluctance of conservative presidential candidates to embrace the problem and discuss it is a result of the diligent effort of a handful of climate change deniers. They have been especially successful at introducing the idea that routine predictive uncertainty, e.g. plus or minus two percent, is somehow the same as plus or minus one hundred percent. **It isn’t, and the deniers are wrong**. **Since the presentation of the facts and science concerning global warming and climate change have been heretofore insufficient to motivate enough of us voters, I am now challenging the deniers directly. By showing enough people the techniques and ignorance of the deniers, I believe we can make warming and climate change a campaign issue**, which will swing the upcoming U.S. presidential election in favor of a candidate who is not out of touch with our worldwide climate situation. **Both Marc Morano and Joe Bastardi are well-known climate change deniers** (Mr. Morano said once that he prefers the term “extreme doubter.”) In an [opinion piece](http://patriotpost.us/opinion/38793) in the unusual Patriot Post online publication, Mr. Bastardi insisted that there is nothing unusual going on in our Earth’s atmosphere and oceans. In time for Earth Day, I issued a [video challenge](http://www.huffingtonpost.com/entry/bill-nye-bets-joe-bastardi-20k-climate-change_us_571589a5e4b0018f9cbaee3a) that was published on The Huffington Post. I offered and still offer to bet Mr. Bastardi $10,000 that this year 2016 will be among the top ten warmest years on record. I offer him another $10,000 that the decade 2010-2020 will prove to be the warmest on record. Mr. Bastardi wrote a [second piece](https://patriotpost.us/opinion/42312) in which he re-stated his belief that carbon dioxide has little effect on global temperatures. Incidentally, despite publishing a “midday digest” every day, no one at the Patriot Post has responded to my enquiries. Carbon dioxide has an enormous effect on planetary temperatures. Climate change was discovered in recent times by comparing the Earth to the planet Venus. When Mr. Bastardi and I appeared on the Bill O’Reilly show six years ago, Mr. Bastardi said, “[He doesn’t] believe we have the proper measurements of Venus from over 10 billion years ago. So [he] can’t tell the relationship with Earth.” In planetary science we can tell several important things. Venus is extremely hot because of the greenhouse effect (and it’s far less than 10 billion years old). The Earth is warm enough to have liquid water, because of the same greenhouse effect. I remind you that Mr. Bastardi’s apparent belief that carbon dioxide has nothing to do with the Earth’s global temperatures is absolutely wrong. Incidentally neither Mr. Bastardi Mr. Morano would take either wager I offered. They both admit the world is getting warmer fast. Mr. Morano just said no, he would not take the bets. In complementary fashion, Mr. Bastardi did not address my offers. Instead, he proposed a new wager based on changes that may or may not occur over a single year. You may have seen his article from November 2015 in which he includes two graphs of the world’s temperature over time. I believe anyone able to think critically can see that the graphs and data Mr. Bastardi’s cited in this previous article are irrelevant. In his first graph, the four and half billion-year time scale is too long to reckon temperature changes over the last two and half centuries. In his second graph, the timescale is too short to accurately depict the overall rate of global temperature change. He has hidden or masked the phenomenon of global warming and climate change from the readers, or perhaps even from himself. Mr. Bastardi suggested that I’ve been brainwashed and that I am irrational. While such claims may or may not be true, rather than address my proposed wager he changed the subject several times. Among the adjacent subjects he included were: nuclear energy, Middle East oil, creationist Roy Spencer’s satellite measurements, veterans’ health benefits, money used to study whether the Earth is flat or round, professors improving fusion [reactor] output, no use of fossil fuels for a year, and television commercials for satellite dish service. Contrary to Mr. Bastardi’s statement, carbon dioxide certainly does affect the Earth’s climate in a big way. I hope you will consider both Mr. Morano’s and Mr. Bastardi’s tendency to change the subject along with their misjudgment, or apparent misjudgment, of atmospheric and planetary science as you head to the polls this year.

#### Open discussion of climate change is key to change people’s minds, and galvanize them behind the cause.

**Harris:** Harris, Tom [Contributor, The Daily Caller] “Free Speech Must Apply To Climate Change Debate.” *The Daily Caller.* June 2016. RP

**The debate over the causes and consequences of climate change is one of the world’s most important discussions**. At stake are literally trillions of dollars, millions of jobs, and, if climate activists are right, the fate of the environment and even our civilization. **Consequently, we need to think clearly about what is being said by all parties in the discussion.** For example, the belief that scientists discover truths, or as the United Nations often puts it, conclusions that are “unequivocal,” is utter nonsense. It is not even possible. In the controversy about the now defunct California Climate Science Truth and Accountability Act of 2016 virtually no one on either side of the debate explained that science is never about truth. Truth applies to mathematics but never to our findings about nature, which are merely educated opinions based on scientists’ interpretations of observations. Since observations always have some degree of uncertainty, they cannot prove anything true. This was the central theme of the ‘[science wars](http://www.thegreatcourses.com/courses/science-wars-what-scientists-know-and-how-they-know-it.html)’ of the late 20th century. In that conflict the intellectual left were the skeptics of the idea that we could have absolute knowledge in science. But this expected approach— skepticism and relativism from liberals and absolutism from conservatives—has been turned on its head in the global warming debate. While right-wingers call for open debate about the causes of climate change, the Left consider such discussion intolerable, even criminal, and act as if we know the future of climate decades in advance, a position that is indefensible, scientifically and philosophically. At first, it was mostly scientifically illiterate activists who made claims to certainty about future climate states. But increasingly, more scientists now use inappropriately absolute language as well, or say little about the vast uncertainties in the science. They apparently fear alienating their intellectual fellow travelers, peers who, even if they are unfamiliar with the science, support the climate movement for other reasons. Other left-wing academics who understand the illogic of confident assertions about such a complex and rapidly evolving field also say nothing rather than undermine positions that they support personally, ideals such as social justice and environmental protection. So they sell out philosophically, declining to employ the skepticism they would normally practice. This is a slippery slope. **Unquestioning acceptance of ‘truth’ in science—truth in the sense of being universal, necessary and certain—has impeded human progress throughout history**. For example, when the Greco-Egyptian writer Claudius Ptolemy proposed his Earth-centered system, he did not say it was physical astronomy, a true description of how the universe actually worked. He promoted it as mathematical astronomy, a model that worked well for astrology, astronomical observations, and creating calendars. It was the ultra-conservative Catholic Church that, relying on a literal interpretation of the Bible, promoted the Ptolemaic system as truth to be questioned at one’s peril. This was why Nicolaus Copernicus, a Canon in the Church, waited until he was on his death bed before he allowed his revolutionary book showing the Sun to be the center of the universe to be published, even though the text was completed 30 years earlier. This is also why Galileo ran into so much trouble when he claimed that the Church was wrong and that Copernicanism was the truth, a position that Galileo could not really know with certainty either. Similarly, the assumed, unquestionable truth of Isaac Newton’s laws of motion and law of universal gravitation eventually acted to slow the advancement of science until Einstein showed that there were important exceptions to the laws. When authorities preach truth about science, progress stops. The greatest misinformation in the climate change debate is that we currently know, or even can know, the future of a natural phenomenon as complex as climate change. University of Western Ontario professor Dr. Chris Essex, an expert in climate models, lays it out clearly: “Climate is one of the most challenging open problems in modern science. Some knowledgeable scientists believe that the climate problem can never be solved.” **Yet progressives often label Essex and other climate experts who hold similar points of view as ‘deniers,’ implying they are as misguided as those who deny the Holocaust.** When it comes to climate change, tolerance of alternative perspectives, a much vaunted hallmark of liberalism, vanishes. **They should welcome, not condemn, questioning of the status quo**. Science advances through fearless investigation, not frightened acquiescence to fashionable thinking. Albert Einstein once said, “Whoever undertakes to set himself up as a judge of truth and knowledge is shipwrecked by the laughter of the gods.” It might be humorous to the gods, but when eco-activists succeed in convincing elected officials to try to criminalize free speech and open scientific enquiry, everyone—left, right and center—must object vigorously. Totalitarianism, not freedom, dominated most of human history. It will dominate our future too if we let eco-extremists have their way.

#### Tons of thumpers – national media like Fox News will always inundate people with false information about climate change anyways.

#### Warming is too far gone to fix – their impacts are inevitable – also, China is a huge alt cause.

**Lochhead March 7:** Lochhead, Carolyn [Contributor, Times Union] “Is it too late to save Earth?” *Times Union.* March 7, 2017. RP

**Within the lifetimes of today's children, scientists say, the climate could reach a state unknown in civilization. In that time, global carbon dioxide emissions from burning fossil fuels are on track to exceed the limits that scientists believe could prevent catastrophic warming. Carbon dioxide levels are higher than they have been in 15 million years. The Arctic, melting rapidly and probably irreversibly, has reached a state that the Vikings would not recognize**. "We are poised right at the edge of some very major changes on Earth," said [Anthony Barnosky](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Anthony+Barnosky%22), a [University of California](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22University+of+California%22), Berkeley professor of biology who studies the interaction of climate change with population growth and land use. "We really are a geological force that's changing the planet." The Arctic melt is occurring as the planet is just 0.8 degree Celsius (1.4 degrees Fahrenheit) warmer than it was in pre-industrial times. At current trends, Earth could warm by 4 degrees Celsius in 50 years, according to a November [World Bank](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22World+Bank%22) report. The coolest summer months would be much warmer than today's hottest summer months, the report said. "The last time Earth was 4 degrees warmer than it is now was about 14 million years ago," Barnosky said. **Experts said it is technically feasible to halt such changes by nearly ending the use of fossil fuels. It would require a wholesale shift to renewable fuels** that the United States, let alone China and other developing countries, appears unlikely to make. Indeed, many Americans do not believe humans are changing the climate. "Science is not opinion, it's not what we want it to be," said [Katherine Hayhoe](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Katherine+Hayhoe%22), an evangelical Christian, climatologist at [Texas Tech University](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Texas+Tech+University%22) and lead author on the draft climate assessment report issued this month by the [National Climate Assessment and Development Advisory Committee](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22National+Climate+Assessment+and+Development+Advisory+Committee%22). "You can't make a thermometer tell you it's hotter than it is," said Hayhoe, who with her husband, a linguist and West Texas pastor, has written a book on climate change addressed to evangelicals. "And it's not just about thermometers or satellite instruments," she said. "It's about looking in our own back yards, when the trees are flowering now compared to 30 years ago, what types of birds and butterflies and bugs we see that ... used to be further south." Robins are arriving two weeks early in Colorado. Frogs are calling sooner in Ithaca. The Sierra Nevada snowpack is melting earlier. Cold snaps like the one gripping the East still happen, but less often. Scientists are loath to pin a specific event such as Hurricane Sandy or floods in England to global warming. But "the risk of certain extreme events, such as the 2003 European heat wave, the 2010 Russian heat wave and fires, and the 2011 Texas heat wave and drought has ... doubled or more," said [Michael Wehner](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Michael+Wehner%22), a staff scientist at [Lawrence Berkeley National Laboratory](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Lawrence+Berkeley+National+Laboratory%22) and co-author of the climate assessment report. "Some of the changes that have occurred are permanent on human time scales." A key question is when greenhouse gas emissions might reach a tipping point, where changes become self-reinforcing and out of human control. Arctic sea ice reflects the sun. As it melts, the dark ocean absorbs more solar heat, raising temperatures. Similarly, the Greenland ice sheet is melting rapidly, reducing reflectivity, and possibly speeding up the melting of the West Antarctic ice sheet. The northern permafrost is thawing, with the potential to release methane, a potent greenhouse gas, and carbon dioxide stored in soils. These can produce sudden, so-called nonlinear changes that are hard to predict. "**We could be at a tipping point where the climate just abruptly warms,**" said [Mark Z. Jacobsen](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Mark+Z.+Jacobsen%22), director of [Stanford University](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Stanford+University%22)'s atmosphere/energy program. An Arctic melting "would make it more difficult for the Northern hemisphere to cool down, so all Greenland would be next. Greenland stores about five to seven meters of sea level." UC Berkeley's Barnosky said tipping points could come earlier than anticipated when factoring in population growth and land use. More than 40 percent of Earth's land surface has been covered by farms and cities. Much of the rest is cut by roads. By 2025, the percentage of development could reach half, a level that on smaller scales has led to ecological crashes. "It's just sort of simple math: the more people, the more footprint," Barnosky said. "**If we're still on a fossil fuel economy in 50 years, there is no hope for doing anything about climate change. It will be here in such a dramatic way that we won't recognize the planet we're on."**

## iLaw DA

#### Non unique – Trump is wrecking iLaw now.

**Sachs March 6:** Sachs, Jeffrey D. [Contributor, The Boston Globe] “The high costs of abandoning international law.” The Boston Globe. March 6, 2017. RP

**Even before Donald Trump put America first, the Republican Party had largely walked away from international treaty law. Now Trump’s “America First” is likely to mean a further denigration of international law and process, to the further detriment of America’s national security and long-term interests.** Consider the following tale of our times. In 1973 the United States passed landmark legislation to protect people with disabilities, and this was followed by the pioneering Americans with Disabilities Act in 1990. The ADA in turn inspired the member states of the United Nations to adopt the Convention on the Rights of Persons with Disabilities. President Barack Obama signed the CRPD in 2009, but the US Senate then refused to ratify it, voting 61 in favor, 38 against, falling five votes short of the two-thirds majority needed for ratification. The United States thereby joined a handful of other countries that have signed but not ratified the treaty, including Libya, North Korea, and Uzbekistan. One-hundred-sixty other countries have ratified the treaty, including Canada, Japan, most European countries, and indeed most of the world. The 38 Senators in opposition, all Republican, were persuaded by anti-UN activists that the Treaty “would surrender our nation’s sovereignty to unelected UN bureaucrats.” They also argued that since this country already had such protections in the ADA, joining the treaty was of no benefit to the United States. They feared that the treaty would somehow prevent home schooling and other parental rights. To a remarkable extent, the Republican Party has thrown down the gauntlet on UN treaties: If the rest of the world agrees on something, even something modeled on US leadership, it is treated as suspect and even dangerous for the United States to join with those countries in a treaty, on the ostensible grounds that the treaty obligations would infringe US sovereignty. The list of global agreements in which the United States refuses to participate is long and growing. Another notable case is the Convention on the Rights of the Child, to prevent the abuse, exploitation, and capital punishment of children. This treaty was adopted by the UN in 1989 and came into force in 1990, after a sufficient number of countries had ratified it. The United States held out. Others kept joining. Now every single UN member state except the United States has ratified the treaty, but US Senate Republicans still balk. Once again, US conservatives argue that the treaty would violate US sovereignty. The United States has stayed out of the UN Convention on the Law of the Sea (1991), the Convention on Biological Diversity (1992), the Comprehensive [Nuclear] Test Ban Treaty (1997), the Ottawa Land Mine Treaty (1997), and the International Criminal Court (1998), among many others. In each case, one argument is that treaty membership would limit US sovereignty. Other reasons are given as well. The US Senate, again largely on the Republican side, objected to the UN Law of the Sea on the grounds that it would limit American companies from earning profits from deep-sea mining. It objected to the Convention on Biological Diversity on the grounds that protecting endangered species would threaten the private property rights of US farmers and ranchers, especially in the large landholdings in the west. Hard-line senators objected to the Comprehensive Test Ban Treaty on the grounds that it was not verifiable, despite expert opinion to the contrary. The United States has stayed out of the land mine treaty not just because of Senate opposition but because the US military has continued to use land mines in the defense of South Korea. The US failure to join the International Criminal Court is especially revealing. First, the United States voted against the ICC in the UN General Assembly, alongside Iraq, Libya, China, Yemen, and a few others, after unsuccessfully demanding the right as a permanent member of the UN Security Council to veto cases before the court. Then, in 2000, President Clinton signed the Rome Statute establishing the ICC but did not submit the statute for Senate ratification. Next, George W. Bush formally notified the court that the US would not seek membership, expressing concern that US military personnel might be subjected to ICC charges. The US pursued a policy of signing more than 100 “bilateral immunity agreements” (BIAs) in which countries commit not to deliver US nationals to the ICC. Some countries faced cutoffs in US foreign aid when they balked at signing BIAs. In 2009, Obama declared that the US would participate in the ICC as an observer. While strongly resisting ICC jurisdiction vis-a-vis US nationals, the US government has repeatedly and insistently called on the ICC to take judicial action against other countries’ leaders — for example, Omar al-Bashir, the president of Sudan. The Senate’s aversion to any form of UN treaties is now so intense and pervasive that none have been ratified in the past decade and only one (on cybercrime) in the past 15 years. The list of unsigned or unratified treaties continues to grow, and the US increasingly stands almost alone in the world in remaining aloof from these UN agreements. Our disdain for globally shared and negotiated rules is clear for all the world to see. The logic of treaty-making should be clear enough. In principle, treaties involve areas where nation states can potentially do serious harm to other nation states (pollution, arms races, arms trade, war) or where vital global protection of vulnerable populations (children, refugees) is at stake. Countries give up their sovereignty reciprocally. On issues of interstate relations, each individual nation agrees to refrain from harmful actions against the other nations on the condition that the other nations agree to refrain from the same actions against the country in question. It is, of course, nothing more than the Golden Rule put into the framework of international law. In general, there is no global “sheriff” to enforce the treaty, and opponents of these treaties routinely argue that they are indeed unenforceable. Yet there is a reason why the foes of these treaties work so hard to prevent their ratification by the US Senate. They believe, and rightly, that if the United States actually ratifies an agreement, it is more likely to follow through on its implementation. To break a treaty, after all, is to incur a global reputation as a deal breaker and to risk not just a bad reputation but also a coalition of countries pressing for a return to compliance. In some cases, including violations of the rules of international trade under the World Trade Organization (WTO), the treaty provides for specific enforcement terms. Moreover, the US government is typically very happy, even insistent, that other countries are living up to the terms of international agreements. I’ve noted the US support for various ICC proceedings. Similarly, the US routinely relies on the UN Convention on the Law of the Sea. Likewise, the United States had aimed to further many of the specific objectives of the Convention on Biological Diversity while not being a signatory to the agreement. **The Republican Party objection to international law has three underpinnings. The first is a historical image, essentially a founding myth, of America as untethered in its fate from the rest of the world. This attitude is expressed in a** [**draft trade policy agenda**](http://im.ft-static.com/content/images/1dd70b12-fe25-11e6-96f8-3700c5664d30.pdf) **released by the Trump administration: “Ever since the United States won its independence, it has been a basic principle of our country that American citizens are subject only to laws and regulations made by the US government – not rulings made by foreign governments or international bodies. This principle remains true today. Accordingly, the Trump administration will aggressively defend American sovereignty over matters of trade policy**. The second is an implicit belief that America’s security and economic interests – in the sea, or the environment, or armaments – can all be achieved largely through American actions alone rather than the sum of the actions of all of the world. According to this view, the US has little interest in what other countries are doing. **The third is an overarching faith in “US primacy,” the idea that the US can protect its interest through its power alone, without the need to rely on international rules and international law.** These beliefs are wrong. From the start of our nation’s history, but especially today, America’s prosperity and security depend on a body of international law developed over the course of centuries that help to govern international trade, intellectual property, global health, international financial flows, arms control, and nuclear nonproliferation, human rights, environmental protection, and other areas. Without international law, today’s global economy could not function, nor could the world successfully fight newly emerging diseases, control cross-border criminal activities, or preserve the peace among the major powers. The United States needs to care profoundly what other countries do. We need to care about nuclear nonproliferation, pollution control, climate change, the movements of terrorists, the laundering of illicit funds, narcotics trafficking, human trafficking, tax administration, financial stability, and the countless other areas governed by treaties and other forms of international law. Without international treaty agreements on such issues, there are no reliable and practical ways to promote the peaceful and beneficial behavior of the world’s 193 nations. Nor could US military power alone begin to accomplish this task in the absence of international law. At the apex of US power after World War II, when the United States constituted roughly 30 percent of global output, American leaders recognized the urgent need for a greatly expanded body of international law to guide an increasingly complex and interdependent world. From the 1940s to the 1970s, the US led the way in promoting UN-based treaty law. Yet more recently, with America’s relative power diminishing, the Republican Senate has turned its back on this indispensable means of protecting America’s vital interests and security, not to mention well-being and peace. **Rumors are swirling that the Trump administration will further turn America’s back on global law; neglect or abandon the recent agreements on climate change; unilaterally redraw the rules on trade; slash US support for the United Nations; break free of longstanding arms agreements; and more.** Time will tell. Yet if America indeed goes in this direction, not only will our national security be profoundly damaged, so too will America’s decline in global leadership be confirmed and accelerated. If the United States continues to turn inward, China will be more than happy to take up the slack. This year at Davos, Chinese President Xi Jinping offered a stirring defense of globalization and international responsibility. “When encountering difficulties,” he said, “we should not complain about ourselves, blame others, lose confidence, or run away from responsibilities. We should join hands and rise to the challenge. History is created by the brave. Let us boost confidence, take actions and march arm-in-arm toward a bright future.”

#### No link – they haven’t shown that the iLaw that the Aff violates is *binding* law – otherwise, no tradeoff in US cred

#### Turn – free speech is guaranteed in international treaties

**Howard:** Howard, Jeff “Article 19: freedom of expression anchored in international law.” February 2012. RP

**The International Covenant on Civil and Political Rights (ICCPR) is the multilateral treaty agreement central to anchoring freedom of expression in international human rights law. The vast majority of the world’s nations have both signed and ratified the treaty**. Nations that have signed but not ratified include China, Comoros, Cuba, Nauru, Palau, Sao Tome and Principe, and Saint Lucia. Nations that have neither signed nor ratified include Saudi Arabia, Antigua and Barbuda, Bhutan, Brunei, Myanmar, Fiji, Kiribati, Malaysia, the Marshall Islands, Micronesia, Oman, Qatar, Saint Kitts and Nevis, Singapore, the Solomon Islands, Tonga, Tuvalu, the United Arab Emirates and the Vatican. But what does it mean to be a signatory or a ratifying party to the ICCPR? **And if your country is a party to the ICCPR (see** [**here**](http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en) **to confirm), how might you personally use it to advance your individual right to free speech?**

#### Non unique -- the US violates international law all the time – so many thumpers.

**Patterson**: Patterson, Margot [Contributor, The National Catholic Review] “How the U.S. Violates International Law in Plain Sight.” *American Magazine.* October 2016. RP

**Americans used to be big supporters of international law**. It was President Woodrow Wilson who proposed the League of Nations after World War I. Politics kept the United States from joining, but after World War II the United States played a leading role in creating the United Nations as well as the World Bank, the International Monetary Fund and a host of other international organizations. Because of  new international trade and investment agreements, intellectual property accords and treaties on the environment, international law has grown; **yet when it comes to waging war, a cornerstone principle, more and more the United States acts as if international law applies to other countries but not to itself**. The law of war prohibits force unless force has been approved by the U.N. Security Council or unless a country has been attacked and is acting in self-defense. Even under those conditions, force is regarded as a last resort, permissible only if it is likely to be successful. **Diminishing respect for international law can be linked to the rise of the United States as a military power after World War II**, to the domination of U.S. foreign policy by realists who emphasize U.S. military might and our willingness to use it, and even to the civil rights and feminist movements of the 1960s. As interest in the Constitution was renewed, Americans turned inward and perceived the struggle for justice almost exclusively through their own legal system. According to Mary Ellen O’Connell, a professor of international law at the University of Notre Dame, there has been a decline in the knowledge of international law at every level of our society, from our highest government officials to the person on the street. Along with that some key misconceptions have taken hold—among them that international law is ineffective and unenforceable. Such views are “factually incorrect,” said O’Connell, author of the book The Power and Purpose of International. Law. The terrorist attacks on Sept. 11, 2001, led the United States to embrace military force in a way it had not done before. Along with that came indefinite detention, torture and the kidnapping of terrorism suspects and their rendition to secret black-box sites. But some of those abuses go back before President George W. Bush, to the Clinton administration in the 1990s. “The Clinton administration had some vaunted notions of what you could do with military force,” O’Connell said. “**They thought you could use military force to promote human rights, so they regularly bombed Iraq to help the Kurds in the north and the Shias in the south. In the views of other countries**, France and Russia in particular, that constant bombing was unlawful and counterproductive. The British unfortunately, did not [share this view]. Already the mindset was coming into the United Kingdom that you could use military force to help persecuted minority groups. That led to a great deal of unnecessary and counterproductive violence in Yugoslavia. It was the beginning of this mindset that military force could be used with no regard for the U.N. Charter.” **U.S. violations of international law continue.** You would never know it listening to our president, our politicians or our news media, but the U.S. intervention in Syria is one of them. In 2013, Michael Ratner, president emeritus of the Center for Constitutional Rights, described it as “an illegal use of force” and “a crime of aggression.” “It’s a war crime. It’s the kind of crime that the Germans were tried for at Nuremberg,” he told the Real News Network. **President Obama’s actions in Syria have been described as the legal equivalent of Vladimir Putin’s in Ukraine**—both arming rebels and conducting air strikes.U.S. drone attacks around the world also constitute an unlawful use of force. We have not been attacked, nor do we have U.N. approval for our targeted killings in Libya, Yemen, Somalia and other countries. Will these acts of war ever cease? Many Americans seem to forget they are even going on. Discussions of their justice, their legality and necessity, even their cost or effectiveness are almost entirely absent from our politics. To the extent they consider them at all, Americans assume might makes right. The evidence points elsewhere: to the millions of refugees fleeing war, instability and the breakdown of law and order in the world.

#### Turn – recognizing free speech is more consistent with international law – multiple documents prove

Mark J. Richards 14 [], "Freedom of Expression," Oxford Bibliographies, 30 JULY 2014, http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0105.xml, ghs//BZ

Freedom of expression is a fundamental international human right. It is intrinsically valuable and necessary for the healthy functioning of democracy and civil society. Freedom of expression is necessary for the achievement of other human rights such as fair administration of justice, education, adequate standard of living, equality, human dignity, and the rights of women, peoples, and minorities. Although it is generally a negative liberty, freedom of expression places positive obligations on the state to provide access to information, Internet access, and to promote a child’s right to participate in education, work, and family life. Freedom of expression broadly understood encompasses a package of rights that are intimately intertwined, including freedom of opinion, speech, press, information, association, assembly, thought, conscience, belief, and religion. Although the rights can be conceptually organized into the four categories of expression, association, assembly, and thought, each with distinct meaning, actual cases commonly involve more than one of the rights. For example, a ban on wearing headscarves in a public educational setting raises issues of freedom of expression and religion. Freedom of expression is recognized by the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples’ Rights (ACHPR), the American Convention on Human Rights (ACHR), the Arab Charter on Human Rights (Arab Charter), and the European Convention on Human Rights (ECHR). Although freedom of expression is fundamental, it is not absolute. Article 19 of the ICCPR allows for restrictions on freedom of expression that are necessary to protect the rights or reputations of others, national security, public order, public health, or public morals. Any such restriction must be provided for by law and be proportionate. The literature on freedom of expression as an international human right tends to focus on cases and jurisprudence, with some attention paid to the roles of international human rights institutions. Regional and international civil society groups actively highlight current threats to freedom of expression, often in cases of threats to individuals, journalists, or small groups, but also more systematically via annual, country, regional, and thematic reports. Contemporary free expression issues arising under international law include commercial speech, hate speech, media, homosexuality, and religion. The two most prevalent issues of the past decade have been anti-terrorism measures and the Internet. Of course, the Internet has transformed communications, but it has also enabled unprecedented state and international surveillance that threatens privacy and freedom of expression alike.

#### No link uniqueness – tons of colleges don’t have speech codes, including private colleges, and the impact hasn’t been triggered.

#### No link – their evidence isn’t even about colleges

#### Missing internal link – they haven’t shown that the iLaw that the Aff violates is *binding* law – otherwise, no tradeoff in US cred

#### No link uniqueness for iLaw – universities are compliant with bans on fighting words – make them read evidence that *hate speech is key.*

**Tsesis:** Tsesis, Alexander [Professor, Loyola University School of Law] “Burning Crosses on Campus: University Hate Speech Codes.” December 2010. RP

In balancing the interests of intimidated individuals and persons wishing to express prejudiced opinions, the United States' free speech tradition provides public university officials with less latitude to punish group hatred than their administrative counterparts in countries like Canada, Germany, and England. **American jurisprudence is nevertheless in accord with international findings that virulent forms of hateful expressions pose a threat to public safety. International norms and foreign laws on this subject suggest that hate speech is harmful to individuals as well as groups. The risk of leaving hate speech unchecked on campuses is that the targets of violent communications remain vulnerable to more harassment**. Because targeted groups and individuals are often uncertain of their safety, they tend to be wary of pursuing the full breadth of available educational opportunities, trying to avoid locations and activities that might expose them to calumny or danger.

#### Discount international evidence on hate speech – there’s no one definition of what hate speech is.

**Malik:** Malik, Kenan [I am a writer, lecturer and broadcaster. My latest book is *The Quest for a Moral Compass: A Global History of Ethics*.] “Why hate speech should not be banned.” *Pandaemonium.* 2012. RP

Kenan Malik: **I am not sure that ‘hate speech’ is a particularly useful concept. Much is said and written, of course, that is designed to promote hatred. But it makes little sense to lump it all together in a single category, especially when hatred is such a contested concept**. In a sense, hate speech restriction has become a means not of addressing specific issues about intimidation or incitement, but of enforcing general social regulation. **This is why if you look at hate speech laws across the world, there is no consistency about what constitutes hate speech. Britain bans abusive, insulting, and threatening speech. Denmark and Canada ban speech that is insulting and degrading. India and Israel ban speech that hurts religious feelings and incites racial and religious hatred. In Holland, it is a criminal offense deliberately to insult a particular group. Australia prohibits speech that offends, insults, humiliates, or intimidates individuals or groups. Germany bans speech that violates the dignity of, or maliciously degrades or defames, a group. And so on. In each case, the law defines hate speech in a different way.**

#### Other countries have terrible track records on free speech rights

Dalmia 16

Shikha Dalmia, Reason magazine, “Debating NYU's Jeremy Waldron on Free Speech vs. Hate Speech on College Campuses” <http://reason.com/blog/2016/09/22/debating-nyus-jeremy-waldron-on-free-spe>

**Countries with hate speech bans don't have much to show by way of stopping hate and protecting minorities. But their record of protecting free speech is way worse than America's. Here are just a few of the many, many egregious examples: Canada has a Human Rights Tribunal that enforces its hate speech laws that were supposed to limit themselves to prosecuting speech that incites hatred and "could lead to a breach of the peace." What is a breach of the peace? Apparently an article by Mark Steyn**, a popular conservative columnist, titled "America Alone," **that worried about Europe's growing Muslim population and its implications for Europe's future. The tribunal decided to prosecute** both Steyn and Maclean, a highly respected magazine in Canada that published his article. Now I disagree with just about every word in Steyn's article, including "a" and "the," but hate speech? C'mon! Likewise, **Britain arrested a British politician for "racial and religious harassment" because he delivered a speech quoting Winston Churchill's unflattering description of Islam**

#### No impact – no great power war

Aziz 14: [John, former economics and business editor at TheWeek.com, Don't worry: World War III will almost certainly never happen, March 6,

Next year will be the seventieth anniversary of the end of the last global conflict. There have been points on that timeline — such as the Cuban missile crisis in 1962, and a Soviet computer malfunction in 1983 that erroneously suggested that the U.S. had attacked, and perhaps even the Kosovo War in 1999 — when a global conflict was a real possibility. Yet today — in the shadow of a flare up which some are calling a new Cold War between Russia and the U.S. — I believe the threat of World War III has almost faded into nothingness. That is, the probability of a world war is the lowest it has been in decades, and perhaps the lowest it has ever been since the dawn of modernity.¶ This is certainly a view that current data supports. Steven Pinker's studies into the decline of violence reveal that deaths from war have fallen and fallen since World War II. But we should not just assume that the past is an accurate guide to the future. Instead, we must look at the factors which have led to the reduction in war and try to conclude whether the decrease in war is sustainable.¶ So what's changed? Well, the first big change after the last world war was the arrival of mutually assured destruction. It's no coincidence that the end of the last global war coincided with the invention of atomic weapons. The possibility of complete annihilation provided a huge disincentive to launching and expanding total wars. Instead, the great powers now fight proxy wars like Vietnam and Afghanistan (the 1980 version, that is), rather than letting their rivalries expand into full-on, globe-spanning struggles against each other. Sure, accidents could happen, but the possibility is incredibly remote. More importantly, nobody in power wants to be the cause of Armageddon.¶ But what about a non-nuclear global war? Other changes — economic and social in nature — have made that highly unlikely too.¶ The world has become much more economically interconnected since the last global war. Economic cooperation treaties and free trade agreements have intertwined the economies of countries around the world. This has meant there has been a huge rise in the volume of global trade since World War II, and especially since the 1980s.¶ Today consumer goods like smartphones, laptops, cars, jewelery, food, cosmetics, and medicine are produced on a global level, with supply-chains criss-crossing the planet. An example: The laptop I am typing this on is the cumulative culmination of thousands of hours of work, as well as resources and manufacturing processes across the globe. It incorporates metals like tellurium, indium, cobalt, gallium, and manganese mined in Africa. Neodymium mined in China. Plastics forged out of oil, perhaps from Saudi Arabia, or Russia, or Venezuela. Aluminum from bauxite, perhaps mined in Brazil. Iron, perhaps mined in Australia. These raw materials are turned into components — memory manufactured in Korea, semiconductors forged in Germany, glass made in the United States. And it takes gallons and gallons of oil to ship all the resources and components back and forth around the world, until they are finally assembled in China, and shipped once again around the world to the consumer.¶ In a global war, global trade becomes a nightmare. Shipping becomes more expensive due to higher insurance costs, and riskier because it's subject to seizures, blockades, ship sinkings. Many goods, intermediate components or resources — including energy supplies like coal and oil, components for military hardware, etc, may become temporarily unavailable in certain areas. Sometimes — such as occurred in the Siege of Leningrad during World War II — the supply of food can be cut off. This is why countries hold strategic reserves of things like helium, pork, rare earth metals and oil, coal, and gas. These kinds of breakdowns were troublesome enough in the economic landscape of the early and mid-20th century, when the last global wars occurred. But in today's ultra-globalized and ultra-specialized economy? The level of economic adaptation — even for large countries like Russia and the United States with lots of land and natural resources — required to adapt to a world war would be crushing, and huge numbers of business and livelihoods would be wiped out.¶ In other words, global trade interdependency has become, to borrow a phrase from finance, too big to fail.¶ It is easy to complain about the reality of big business influencing or controlling politicians. But big business has just about the most to lose from breakdowns in global trade. A practical example: If Russian oligarchs make their money from selling gas and natural resources to Western Europe, and send their children to schools in Britain and Germany, and lend and borrow money from the West's financial centers, are they going to be willing to tolerate Vladimir Putin starting a regional war in Eastern Europe (let alone a world war)? Would the Chinese financial industry be happy to see their multi-trillion dollar investments in dollars and U.S. treasury debt go up in smoke? Of course, world wars have been waged despite international business interests, but the world today is far more globalized than ever before and well-connected domestic interests are more dependent on access to global markets, components and resources, or the repayment of foreign debts. These are huge disincentives to global war.

### 1AR Mpx Turns

Omitted

## Revenge Porn

### Generics

#### If their uniqueness is true, then the link’s irrelevant – they say federal and state law ban revenge porn, but they haven’t won that the fiat of the Aff overrides federal law – it’s just public colleges and universities.

#### Censorship doesn’t solve the root cause, increases the power of dominant elites, and suppresses valuable information that’s key to activism

**York:** York, Jillian C. [Writer and contributor for several news sources] “Harassment Hurts Us All. So Does Censorship.” *Medium.* September 2013. RP

**The crux of the interview, and the issue at hand, is whether or not censorship is a good solution to the problem of online harassment and bul- lying. It has become a fairly commonplace response to certain “undesirable” speech—be it misogynistic, racist, homophobic, etc—to call for bans on it, either from government or from online platforms themselves**. I sympathize with the sentiment behind those calls—who amongst us hasn’t wished a certain racist or sexist commentator would just disappear?—but in the end, I just can’t abide. **You see, I don’t see censorship as a solution to anything.** I see it as a band-aid slapped carelessly over a gaping, septic wound. **That is not to deny the effects of harassment, or even “hate speech” (click the link to understand why I use quotes around that term), but to say that the problem is institutional, systemic, and in need of a better solution. It makes me very frustrated when arguments are made to ban a certain type of speech, but seem to go no further, as if ridding our spaces of that speech is the be-all end-all to solving the problem.** Hint: it’s not. Most of all, I don’t believe that censorship offers lasting benefits. **If this were a perfect world, in which we could draw a very solid red line be- tween speech that should be banned and speech that should not, and we were all able to have a voice in making those determinations, and that blocking was done with the utmost oversight, transparency, and accountability, you might be able to convince me. The truth, however, is that efforts to censor hate speech, or obscenity, or pornography, are far too often overreaching, creating a chilling ef- fect on other, more innocuous speech. Microsoft Bing, which I men- tioned in my article, is not the first nor the last platform to block “breast” and with it, “breast cancer” and “chicken breast.” In my years of research, I’ve spoken to doctors whose workplace network blocked important health terms, to women in Saudi Arabia whose ISPs did the same, to queer youth whose schools or public libraries used pornogra- phy filters that took down non-obscene LGBTQ content with it, and so on.** And as such, I’m convinced that the imperfect technologies we put so much stock in to make our world a little better and brighter actually make it darker. I**’ve also talked to activists and others around the world whose content has been taken down from Facebook and YouTube because it doesn’t meet the yes, patriarchal terms of service set forth by the mostly-male teams that design them.** Breastfeeding=bad, violence against women=good, they tell us. They take down important pages (like ‘We Are All Khaled Said’) because their moderator, likely an at-risk activist in an unsafe space, dares use a pseudonym. **And yet you want to trust them to regulate speech even more?** No, thanks. I am not deaf to the argument that in some contexts, removing certain types of speech creates a safer and more inclusive space. To be clear, I want those spaces to exist. That’s the same reason I moderate comments on my blog and block trolls on Twitter. But I view that as very different from a major online platform with more than one billion users making those decisions for me. But I also realize that something I said in that interview was, while rep- resentative of my personal experience, pretty callous. I have dedicated a substantial amount of my time to finding and culti- vating platforms for women’s voices, based on my belief that a solution to the widespread harassment and bullying of women online is to keep pushing women’s voices into the mainstream, louder and stronger. I recognize that this solution doesn’t work for everyone, and therefore acknowledge that it’s a mere piece of the puzzle, rather than a solution on its own. So when I say, “I get really tired of [the argument that women are bullied out of public discussions] because I’m a woman and I don’t feel that way,” the point I’m trying to make is that, while I feel bullied, I’m not going anywhere. No way, no how. I want to be clear: I am not denying that women are frequently “bullied off the Internet,” and I can see why it appears from the interview that I feel that way. Rather, I believe that that refrain ignores the experiences of those of us who would prefer to respond to hate speech with more speech, prefer to shout louder over the din. I’ve been accused many times of upholding the patriarchy for my ideal that sunlight and resolve are even a solution, and I’m tired of it. And so I stand by my position, reflected in the words of the great Jus- tice Louis Brandeis, that the best remedy to “bad” speech is more speech, not enforced silence. I believe this, but I also believe we need to fight to ensure that women—as well as other marginalized groups and individuals—have the opportunity to engage in counter speech. If we are to fight for free expression, we must also fight for greater op- portunity, and we must have each other’s backs. We must call out misogyny where we see it, and we must have zero tolerance for it in the workplace. We must commit to inclusivity, and we must raise up those around us who might not have the same privilege that we do. It is possible to be dedicated to freedom of speech and to the advance- ment of women. I’ve worked at the EFF for a little over two years and have found it to be the most inclusive space in which I’ve had the plea- sure of working. Not to mention, eight out of eleven staffers here with the word “director” in their title are women, and on the whole, we’re very balanced in terms of gender. In the often privi- leged field that is digital rights, this is notable. Interviews are less than ideal in getting one’s point across; quotes are shortened, context is left out, and terrible titles are added for link bait. But while I intend to make no excuses for what I’ve said, I feel compelled to elaborate on my beliefs and how I came to them. I expect disagreement, but I’d prefer it be with my ideas, rather than a context- less shell of them. **I believe that free expression is compatible with a better society**, and I will continue to fight for both.

#### Revenge porn isn’t constitutionally protected speech.

**Citron:** Citron, Danielle [Contributor, Forbes] “Debunking the First Amendment Myths Surrounding Revenge Porn Laws.” *Forbes.* April 2014. RP

**Disclosing someone’s nude image in violation of trust and confidence  (often known as nonconsensual pornography or revenge porn) is a**[**destructive invasion of privacy**](http://www.theguardian.com/commentisfree/2014/apr/17/revenge-porn-must-be-criminalized-laws)**that can cause irreversible harm to a person’s physical and emotional well-being, professional reputation, and financial security**. Lawmakers are rightfully paying attention. Seven states have criminalized the practice; 18 states have pending bills; Representative Jackie Speier has expressed interest in making it a federal crime. Some object to criminalizing invasions of sexual privacy because free speech will be chilled. That’s why it is [crucial](http://www.slate.com/articles/news_and_politics/jurisprudence/2013/11/making_revenge_porn_a_crime_without_trampling_free_speech.html) to craft narrow statutes that only punish individuals who knowingly and maliciously invade another’s privacy and trust. Other features of anti-revenge porn laws can ensure that defendants have clear notice about what constitutes criminal activity and exclude innocent behavior and images related to matters of public interest. Even so, some argue that revenge porn laws are doomed to fail because nonconsensual pornography does not fall within a category of unprotected speech. To criminalize revenge porn, they say, the Court would have to recognize it as new category of unprotected speech, which it would not do. Another argument is that even if law could secure civil remedies for revenge porn, it could not impose criminal penalties because the First Amendment treats criminal and civil laws differently. These objections are unfounded and deserve serious attention lest they be taken seriously. Let’s first address the argument that revenge porn laws are unconstitutional because they do not involve categorically unprotected speech like true threats. Advocates rely [United States v. Stevens](http://www.supremecourt.gov/opinions/09pdf/08-769.pdf), which struck down a statute punishing depictions of animal cruelty distributed for commercial gain. In Stevens, the Court rejected the government’s argument that depictions of animal cruelty amounted to a new category of unprotected speech. As the Court explained, the First Amendment does not permit the government to prohibit speech just because it lacks value or because the “ad hoc calculus of costs and benefits tilts in a statute’s favor.” The Court explained that it lacks “freewheeling authority to declare new categories of speech outside the scope of the First Amendment.” The Court did not say that only speech falling within explicitly recognized categories (such as defamation, true threats, obscenity, imminent incitement of violence, and crime-facilitating speech) are proscribable. To the contrary, the Court specifically recognized that other forms of speech have “enjoyed less rigorous protection as a historical matter, even though they have not been recognized as such explicitly.” **Disclosing private communications about purely private matters is just the sort of speech referred to in Stevens that has enjoyed less rigorous protection as a historical matter**. We do not need a new category of unprotected speech to square anti-revenge porn criminal laws with the First Amendment. Now for the cases establishing that precedent. [Smith v. Daily Mail](http://scholar.google.com/scholar_case?case=740614020734478800&hl=en&as_sdt=6&as_vis=1&oi=scholarr), decided in 1979, addressed the constitutionality of a newspaper’s criminal conviction for publishing the name of a juvenile accused of murder. The Court laid down the now well-established rule that “if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish the publication of the information, absent a need to further a state interest of the highest order.” Ever since the Court has refused to adopt a bright-line rule precluding civil or criminal liability for truthful publications “invading ‘an area of privacy’ defined by the State.” Rather the Court has issued [narrow decisions](http://scholar.google.com/scholar_case?case=11083261902857685106&hl=en&as_sdt=6&as_vis=1&oi=scholarr) that specifically acknowledge that press freedom and privacy rights are both “plainly rooted in the traditions and significant concerns of the society.’” Consider [Bartnicki v. Vopper](http://scholar.google.com/scholar_case?case=2171346211086974391&hl=en&as_sdt=6&as_vis=1&oi=scholarr). There, an unidentified person intercepted and recorded a cell phone call between the president of a local teacher’s union and the union’s chief negotiator. During the call, one of the parties talked about “go[ing] to the homes” of school board members to “blow off their front porches.” A radio commentator, who received a copy of the intercepted call in his mailbox, broadcast the tape. The radio personality incurred civil penalties for publishing the cell phone conversation in violation of the Wiretap Act. The Court characterized the wiretapping penalty as presenting a “conflict between interests of the highest order—on the one hand, the interest in the full and free dissemination of information concerning public issues, and, on the other hand, the interest in individual privacy and, more specifically, in fostering private speech.” For the Court, free speech interests appeared on both sides of the calculus. **The Court recognized that “the disclosure of the contents of a private conversation can be an even greater intrusion on privacy than the interception itsel**f.” The penalties were struck down because the private cell phone conversation about the union negotiations “unquestionably” involved a “matter of public concern.” Because the private call did not involve “trade secrets or domestic gossip or other information of purely private concern,” the privacy concerns vindicated by the Wiretap Act had to “give way” to “the interest in publishing matters of public importance.” The state interest in protecting the privacy of communications is strong enough to justify regulation if the communications involve “purely private” matters, like nude images. Neil Richards has persuasively [argued](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1862264), and lower courts have ruled, a lower level of First Amendment scrutiny applies to the nonconsensual publication of “domestic gossip or other information of purely private concern.” Appellate courts have affirmed the constitutionality of civil penalties under the wiretapping statute for the unwanted disclosures of private communications involving “purely private matters.” Along similar lines, lower courts have upheld claims for public disclosure of private fact in cases involving the nonconsensual publication of sex videos. **In Michaels v. Internet Entertainment Group, Inc., an adult entertainment company obtained a copy of a sex video made by a celebrity couple, Bret Michaels and Pamela Anderson Lee. The court enjoined the publication of the sex tape because the public had no legitimate interest in graphic depictions of the “most intimate aspects of” a celebrity couple’s relationship. As the court explained, a video recording of two individuals engaged in sexual relations “represents the deepest possible intrusion into private affairs.”** These decisions support the constitutionality of efforts to criminalize revenge porn**. Nude photos and sex tapes are among the most private and intimate facts; the public has no legitimate interest in seeing someone’s nude images without that person’s consent**. A prurient interest in viewing someone’s private sexual activity does not change the nature of the public’s interest. On the other hand, the nonconsensual disclosure of a person’s nude images would assuredly chill private expression. Without any expectation of privacy, victims would not share their naked images. With an expectation of privacy, victims would be more inclined to engage in communications of a sexual nature. Such sharing may enhance intimacy among couples and the willingness to be forthright in other aspects of relationships. The fear of public disclosure of private intimate communications would have a “chilling effect on private speech.” When would victims’ privacy concerns have to cede to society’s interest in learning about matters of public importance? Recall that women revealed to the press that former Congressman Anthony Weiner had sent them sexually explicit photographs of himself via Twitter messages. His decision to send such messages sheds light on the soundness of his judgment. Unlike the typical revenge porn scenario involving private individuals whose affairs are not of broad public interest, the photos of Weiner are a matter of public import, and so their publication would be constitutionally protected. Another way to understand the constitutionality of revenge porn statutes is through the lens of confidentiality law. Woodrow Hartzog persuasively [contends](http://www.theatlantic.com/technology/archive/2013/05/how-to-fight-revenge-porn/275759/) that revenge porn is a “legally actionable breach of confidence.” As Neil Richards and Daniel Solove have [argued](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=969495), confidentiality regulations are [less troubling](http://www.oyez.org/cases/1990-1999/1990/1990_90_634) from a First Amendment perspective because they penalize the breach of an assumed or implied duty rather than the injury caused by the publication of words. Instead of prohibiting a certain kind of speech, confidentiality law enforces express or implied promises and shared expectations. Now for the view that civil revenge porn remedies might stand but that criminal penalties cannot because the First Amendment has different rules for them. Generally speaking, the First Amendment rules for tort remedies and criminal prosecutions are the same. On the point, Eugene Volokh has said that the Court has “refused invitations to treat civil liability differently from criminal liability for First Amendment purposes.” In an e-mail exchange, he pointed to "New York Times Co. v. Sullivan, Garrison v. Louisiana, and the Court’s rejection of Justice Stevens’ proposal in the late 1970s to bar criminal prosecutions for obscenity.” In New York Times v. Sullivan, the Court explained, “What a State may not constitutionally bring about by means of a criminal statute is likewise beyond the reach of its civil law.” As the Court recognized, the treatment is the same though the threat of civil damage awards can be more inhibiting than the fear of criminal prosecution and civil defendants do not enjoy special protections that are available to criminal defendants, such as the requirement of proof beyond a reasonable doubt. It’s worth noting Volokh’s view that “the vagueness doctrine may be more in play in criminal cases than in civil cases (compare FCC v. Pacifica Foundation and its stress on absence of criminal liability); a mens rea of recklessness or worse may be required for criminal liability in public concern libel cases (by analogy to Gertz v. Robert Welch’s holding about punitive damages).” In his view (and in mine): “I don’t think that the revenge porn statutes that I’ve seen suffer from vagueness problems.”So these two myths should be seen and understood for what they are: misleading and uninformed. If we are going to oppose revenge porn efforts, let's be honest about why. Opponents may reject them on policy grounds. They can worry that it is a bad idea to criminalize revenge porn. They can insist it is no big deal, though I'd disagree as would the countless victims, advocacy groups like the [Cyber Civil Rights Initiative](http://www.cybercivilrights.org/) and [Without My Consent](http://www.withoutmyconsent.org/), and my colleague [Mary Anne Franks](http://www.law.miami.edu/faculty-administration/mary-anne-franks.php). Let the discussions on the merits begin.

#### Laws don’t exist now to combat revenge porn, and legal scholars agree it won’t violate the constitution

**Abdul-Alim:** Abdul-Alim, Jamaal [Contributor, Diverse] “Colleges May Get Help Fighting ‘Revenge Porn’.” *Diverse.* October 3, 2016. RP

WASHINGTON — **A proposed law that would punish people who publish “revenge porn”** online will likely be put forth in the next Congress, but it remains to be seen how effective the measure — if passed — would be in combating the practice on America’s college campuses.“We are totally aware of the huge problem on campus of sexual assault and this sort of conduct on campuses as well,” said Josh Connolly, chief of staff for U.S. Rep. Jackie Speier (D-Calif.), who introduced the bill — known as the “Intimate Privacy Protection Act,” or IPPA — earlier this year and plans to do so again next session. While sexual assaults on campus are often handled by Title IX coordinators, Connolly said he didn’t foresee that happening if the revenge porn bill becomes law. He said the “default” should be to have attorneys general or district attorneys handle the cases. “Regarding any sort of jurisdictional ambiguity, we don’t really foresee that,” Connolly said. “I think it is solidly within a DA or an AG’s jurisdiction of whether or not to take a case or not, and we would encourage them to do so.” Connolly made his remarks Friday during a panel [discussion](https://www.c-span.org/video/?416135-1/discussion-focuses-combating-revenge-porn) on Capitol Hill titled “Outlawing Revenge Porn: How Congress Can Protect Privacy and Reduce Online Harassment.” The discussion comes at a time when sex video scandals — sometimes with costly and tragic results — are making more and more headlines. People of all ages have become ensnared in the practice in which perpetrators post images or videos of their victims nude or engaged in sex The victims range from celebrities such as Hulk Hogan, who earlier this year won a $140 million lawsuit against Gawker for publishing a portion of a sex tape of the pro wrestler, to otherwise anonymous young people such as Tovonna Holton, 15, who committed suicide this year after friends video recorded her in the shower and posted it on social media app Snapchat. Similar things have happened at colleges and universities in recent years. For example, Tyler Clementi, an 18-year-old Rutgers University freshman, leapt to his death after a roommate used a webcam to live broadcast Clementi on social media having sex in his dorm with another man. The roommate, Dharun Ravi, served 20 days in jail on various charges and was ordered to pay $10,000 to a program to help victims of hate crimes. However, his conviction was overturned last month due to a change in state law. Last year, Penn State banned Kappa Delta Rho fraternity for three years after it surfaced that members of the fraternity had been using an invitation-only Facebook page to post photos of nude women who were passed out. Congresswoman Speier said the Internet has become a “new age sewage pipeline carrying the worst material imaginable in endless quantities.”“As social media proliferates, so do the opportunities to destroy people’s lives,” Speier said at Friday’s discussion on The Hill. “Young people are committing suicide because of their images being distributed without their consent.”While the majority of states have passed various types of anti-revenge porn laws, Speier said the “patchwork” of state laws — some of which only target those who are motivated by a desire to harass the victim — creates great uncertainty for victims. “If passed**, this bill will punish individuals and websites that knowingly post private, intimate materials while also providing a safe harbor for websites that don’t advertise or solicit such content,” Speier said**. Speier said her proposed revenge porn law has been reviewed by 12 constitutional scholars who have all refuted concerns that the law would violate free speech. Among the scholars who back the bill are University of Miami law professor Mary Anne Franks. “A federal criminal law is necessary not only to provide a single, clear articulation of the relevant elements of the crime, but also to signal society’s acknowledgement and condemnation of this serious wrongdoing,” Franks, who helped draft the bill, has [written](http://www.huffingtonpost.com/mary-anne-franks/how-to-defeat-revenge-porn_b_7624900.html). Under the bill, perpetrators who post images of a person who is naked or engaged in sex could be fined or imprisoned for up to five years if they did so without the person’s consent. Carrie Goldberg, a Brooklyn-based attorney who represents victims of revenge porn, said 90 percent of the victims are women and range in age from 13 to 65. She said having one’s naked images published online can do irreparable harm. “At this point in time no one can get a job, date or even a roommate without being Googled,” Goldberg said. “How would you feel if the first five pages of your results were images of you fully exposed and images you never wanted anyone to see?” Goldberg said revenge porn on campus is becoming more common and said her firm is handling one such case but that she could not disclose the particulars. She criticized authorities who handled the Penn State case because although Pennsylvania has a revenge porn law, it was not applied against the Kappa Delta Rho fraternity because of apparent lack of intent

#### Counterspeech is better than bans on harrassmement online – empirics go Aff.

**Collier:** Collier, Anne [Contributor, Net Family News] “Counterspeech: New online safety tool with huge potential.” December 2015. RP

Susan Benesch, founder of The Dangerous Speech project, tells the story of how worried people in Kenya were in the run-up to their national election in 2013. **Dangerous, inflammatory speech around the previous election in 2007 had led to widespread violence involving more than 1,000 deaths and hundreds of thousands of people being displaced, she said in a** [**talk at Harvard’s Berkman Center**](https://cyber.law.harvard.edu/events/luncheon/2014/03/benesch)**, where she is a faculty associate. But in 2013, Kenyan activists were able to counter the violent speech, especially on Twitter, which is extremely popular there. “When inflammatory speech was posted on Twitter, prominent Kenyan Twitter users (often members of the #KOT, Kenyans on Twitter, community) responded,” Benesch said, “often invoking the need to keep discourse in the country civil and productive.”** It turned out to be a far more peaceful election than the 2007 one. What the #KOT peacemakers were tapping into in that very volatile situation was the power of social norms. “**People’s behavior shifts dramatically in response to community norms,”** Benesch said in her talk, explaining that 80% of people are likely to conform their speech or behavior to the norms of their community – “even trolls,” she said. [For more on social norms, see [this](http://www.netfamilynews.org/?s=%22social+norms%22).] **In one example she gives, a Kenyan Twitter user “posted that he would be okay with the disappearance of another ethnic group and was immediately called out by other Twitter users. Within a few minutes, he had tweeted, ‘Sorry, guys, what I said wasn’t right and I take it back’.” Think about that in the context of young people’s online speech. Acts of kindness like that of** [**this US high school student**](http://abcnews.go.com/Lifestyle/washington-valedictorians-secret-instagram-reveals-tear-jerking-thoughts/story?id=31689197) **and** [**these Canadian students**](http://www.netfamilynews.org/pink-shirts-in-canada-ultimate-social-norms-model)**) are demonstrations of counterspeech that not only increases students’ safety, online and offline, but also inspires and challenges their peers’ own creative civic engagement.** So you might think of this as the “new kid on the block” of Internet safety – though it’s a safety tool for people of all ages. **Counterspeech is not new in terms of social change, but we’re at the start of its being used, consciously, as a tool for addressing and turning around destructive online behavior.** In other words, it’s a tool with enormous potential for bottom-up or peer-driven (P2P) safety and social change in both digital and physical environments – including school environments. And I hypothesize that it will be lasting because it isn’t limited to either online or offline spaces or any particular interest group, culture or nationality**. I can think of two other examples of powerful counterspeech, one in the US, the other in Myanmar. In the latter country, there’s a counterspeech movement called Panzagar, which translates to “Flower Speech,” and Facebook is its main platform** because, as Benesch put it in a [blog post](https://medium.com/internet-monitor-2014-public-discourse/flower-speech-new-responses-to-hatred-online-d98bf67735b7#.a8vtba8j1), “Facebook so dominates online life in Myanmar that some of its users believe Facebook is the Internet, and have not heard of Google.”

#### Status quo solves – even if the First Amendment allows revenge porn, the Fourth Amendment doesn’t

**Hartzog:** Hartzog, Woodrow [Woodrow Hartzog is an Assistant Professor at the Cumberland School of Law at Samford University. His research focuses on privacy, human-computer interaction, online communication, and electronic agreements. He holds a Ph.D. in mass communication from the University of North Carolina at Chapel Hill, an LL.M. in intellectual property from the George Washington University Law School, and a J.D. from Samford University. He previously worked as an attorney in private practice and as a trademark attorney for the United States Patent and Trademark Office. He also served as a clerk for the Electronic Privacy Information Center.] “HOW TO FIGHT REVENGE PORN.” T*he Center for Internet and Society*. May 2013. RP

**But one legal argument has somehow failed to make a major appearance in revenge-porn cases: confidentiality**. Broadly speaking, to confide is "to give to the care or protection of another," and it is often the defining trait of explicit media shared between romantic partners. Simply put, explicit images and videos are unlikely to be created or shared with an intimate without some expectation or implication of confidence. This reality has been acknowledged but underutilized in the dominant narrative on non-consensual pornography. **In contrast to new rights that would be created by proposed "anti-revenge porn" laws, confidentiality is already a well-established legal concept. It is older than all of the privacy torts and statutes in America**. Nevertheless, the concept has languished in law and our conversations about social relationships. Arguably, there are several reasons for this. Confidentiality agreements are socially awkward and provide for limited damages. Traditionally confidential relationships are rare, usually being limited to professional relationships like those between doctors and patients and attorneys and clients. Perhaps most significantly, confidentiality law doesn't directly restrict the most injurious actor in the debate -- websites. While romantic partners who receive explicit materials might be prohibited from further disclosure, websites and other third-party recipients are not bound by the same rules because they presumably have no relationship with the person depicted in the media. But one of the most likely reasons confidentiality law has not played a larger role in the modern privacy debate is that most of our social communications are not conditioned upon an express or even implied promise of confidentiality. **It is difficult to imagine, though, a more illustrative context of implied confidences than explicit material shared between intimates.** Indeed, this argument has been made for some time now. Yet confidentiality law has remained a relatively limited and insignificant remedy in the larger patchwork of privacy jurisprudence. We should have a better national dialogue about a romantic partner's obligations of confidentiality**. Salient norms of confidentiality would strengthen our relationships as well as the legal remedies for those whose trust has been betrayed. Notably, confidentiality law is not as problematic under the First Amendment as legislation or other tort remedies**. Instead of prohibiting a certain kind of speech, confidentially law enforces express or implied promises and shared expectations. **The tort of breach of confidentiality is currently very limited in scope, but could be made much more robust to sit alongside the more commonly asserted privacy torts. Under an "inducement to breach confidentiality" theory, it is even possible that certain websites would not be able to take full advantage of the immunity typically provided by Section 230 of the Communications Decency Act.** So how are individuals in a romantic relationship supposed to determine whether information is confidential? The best practice has always been to secure an explicit promise of confidentiality. But that's not always feasible. Confidentiality can also be implied, though determining when it is is a little more complicated. Fortunately, courts have left clues in previous court cases that will help people determine when information should be considered confidential. These clues are consistent with Helen Nissenbaum's theory of privacy as contextual integrity, which has seemingly been embraced by the FTC, among others. Based on case law, it seems that there are a few important aspects in any given context to consider. Developed relationships are more likely to be confidential than brief or shallow ones. Confidentiality is more likely to be found when it is supported by contextual norms and when the information disclosed is sensitive. Courts consider whether the victim requested confidentiality and, even more importantly, whether the recipient promised not to disclose the information. These promises can be vague or even implied. The important question is whether a confidence was apparent before the sensitive information was shared. With the exception of an explicit promise of confidentiality, none of these considerations are dispositive, but rather something to be considered as part of a whole.

#### Banning revenge porn is constitutional, even when enacted by the state

**Volokh 13** [Eugene Volokh (Gary T. Schwartz Professor of Law, UCLA School of Law), “Florida “Revenge Porn” Bill,”, The Volokh Conspiracy, April 2013]

A [Florida bill](http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h0787c1.docx&DocumentType=Bill&BillNumber=0787&Session=2013) would ban “knowingly transmit[ting] or post[ing]” to any web site, a “photograph or video that depicts nudity of another person” coupled with “personal identification information” of that other person, “for the purpose of harassing the depicted person or causing others to harass the depicted person.” “Harass” is defined as “to engage in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose.” Readers of this blog know that I’m not a fan of laws imposing liability for [disclosure of private facts about a person](http://www.law.ucla.edu/volokh/privacy.pdf) and laws that criminalize [saying offensive things about a person](http://www.law.ucla.edu/volokh/crimharass.pdf). In particular, I think (for reasons discussed in [this article](http://www.law.ucla.edu/volokh/crimharass.pdf)) that speech restrictions that exempt speech with a “legitimate purpose” are likely unconstitutionally vague. But I do think that **a** suitably **clear and narrow statute banning nonconsensual posting of nude pictures** of another, in a context where there’s good reason to think that the subject did not consent to publication of such pictures, **would** likely **be upheld by the courts**. While I don’t think judges and juries should be able to decide, on a case-by-case basis, which statements about a person aren’t of “legitimate public concern” and can therefore be banned, I think courts can rightly conclude that **as a categorical matter such** nude **pictures** indeed **lack First Amendment value**. Of course, I can imagine a few situations in which such depictions might contribute to public debates. But those situations are likely to be so rare that the law’s coverage of them wouldn’t make it “substantially” overbroad (even if the “no legitimate purpose” proviso is seen as too vague to exclude those valuable nonconsensual depictions of nudity). Any challenges to the law based on such unusual cases would therefore have to be to the law as applied in a particular case. A facial challenge asking that the law be invalidated in its entirety, based on just these few unconstitutional applications, would not succeed. I recognize that United States v. Stevens (2010) held that “The First Amendment’s guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits,” and that First Amendment exceptions be limited to “historic and traditional categories long familiar to the bar,” such as obscenity, defamation, fraud, incitement, and the like, which are “well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem.” Chaplinsky v. New Hampshire (1942). But even under this sort of historical approach, I think nonconsensual depictions of nudity could be prohibited. **Historically** and traditionally, **such depictions would** likely **have been seen as unprotected obscenity** (likely alongside many consensual depictions of nudity). **And** while the Court has narrowed the obscenity exception — in cases that have not had occasion to deal with nonconsensual depictions — in a way that generally excludes mere nudity (as opposed to sexual conduct or “lewd exhibition of the genitals”), the fact remains that historically such depictions would **not** have been seen as **constitutionally protected**.

#### Empirics confirm revenge porn statutes are overly vague, and circumvention drives the problem underground.

**Robertson:** Robertson, Hope [Guest Contributor, Campbell Law Observer] “The Criminalization of Revenge Porn.” *Campbell Law Review.* July 2015. RP

**As of July 16, 2015, twenty four states have laws addressing criminal charges against Revenge Porn posters and website hosts. Some are broader than others, and most leave gaping holes for technicalities.** The current statutes vary on what categories legislators decided to categorize them under—everything from harassment and stalking to voyeurism and invasion of privacy. **Also, the anonymity allowed to those who post on these websites makes it almost impossible to prosecute, and website hosts are often hard to find**. Additionally, hosting a simple website that is mostly user-run makes it almost impossible to find any civil liability to impose on the website hosts. Website URL hosts have been cleared of any civil liability under protection of § 230 of the Communications Decency Act. Currently, all civil or criminal charges brought against defendants for Revenge Porn practices have been because they are engaged in other illegal activity, like soliciting photos and money under false pretenses. With the advancement of the Internet and continued heightened sexualization of younger generations, Revenge Porn will never go away. However, just like any other crime, making the act illegal will hopefully deter both the posters and the website hosts. Some will start to balance the satisfaction gained from posting the photos against criminal punishment and a criminal record, and decide posting these photos is not worth it. Unlike consensual pornography, the only goal of posting Revenge Porn is to humiliate and harass the subject. It is the cyber equivalent of sexual harassment and stalking, which are already illegal. Photos on the Internet never go away; thus focusing efforts towards liability only after photos are posted should not be the ultimate goal. Legislation should work towards deterring people from posting the photos and hosting these websites in the first place. Criminal codes across the nation should catch up with technology and culture by criminalizing Revenge Porn practices of both those who create the websites and those who post on the websites. To find the most favorable Revenge Porn criminalization statute, this article will analyze the revenge porn statutes in place in Maryland, California, and Virginia. Maryland was one of the earliest revenge porn statutes to be codified and is one that categorized Revenge Porn under their harassment and stalking laws, which is the category where Revenge Porn fits best. California had the first criminal conviction of a Revenge Porn website host under its Revenge Porn statute. Virginia’s statute has effectively charged people for posting revenge porn, and might show to be very effective addressing that issue. This article will then address the main issue with Revenge Porn criminalization statutes: free speech and the first amendment. Finally, this article will analyze other routes of recovery for victims including federal charges, state tort law, and copyright law, and how they are not enough to solve the ultimate issues. Maryland was one of the first states to have an official “Revenge Porn” law enacted it its criminal code. It is included with other laws under the heading of “Stalking and Harassment.” Although the law criminalizes uploading revenge porn by an individual who knowingly did not receive consent to publish the video, the law specifically excludes “interactive computer services” from liability. Under 47 U.S.C. § 230(f)(2), the term “interactive computer service” is defined as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.” This means that providers like Google Chrome, Safari, and Internet Explorer are not liable for websites that can be accessed on their servers. The Maryland statute aims to punish those who post Revenge Porn by criminalizing the act of posting photos (that fit the definition) with the intent to cause severe emotional distress, knowing that the victim of the photo did not consent, and the victim would subjectively believe the images would be kept private. This statute covers a substantial amount of Revenge Porn incidents. The only purpose of posting on a Revenge Porn website is to intentionally cause emotional distress to the victim because they are posting photos that the victim assumed would be kept private and doing so without their consent. This statute on its face seems like a sufficient way to solve the problem—criminalize the activity of posting the photos thus deter people from doing it. However, the Maryland statute has a few problems. **First, Maryland’s statute does not address or criminalize the production of the website itself. It does not go for the root of the problem**, but merely the aftermath of posting the photos. The statute should also ideally include the criminalization of producing websites solely for the purpose of Revenge Porn. **However, some believe that just like “interactive computer services,” the website itself can assert federal immunity under § 230 of the federal Communications Decency Act.** The court has yet to answer this question, however, because sites are being taken down for other reasons besides being a Revenge Porn site. **Some believe that because the website owner is only setting up the website, that they are not participating in the creation of Revenge Porn**, and that they are only providing the space for their users to do whatever they want. The users and posters are the ones deciding to post the pictures, comments, and descriptions, while the website creator just pays for the URL. If users did not want to post Revenge Porn, they do not have to, and can choose to not use the site as it is intended. However, in a Google search for “myex.com,” the title of the link states: “MyEx.com Get Revenge! Naked Pics of Your Ex.” That tag was specifically created by the owner and creator of the website clearly advertising what the website is for, how it is supposed to be used, and what can be found on it. Allowing website creators to hide under this exception is nonsensical and dangerous. The owner might not be creating the Revenge Porn, but they are providing the means thus they are the equivalent to an accessory to a crime. Therefore, the Maryland statute should include a revision that punishes the creator as well as the users. However, there could be an issue with finding the creator to impose liability, although this could be remedy after the fact via IP address tracking. **Another problem with the statute is it is largely ineffective for websites like myex.com and others that allow the poster to remain anonymous. The content might be there, and all of the elements might be fulfilled, but a majority of websites dedicated to hosting Revenge Porn hide the user’s name and any identifying factors**. Unfortunately, too often the automatic response to this problem is assuming the victims should know who they send what photos to, putting the responsibility and blame back on them instead of requiring the websites to keep track of who posts on their sites. Even if that were the case and victims knew who had those specific pictures, it does not always solve the problem. As soon as the original pictures are posted, the pictures have already been on the Internet long enough for other people to download them or screenshot them. A visitor to myex.com might see pictures of someone they know, not necessarily someone he has had a sexual relationship with, and copy those pictures to post to a different site. This same scenario often happens when websites are taken down or victims request pictures be removed under DMCA. Again, the issues come from the pictures being posted in the first place and what happens after.

#### Revenge porn laws backfire – they can be enforced against people researching solutions to the problem

**Jeong:** Jeong, Sarah [Sarah Jeong is co-Editor-in-Chief of the [*Harvard Journal of Law & Gender*](http://harvardjlg.com/), and is a third-year student at Harvard Law School. She has previously done clinical work with the Berkman Center and the Electronic Frontier Foundation, though her opinions here are her own. Jeong is also the author of [Dear Miss Disruption](https://medium.com/funny-stuff/d7e5d14065f1), “an [advice column](http://valleywag.gawker.com/dear-miss-disruption-an-advice-column-from-silicon-va-1221607088) from Silicon Valley”. Follow her on Twitter @sarahjeong.] “Revenge Porn Is Bad. Criminalizing It Is Worse.” *Wired.* October 2013. RP

Very little on the web exists in isolation from the rest: content is regularly copied, mimicked, modified, and linked to. Is linking to something illegal in itself illegal? (Sometimes it is, [sometimes](http://www.chillingeffects.org/linking/faq.cgi#QID152) it isn’t). **An earlier iteration of the California revenge porn bill** [**would have found**](http://adamsteinbaugh.com/2013/05/09/california-senate-to-consider-bill-criminalizing-revenge-porn/) **a blogger who analyzes legal developments in revenge porn guilty of a misdemeanor for linking to the very sites he was analyzing. While it seems indisputable that those who blog about Hunter Moore should not be subject to criminal liability, what about someone who submits a link to a link aggregator like Reddit, Hacker News, or Slashdot? And what about the link aggregator itself**? This tension is at the heart of internet law. Indeed, section 230 of Communications Decency Act, a cornerstone of internet law, [provides a shield](http://www.law.cornell.edu/uscode/text/47/230) for the speech of online intermediaries — even that which is “obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.” Despite CDA 230, the distributors of revenge porn and the websites that host the pictures are still subject to a number of [legal liabilities](http://marshall2law.com/2013/01/14/yougotposted-com-website-raises-complex-legal-issues/), both civil and criminal: A victim can go after the initial vengeful discloser under a tort theory of public disclosure of private information and even the intentional infliction of emotional distress. A victim who personally took the photographs holds copyright in them and can have them removed from a website through the Digital Millennium Copyright Act. Porn websites – whether hosting voluntary or involuntary porn — are subject to more laws than just CDA 230; conceivably, the FBI could go after some revenge porn sites under [18 U.S.C. 2257](http://www.law.cornell.edu/uscode/text/18/2257) for not keeping records on the subjects of their photos. Finally, websites that offer to take down photos in return for payment are clearly in the business of [extortion](http://adamsteinbaugh.com/2013/10/07/call-a-spade-a-spade-mugshot-sites-and-revenge-porn-sites-are-extortion/), which, once again, is already illegal. Framing a new criminal law as a necessity is disingenuous: many of the most egregious revenge porn websites have now [shut down](http://betabeat.com/2013/04/craig-brittain-revenge-porn-is-anybody-down-obama-nudes/), and a number of civil suits (some based on causes of action mentioned above) have been undertaken against those involved. In light of these various recourses through existing laws, what does the push to criminalize revenge porn actually achieve? There is something to be said for the dubious pleasure of retributive justice. But will that tangibly help the victims? Whatever deterrent effect that criminalization could generate — such as discouraging future postings of revenge porn — is likely to be redundant given the civil litigation already taking place. More’s the pity: this moment of media attention on the stalking, harassment, and employment problems suffered by victims could have been used to legislate against exactly that. As Marcotte herself points out, revenge porn is often just another form of domestic violence or sexual  harassment. The problem of revenge porn is embedded within a larger context of violence against women and the stigmatization of the naked body, which means the issue can be tackled from many other directions. Why look to regulating the internet when restraining orders [cannot be enforced](http://www.law.cornell.edu/supct/html/04-278.ZS.html), when domestic violence victims are hampered in [initiating civil actions](http://www.law.cornell.edu/supct/html/99-5.ZO.html) against abusers, when employers can fire their employees for being sexualized on the internet? **Our efforts would be better spent seeking legislation to remedy the suffering that victims actually experience. Criminalizing revenge porn solves one problem while potentially generating many more.** An overbroad criminal law is a threat to the public, runs the risk of being struck down by a court (for violating the First Amendment), or even worse, becomes the basis of questionable convictions and imprisonments. But an overly narrow law — like the [final version](http://blog.ericgoldman.org/archives/2013/10/californias_new_1.htm) of the California revenge porn law, which does not cover selfies sent to the vengeful ex or liability for website operators — is little more than lip service to the harm suffered by victims. We do not need to choose between the internet and women, or between free speech and feminism. These are false and unnecessary dichotomies. **Refusing to criminalize revenge porn would not make us misogynists. It would instead make us prudent.**

#### Revenge porn laws commodify women’s suffering and are motivated by other goals, and aren’t needed – civil remedies solve.

**Jeong:** Jeong, Sarah [Sarah Jeong is co-Editor-in-Chief of the [*Harvard Journal of Law & Gender*](http://harvardjlg.com/), and is a third-year student at Harvard Law School. She has previously done clinical work with the Berkman Center and the Electronic Frontier Foundation, though her opinions here are her own. Jeong is also the author of [Dear Miss Disruption](https://medium.com/funny-stuff/d7e5d14065f1), “an [advice column](http://valleywag.gawker.com/dear-miss-disruption-an-advice-column-from-silicon-va-1221607088) from Silicon Valley”. Follow her on Twitter @sarahjeong.] “Revenge Porn Is Bad. Criminalizing It Is Worse.” *Wired.* October 2013. RP

-Power actors, like Anthony Weiner, can use laws to protect themselves

“FREE SPEECH IS important, but…” Oh no. Here we go again. This time, the issue is the criminalization of revenge porn. **Much of the media narrative** [**characterizes**](http://mashable.com/2013/10/21/revenge-porn/) **revenge porn as a new, runaway technological scourge too disruptive to fall under any existing law, but that is simply untrue. A number of legal remedies against both vengeful exes and website operators already exist: civil tort actions, DMCA takedowns, criminal statutes against extortion, and even a federal law that could give the FBI authority to go after the sites.** Discussions of internet law seem like an endless cycle of “but what about the women/children?” pitted against “but what about my free speech?” We’re back on the merry-go-round again with the recent furor over revenge porn — the unconsented-to public distribution of nude photos or videos, usually by a significant other (often male) who intends to humiliate or harass their ex-partner (often female). **The exploitation of women and children has always been the Trojan horse of internet regulation**, from the now old-and-venerable [Communications Decency Act of 1996](http://transition.fcc.gov/Reports/tcom1996.txt), to more recent attempts like the [ridiculous and ineffectual](https://www.wired.com/opinion/2012/12/why-we-need-to-defend-sex-offenders-online-rights/) California ballot initiative Proposition 35 (which attempted to address human trafficking by, among other things, requiring registered sex offenders to disclose their internet handles to the authorities). At each turn, such efforts have been confronted with the inconvenient existence of the First Amendment. Although First Amendment issues are certainly present with respect to revenge porn, it’s hardly the most compelling reason why we should reject the push to criminalize it. Many of the discussions of revenge porn — including the exchange between Amanda Marcotte and Cathy Reisenwitz in Talking Points Memo — have focused on free speech, forcing us to consider a false dichotomy between speech and gendered harassment. A haze of uncertainty surrounds the definition of revenge porn, as Reisenwitz [points out](http://talkingpointsmemo.com/cafe/revenge-porn-is-awful-but-the-law-against-it-is-worse). **An overbroad definition of revenge porn could net a reporter publishing screencaps of Anthony Weiner’s more infamous tweets. Although we have in our minds the perfect-paradigm case of a sympathetic victim — a nice girl with a penchant for selfies — and an unsympathetic perpetrator — a spurned, vindictive ex-boyfriend with a blatant streak of misogyny — the web of liability becomes nebulous when we think about cases that fall outside this paradigm**. (And things get more problematic when we think about websites and website operators beyond the horrifying IsAnyoneUp.com and the entirely unlikable Hunter Moore.) Dismissing such concerns, Marcotte [argues](http://talkingpointsmemo.com/cafe/angry-abusive-men-still-have-free-speech-without-revenge-porn) that giving up tabloid reporting for the sake of revenge porn victims is fair: Knowing that [Anthony] Weiner’s dick pics are out there but being unable to view them myself seems like a fair trade for a world where men are more limited in the weapons they can use to stalk, abuse, and control women. …**But the sacred constitutional freedom to snark about Anthony Weiner is hardly the point. The point is that a new criminal statute paves another way to put a human life on hold and a human body in prison — and yes, a paparazzo still counts as human. There are unintended consequences to overbroad laws, and failing to take that into consideration when advocating for increased criminal liability is irresponsible. The problem is further exacerbated by how the internet works.**

#### Limits on revenge porn are paternalizing, don’t work, and thwart feminist movements

**Haupt:** Haupt, Claudia E. [Law Clerk, Cologne, Germany. Erstes Juristisches Staatsexamen (E.J.S) (J.D. equivalent), University of Cologne, Germany; M.A., State University of New York at Albany.] “REGULATING HATE SPEECH - DAMNED IF YOU DO AND DAMNED IF YOU DON'T: LESSONS LEARNED FROM COMPARING THE GERMAN AND U.S. APPROACHES.” *Boston University International Law Journal.* Fall 2005. RP

\*\*\*Bracketed for offensiveness

The libertarian arguments protective of the First Amendment parallel those made by traditionalists in the campus speech code debate and will be illustrated in that context. **Nadine Strossen, for examples, argues against free speech restrictions based on her interpretation of First Amendment doctrine. She confronts MacKinnon in the context of feminist discours**e. n60 Strossen argues that numerous works of special value to feminists would inevitably be subject to the kind of regulatory scheme advocated by MacKinnon. **Moreover, some scholars have pointed out that the very groups that were intended to be the beneficiaries of the protective measures - especially feminists and lesbians - would be the ones hardest hit. n61 Thus, censorship would promote a multitude of reactions counterproductive to the cause. n62 It would perpetuate demeaning stereotypes, including that sex is bad for women, and the disempowering notion that women are [targets] ~~victims~~. Strossen also suggests that the proposed legislation would distract people from working towards eliminating gender-based discrimination and violence through more constructive approaches. Turning to the individual, Strossen contends that women who voluntarily work in the sex industry would be harmed and the efforts of women to develop their own sexuality would be thwarted. On a political level, she states that MacKinnon's proposed legislation would lead to an increased power of the religious right and its patriarchal agenda that would curtail women's rights while depriving feminists of a powerful tool in their struggle to advance women's equality. Similarly, an argument can be made that that laws such as those suggested by MacKinnon, which lead to an in- crease in the state's regulation of sexual images, would present many dangers to women "because they seek to embody in law an analysis of the role of sexuality and sexual images in the oppression of women with which even all feminists do not agree.**" Under this view, an analysis of sexuality as "a realm of unremitting, unequaled victimization for women" is what MacKinnon seeks to impose with the power of the state.

#### Revenge porn isn’t constitutionally protected –time place manner restrictions – it’s not speech but images

**Robertson:** Robertson, Hope [Guest Contributor, Campbell Law Observer] “The Criminalization of Revenge Porn.” *Campbell Law Review.* July 2015. RP

**Laws prohibiting Revenge Porn fall under the time, place, and manner exception to the First Amendment and do not violate free speech**. The posting of nude photos and the writing surrounding the content are two different free speech analyses**. The photos are not protected under the First Amendment, while the writing surrounding the photos (usually) is protected. The posting of photos on a website is not pure speech; it is conduct.** The United States Supreme Court has stated that there is not a “limitless variety of conduct [that] can be labeled ‘speech’ whenever the person engaging in the conduct intends thereby to express an idea.” **Therefore, the court must analyze whether the conduct is expressive. To be expressive conduct, the speaker must intend to communicate something**, and the audience must understand the message the speaker is intending to communicate. In this case, the speaker is intending to communicate certain things about his/her ex by posting these photos (the ex wronged the speaker in some way to make the speaker want revenge) and the audience understands this is the message the speaker is intending to send. **This makes the posting of photos qualify as expressive conduct, and the “Court has held that when ‘speech’ and ‘nonspeech’ (conduct) elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment Freedoms.”**

#### No explanation as to how colleges have jurisdiction in the digital realm

#### They set dangerous precedents that harm free speech.

**Stokes:** Jenna K. Stokes [J.D. Candidate, 2015, University of California, Berkeley, School of Law] “THE INDECENT INTERNET: RESISTING UNWARRANTED INTERNET EXCEPTIONALISM IN COMBATING REVENGE PORN” BERKELEY TECHNOLOGY LAW JOURNAL 2014 AG

**Another suggested civil response to the revenge porn problem is** that courts should understand the exchange of intimate media to carry with it an implied confidentiality contract, based on an implied **“right to be forgotten.”**64 This proposal is an attractive solution because it allows for a clear-cut breach of contract cause of action once revenge porn hits the web. However, **[T]his suggestion appears to be little more than a convenient sidestep around the First Amendment, allowing courts to assume that the parties contracted around their free speech rights from the outset.65 Further, if the implied contract is thought to be based on the parties’ reasonable expectations, it may not always be reasonable to assume confidentiality in the context of sharing images and videos.** Certainly, there is no such assumption with other forms of personal media.66 Although societal norms may suggest that those who share intimate media likely do not want it shared online, one might also argue that **[T]he recipient of such media operated under the assumption that because it was shared with them, the sender was open to sharing it in general. With no obvious limiting principle, implying a confidentiality contract as a rule could easily capture cases where it is inappropriate and override individuals’ freedom to contract as they so choose.**

#### Victims won’t come forward

**Citron:** Citron, Danielle. [Lois K. Macht Research Professor & Professor of Law, University of Maryland Francis King Carey School of Law] “Criminalizing Revenge Porn.” Wake Forest Law Review, 2014. AG

What is more, **[S]ince plaintiffs in civil court** generally **have to proceed under their real names, victims may be reluctant to sue for fear of** unleashing more **unwanted publicity. Generally, courts disfavor pseudonymous litigation because it is assumed to** interfere with the transparency of the judicial process, to **deny a defendant’s constitutional right to confront his or her accuser, and** to **encourage frivolous claims from being asserted by those whose names and reputations would not be on the line.** Arguments in favor of Jane Doe lawsuits are considered against the presumption of public opennessa heavy presumption that often works against plaintiffs asserting privacy invasions.81 **Even in ideal circumstances, where pseudonymous litigation is permitted[,]** and where a lawyer is willing to take the case, **it may be hard to recover much in the way of damages.** Defendants often do not have deep pockets. **Victims may be hard pressed to expend their time and money on lawsuits if defendants are effectively judgment proof.** Then too**, [A]n award of damages is no assurance that websites will comply with requests to take down the images. The removal of images is the outcome that** most **victims desire above all else, and civil litigation may be unable to make that happen**

#### Victims lack the resources to file civil suits, and lawyers are unwilling to take their cases.

**Citron:** Citron, Danielle. [Lois K. Macht Research Professor & Professor of Law, University of Maryland Francis King Carey School of Law] “Criminalizing Revenge Porn.” Wake Forest Law Review, 2014. AG

One major problem, however, is that **[M]ost victims lack resources to bring civil suits.** As we have heard from countless victims, **[M]any cannot afford to sue their perpetrators. Having lost their jobs due to the online posts, they cannot** pay their rent, let alone **cover lawyer’s fees**. It may also be hard to **[or] find lawyers willing to take their cases. Most lawyers do not know this area of law and are not prepared to handle the trickiness of online harassment evidence.** **This reduces the deterrent effect of civil litigation, as would-be perpetrators are unlikely to fear a course of action that is unlikely to materialize.**

## Zones Terror

#### Non unique -- free speech zones exist in only 1/6 of colleges

**FIRE:** Free Speech Zones on Campus <https://www.thefire.org/pdfs/5bed6be4733c1eb18e3adec122073a22.pdf> NO DATE NO SPECIFIC AUTHOR

**Roughly 1 in 6 of America’s top colleges and universities have free speech zones**

#### Turn – free speech zones don’t allow police into them – they wouldn’t be able to stop terror.

**ACLU:** Know Your Rights: Free Speech, Protests & Demonstrations ACLU no date https://www.aclunc.org/our-work/know-your-rights/free-speech-protests-demonstrations

**The police are charged with safeguarding the public during a demonstration, but they can't use their powers to stop you from exercising your free-speech rights. As long as you're observing reasonable time, place and manner restrictions, the police may not break up a gathering unless there is a "clear and present danger of riot**, disorder, interference with traffic upon the public streets, or other immediate threat to public safety . . . ." **And police officers may not use their powers in a way that has a "chilling effect"** on ordinary people who wish to express their views.

#### Turn – speech zones damage public safety by putting everyone in a small area – that’s a perfect target for terror.

**Hacker:** Hacker, David [David J. Hacker serves as senior legal counsel with Alliance Defending Freedom at its Sacramento, California Regional Service Center] “It's Time to End Public University Speech Zones.” *JuristTwenty.* May 2014. Rp

**Free speech zones on public university campuses sound wonderful in the abstract—a special zone just for free speech! But don't be fooled. College's sell the idea of free speech zones like used car salesmen. They make students think that they want the zones, but in reality, students don't want them and they don't need them**. And in the end, students realize they've been duped. Several recent news stories highlight the troubling irony of so-called free speech zones on public university campuses: they are used to stifle speech rather than encourage it. In one story, administrators at the University of Hawaii-Hilo stopped two students from handing out free copies of the US Constitution—the very document that gives us the right to free speech—because the students were standing outside the university's "free speech zone." According to a [complaint](http://d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2014/04/Complaint-in-Burch-and-Vizzone-v-University-of-Hawaii-et-al.pdf)  [PDF] filed in federal court in Hawaii, the university's free speech zone is essentially a muddy ravine that occupies less than one percent of the university's campus. This is the only place students may speak on campus without prior approval from administrators. In another story, administrators at Modesto Junior College stopped a student from distributing free copies of the Constitution on Constitution Day. The reason? Although he was standing in front of the student center on campus, a likely forum to communicate with his peers, administrators told him that he could not distribute the Constitutions without getting permission five days in advance and even then he could distribute them only in the "free speech area." Like the Hawaii case, the [complaint](http://www.gpo.gov/fdsys/granule/USCOURTS-caed-1_13-cv-01630/USCOURTS-caed-1_13-cv-01630-1) alleged that the so-called "free speech area" was a mere 600 square foot stage. The college eliminated the speech zone and [settled](http://d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2014/03/Combined-Settlement-in-Van-Tuinent-v.-Yosemite-Community-College.pdf)  [PDF] the case in March. These cases would be funny, if only they weren't true. Sadly, despite decades of legal precedent declaring university campuses to be the "marketplaces of ideas" in keeping with their historic role, the restrictions public universities place on student speech today would come as a great surprise to James Madison and the Founding Fathers. A basic review of public forum case law reveals the multiple legal problems these policies present. Generally speaking, to assess a [First Amendment](http://www.law.cornell.edu/wex/first_amendment) claim arising on government property, the US Supreme Court determined in [Cornelius v. NAACP Legal Defense and Education Fund](http://supreme.justia.com/cases/federal/us/473/788/case.html)  that a court must first "identify the nature of the forum, because the extent to which the Government may limit access depends on whether the forum is public or nonpublic." Streets, sidewalks and parks are traditional public forums, where restrictions on speech are subject to strict scrutiny. Most public university campuses resemble traditional public forums with streets, sidewalks and open-air quads used by students not only to get around campus, but to socialize and debate ideas. As the court said in [Widmar v. Vincent](http://www.law.cornell.edu/supremecourt/text/454/263), the "campus of a public university, at least for its students, possesses many of the characteristics of a public forum." When analyzing public university campuses, many courts have ruled that student free speech rights are at their apex in the common outdoor areas of campus. And yet some universities still persist in attempting to classify the entire campus as non-public or limited public forums with lesser protections. But in [University of Cincinnati Chapter of Young Americans for Liberty v. Williams](http://law.justia.com/cases/federal/district-courts/ohio/ohsdce/1:2012cv00155/152606/86), the US District Court for the Southern District of Ohio commented that it was unaware of any precedent establishing that a "public university may constitutionally designate its entire campus as a limited public forum as applied to students." (In a limited public forum, restrictions on speech need only be reasonable and viewpoint neutral.) This makes sense. As the US Court of Appeals for the Fifth Circuit noted in [Hays County Guardian v. Supple](http://scholar.google.com/scholar_case?case=5872076468369579038&hl=en&as_sdt=6&as_vis=1&oi=scholarr), students "live and work on campus, making the campus . . . a 'town' of which the resident student will be a 'contributing citizen.'" Thus, it should be no surprise that the Ninth Circuit recently [declared](http://scholar.google.com/scholar_case?case=6227660637645612086&q=osu+student+alliance+v.+ra7&hl=en&as_sdt=2003)  that Oregon State University's campus was a public forum for students. Universities often intertwine speech zone policies limiting the location of student speech with policies that require advanced approval for speech. These prior restraints censor speech before it occurs, so there is a heavy presumption against their constitutionality. As the Supreme Court said in [Forsyth County v. Nationalist Movement](http://scholar.google.com/scholar_case?case=15663411359492122494&hl=en&as_sdt=6&as_vis=1&oi=scholarr), in order to survive constitutional scrutiny, a prior restraint may not delegate overly broad discretion to a government official; it may not be based on the content of the message if it regulates the time, place or manner of speech; it must be narrowly tailored to serve a significant governmental interest; and it must leave open ample alternative channels for communication. Campus speech zones often fail the content-neutrality requirement because the policies implementing these zones grant administrators unbridled discretion. Thus, administrators allow popular student groups to speak outside the designated zones, but deny the same accommodations to less popular speech, like prolife or Christian students. That is exactly what happened in [Pro-Life Cougars v. University of Houston](http://scholar.google.com/scholar_case?case=8848872593454933327&hl=en&as_sdt=6&as_vis=1&oi=scholarr), where university policy allowed administrators to restrict speech to certain areas of campus if it was "potentially disruptive." The Supreme Court warned of these dangers in Forsyth County. It said that policies which vest government officials with unbridled discretion to regulate speech will violate the content-neutrality requirement by allowing for veiled discrimination against some speakers. **Universities claim that free speech zones protect student safety, preserve campus aesthetics and prevent disruption of the educational environment. But restricting student speech to one area of campus is not narrowly tailored to any of these interests. Placing all student speech in a small zone on campus actually causes more danger to student safety by requiring competing student groups to voice their ideas in close proximity. Everyone likes a beautiful college campus, but campus aesthetics can be preserved by prohibiting litter, not speech**. And preventing substantial disruption of the educational environment can be accomplished by prohibiting bullhorns and loud events near classroom buildings, regardless of where the speech occurs on campus. Of course, free speech zones close off all alternative channels of communication in the outdoor areas of campus. Alternatives are not ample if the speaker is unable to reach his intended audience. So if students want to set up a "[debt clock](http://www.adfmedia.org/files/YALUGlawsuit.pdf) " [PDF] near the economics department, but the speech zone is located in a different part of campus, the policy fails constitutional review because it does not allow the students to reach their audience. Students have been incredibly successful in challenging speech zone policies in court. In [Roberts v. Haragan](http://scholar.google.com/scholar_case?case=7980994215577858262&hl=en&as_sdt=6&as_vis=1&oi=scholarr), Texas Tech University limited speech to a gazebo on campus. A student who wanted to distribute religious literature elsewhere on campus sued and the Northern District of Texas struck down the policy because its regulation of even simple conversation between classmates was not narrowly tailored to the university's interest in preserving the educational environment. In Williams, the university restricted all "demonstrations, picketing and rallies" to a free speech area which constituted less than 0.1% of the campus. The Southern District of Ohio enjoined the policy because it determined that the outdoor areas of the university's campus were designated public forums for students to speak freely and the policy was not narrowly tailored to the university's interest in maintaining a peaceful and safe campus. Similarly, in [Burbridge v. Sampson](http://scholar.google.com/scholar_case?case=15746465527580994007&hl=en&as_sdt=6&as_vis=1&oi=scholarr), the South Orange Community College District restricted student gatherings of twenty or more people to three "preferred" areas. The Central District of California enjoined the policy because the college failed to articulate any interest in limiting the location of speech and the designation of three preferred areas only did not leave open ample alternative channels of communication. Despite courts uniformly striking down university speech zone policies, they persist from coast to coast. "Free speech zones" might sound great at first glance, but they put the First Amendment rights of students in a box and in some cases, a [ridiculously small box](http://blog.speakupmovement.org/university/freedom-of-speech/do-you-ever-complain-about-your-colleges-speech-zone/). When free speech zones prevent students from distributing the US Constitution, we know it is time to put the zones in a box—six feet under—and let students participate freely in the "marketplace of ideas."

#### Speech zones are going away in the status quo – no counterplan for uniqueness – their impacts are inevitable

**Watanabe:** Watanabe, Teresa [Contributor, the LA Times] “Students challenge free-speech rules on college campus.” *LA Times.* July 2014. RP

**College students in California and three other states filed lawsuits against their campuses Tuesday in what is thought to be the first-ever coordinated legal attack on free speech restrictions in higher education. Vincenzo Sinapi-Riddle, a 20-year-old studying computer science, alleged that Citrus College in Glendora had violated his 1st Amendment rights by restricting his petitioning activities to a small "free-speech zone" in the campus quad**. According to Sinapi-Riddle's complaint, a campus official stopped him last fall from talking to another student about his campaign against spying by the National Security Agency, saying he had strayed outside the free-speech zone. The official said he had the authority to eject Sinapi-Riddle from campus if he did not comply. "It was shocking to me that there could be so much hostility about me talking to another student peacefully about government spying," Sinapi-Riddle said in an interview. "My vision of college was to express what I think." **In his lawsuit, Sinapi-Riddle is challenging Citrus' free-speech zone, an anti-harassment policy that he argues is overly broad and vague and a multi-step process for approving student group events**. The college had eliminated its free-speech zones in a 2003 legal settlement with another student, but last year "readopted in essence the unconstitutional policy it abandoned," the complaint alleged. College officials were not immediately available for comment. But communications director Paula Green forwarded copies of Citrus' free-speech policy, which declares that the campus is a "non-public forum" except where otherwise designated to "prevent the substantial disruption of the orderly operation of the college." The policy instructs the college to enact procedures that "reasonably regulate" free expression. The "Stand Up for Speech" litigation project is sponsored by the Foundation for Individual Rights in Education, a Philadelphia-based group that promotes free speech and due process rights at colleges and universities. Its aim is to eliminate speech codes and other campus policies that restrict expression. **In a report published this year, the foundation found that 58 of 427 major colleges and universities surveyed maintain restrictive speech codes despite what it called a "virtually unbroken string of legal defeats" against them dating to 1989.** Even in California — unique in the nation for two state laws that explicitly bar free speech restrictions at both public and private universities — the majority of campuses retain written speech codes, he said. Among 16 California State University campuses surveyed by the group, for instance, 11 were rated "red" for employing at least one policy that "substantially restricts" free speech. "**Universities are scared of people who demand censorship -- they're afraid of lawsuits and PR problems**," said Robert Shibley, the foundation’s senior vice president. "Unfortunately, they are more worried about that than about ignoring their 1st Amendment responsibilities," he added. "The point of the project is to balance out the incentives that cause universities to institute rules that censor speech." The foundation intends to target campuses in each of four federal court circuits; after each case is settled, it will file another lawsuit. In other cases filed Tuesday: — **Iowa State University students Paul Gerlich and Erin Furleigh challenged administrative rejection of their campus club T-shirt promoting legalization of marijuana**. The university said the shirt violated rules that bar the use of the school name to promote "dangerous, illegal or unhealthy" products and behavior, according to the complaint. — **Chicago State University faculty members Phillip Beverly and Robert Bionaz sued over what they said were repeated attempts to silence a blog they write on alleged administrative corruption. — [An] Ohio University student Isaac Smith challenged the campus speech code that forbids any act that "degrades, demeans or disgraces another."** University officials invoked the code to veto a T-shirt by Smith’s Students Defending Students campus group — which defends peers accused of campus disciplinary offenses. The T-shirt said, "We get you off for free," a phrase that administrators found "objectified women" and "promoted prostitution," the complaint said.

#### No impact to terrorism – Terrorists’ nuclear weapons fail, and they’ll only use conventional weapons.

**Muller,** November **08**,( Richard, Prof. Of Physics @ UC-Berkeley, Foreign Policy; *The List: Five Physics* *Lessons for Obama*; http://www.foreignpolicy.com/story/cms.php?story\_id=4555&print=1

Conventional Wisdom: A nuclear attack is the biggest terrorist threat we face.

**The hard science:** Making a nuclear bomb is excruciatingly difficult. North Korean leader Kim Jong Il spent billions making one—starving his people in the process—and even his bomb fizzled. When it was tested in 2006, it released the energy equivalent of about half the jet fuel of each of the planes that crashed into the World Trade Center towers. But even if a nuclear bomb fizzles, can’t it spread deadly radioactivity? And what about a “dirty bomb,” a smaller weapon specifically designed to do just that? This threat is also mostly exaggerated. In reality, a dirty bomb would leave very few immediate casualties. That’s because radioactivity, once spread after an explosion, drops below the threshold for radiation illness. A dirty bomb might not even cause an observable increase in cancer rates. Perhaps that’s why al Qaeda instructed Chicago gang member José Padilla to abandon his goal of making a dirty bomb and told him instead to blow up apartment buildings using natural gas—which would have a greater chance of killing a large number of people. What is most scary is that al Qaeda seems to understand this fact better than many politicians.

#### No impact to terrorism – Terror attacks will only be small—not huge.

**Roberts 02** Brad Roberts, member of the research staff at the Institute for Defense Analyses, and Michael Moodie, president of the Chemical and Biological Arms Control Institute, July 2002, “Biological Weapons: Toward a Threat Reduction Strategy, Defense Horizons, http://www.ndu.edu/inss/DefHor/DH15/DH15.htm

The argument about terrorist motivation is also important. Terrorists generally have not killed as many as they have been capable of killing. This restraint seems to derive from an understanding of mass casualty attacks as both unnecessary and counterproductive. They are unnecessary because terrorists, by and large, have succeeded by conventional means. Also, they are counterproductive because they might alienate key constituencies, whether among the public, state sponsors, or the terrorist leadership group. In Brian Jenkins' famous words, terrorists want a lot of people watching, not a lot of people dead. Others have argued that the lack of mass casualty terrorism and effective exploitation of BW has been more a matter of accident and good fortune than capability or intent. Adherents of this view, including former Secretary of Defense William Cohen, argue that "it's not a matter of if but when." The attacks of September 11 would seem to settle the debate about whether terrorists have both the motivation and sophistication to exploit weapons of mass destruction for their full lethal effect. After all, those were terrorist attacks of unprecedented sophistication that seemed clearly aimed at achieving mass casualties--had the World Trade Center towers collapsed as the 1993 bombers had intended, perhaps as many as 150,000 would have died. Moreover, Osama bin Laden's constituency would appear to be not the "Arab street" or some other political entity but his god. And terrorists answerable only to their deity have proven historically to be among the most lethal. But this debate cannot be considered settled. Bin Laden and his followers could have killed many more on September 11 if killing as many as possible had been their primary objective. They now face the core dilemma of asymmetric warfare: how to escalate without creating new interests for the stronger power and thus the incentive to exploit its power potential more fully. Asymmetric adversaries want their stronger enemies fearful, not fully engaged--militarily or otherwise. They seek to win by preventing the stronger partner from exploiting its full potential. To kill millions in America with biological or other weapons would only commit the United States--and much of the rest of the international community--to the annihilation of the perpetrators.

#### No scenario for nuclear terror---consensus of experts

Matt Fay 13, PhD student in the history department at Temple University, has a Bachelor’s degree in Political Science from St. Xavier University and a Master’s in International Relations and Conflict Resolution with a minor in Transnational Security Studies from American Military University, 7/18/13, “The Ever-Shrinking Odds of Nuclear Terrorism”, webcache.googleusercontent.com/search?q=cache:HoItCUNhbgUJ:hegemonicobsessions.com/%3Fp%3D902+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a

For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.

## Heg

### 1AR Straight Up

#### Non unique – military spending will stay the same or decrease – Trump’s increases have massive backlash in Congress.

**Drum February 27:** Drum, Kevin [Contributor, Mother Jones] “Trump Wants to Increase Defense Spending by $54 Billion. Can He Do It?” *Mother Jones.* February 27, 2017. RP

**We learned today that President Trump wants to increase defense spending by $54 billion**. How much is that, anyway? This is tricky. Normally, you'd just take a look at defense spending over the past decade or so and see how it compares to the trend. However, ever since 9/11, a big chunk of defense spending has been for ["Overseas Contingency Operations,"](https://fas.org/sgp/crs/natsec/R44519.pdf) known to the rest of us as "wars." You don't want to count that as part of the baseline. On the other hand, the OCO account sometimes acts as a sort of slush fund for ordinary spending, which basically hides increases in baseline defense expenditures. With that caveat in mind, here is baseline defense spending since 2001:1 There are two ways you can look at this: **All this is doing is getting defense spending back up to its Obama-era levels prior to the sequester. Yikes! That's a 45 percent increase since 2001**. Do we really need to be spending 45 percent more than we did in 2001 for baseline defense? Remember, if we decide to invade Iraq and take their oil, that would get funded separately. The baseline budget is just to support basic military readiness. I guess we can all make up our own minds about this, though I can't say that I've heard any persuasive arguments that the Pentagon is truly suffering too much with a $550 billion budget. **The real question is whether Trump's $54 billion increase can get through Congress.** Normally, Republicans would pass it via reconciliation and they wouldn't need any Democratic votes. **However, this increase would blow past the sequester limits put in place in 2013, and this can only be done via regular order.2 That means Republicans need at least eight Democratic votes in the Senate to overcome a filibuster. Normally, they could probably get that. But if they try to balance this $54 billion increase with a $54 billion cut to the EPA and safety net programs,** there are very few Democrats who will play ball**. So what's the plan here?**

#### This is ridiculously offensive – should people never be able to criticize the government or military??? This justifies the worst forms of human rights violations possible.

#### Protests are focused on social issues like inclusion, not challenging the military.

**Chessman and Wayt:** Chessman, Hollie [American Council on Education] and Wayt, Lindsay [American Council on Education]. "What Are Students Demanding,"  Higher Education Today. Jan 13, 2016

Throughout the fall semester, **colleges and universities around the United States and Canada experienced perhaps the biggest upsurge in student activism since the 1960s.** Similar to the demonstrations 50 years ago, **student protests today are focused on social justice, specifically on issues of diversity and inclusion.¶ College administrations were presented with demands** from student organizations, student groups and self-organized demonstrators **asking leadership to address varying concerns related to the climate for underrepresented groups at their institutions.** Some of these demands are a result of solidarity with [Concerned Student 1950](https://twitter.com/CS_1950) at the University of Missouri, and others are a result of ongoing racial tension or concerns surrounding social justice issues on individual campuses.¶ The creators of a newly established website, [TheDemands.org](http://www.thedemands.org/), have compiled student demands stating boldly that “**across the nation, students have risen up to demand an end to systemic and structural racism on campus**[es].” The demands are as complex and varied as the students that proffered them and the institutions that received them, so we undertook a project to examine the lists for trends and common topics.¶ Our analysis was completed using lists posted on TheDemands.org as of Dec. 23, 2015. We categorized and summarized each as accurately as possible, but there is value in considering individual institutional contexts. For example, context may shed light on the finding that 13 percent of the demands focus specifically on African American or Black students with over half referencing a broad focus on racial and other forms of diversity, using terms like “students of color” or “underrepresented populations.”

#### No impact – no great power war

Aziz 14: [John, former economics and business editor at TheWeek.com, Don't worry: World War III will almost certainly never happen, March 6,

Next year will be the seventieth anniversary of the end of the last global conflict. There have been points on that timeline — such as the Cuban missile crisis in 1962, and a Soviet computer malfunction in 1983 that erroneously suggested that the U.S. had attacked, and perhaps even the Kosovo War in 1999 — when a global conflict was a real possibility. Yet today — in the shadow of a flare up which some are calling a new Cold War between Russia and the U.S. — I believe the threat of World War III has almost faded into nothingness. That is, the probability of a world war is the lowest it has been in decades, and perhaps the lowest it has ever been since the dawn of modernity.¶ This is certainly a view that current data supports. Steven Pinker's studies into the decline of violence reveal that deaths from war have fallen and fallen since World War II. But we should not just assume that the past is an accurate guide to the future. Instead, we must look at the factors which have led to the reduction in war and try to conclude whether the decrease in war is sustainable.¶ So what's changed? Well, the first big change after the last world war was the arrival of mutually assured destruction. It's no coincidence that the end of the last global war coincided with the invention of atomic weapons. The possibility of complete annihilation provided a huge disincentive to launching and expanding total wars. Instead, the great powers now fight proxy wars like Vietnam and Afghanistan (the 1980 version, that is), rather than letting their rivalries expand into full-on, globe-spanning struggles against each other. Sure, accidents could happen, but the possibility is incredibly remote. More importantly, nobody in power wants to be the cause of Armageddon.¶ But what about a non-nuclear global war? Other changes — economic and social in nature — have made that highly unlikely too.¶ The world has become much more economically interconnected since the last global war. Economic cooperation treaties and free trade agreements have intertwined the economies of countries around the world. This has meant there has been a huge rise in the volume of global trade since World War II, and especially since the 1980s.¶ Today consumer goods like smartphones, laptops, cars, jewelery, food, cosmetics, and medicine are produced on a global level, with supply-chains criss-crossing the planet. An example: The laptop I am typing this on is the cumulative culmination of thousands of hours of work, as well as resources and manufacturing processes across the globe. It incorporates metals like tellurium, indium, cobalt, gallium, and manganese mined in Africa. Neodymium mined in China. Plastics forged out of oil, perhaps from Saudi Arabia, or Russia, or Venezuela. Aluminum from bauxite, perhaps mined in Brazil. Iron, perhaps mined in Australia. These raw materials are turned into components — memory manufactured in Korea, semiconductors forged in Germany, glass made in the United States. And it takes gallons and gallons of oil to ship all the resources and components back and forth around the world, until they are finally assembled in China, and shipped once again around the world to the consumer.¶ In a global war, global trade becomes a nightmare. Shipping becomes more expensive due to higher insurance costs, and riskier because it's subject to seizures, blockades, ship sinkings. Many goods, intermediate components or resources — including energy supplies like coal and oil, components for military hardware, etc, may become temporarily unavailable in certain areas. Sometimes — such as occurred in the Siege of Leningrad during World War II — the supply of food can be cut off. This is why countries hold strategic reserves of things like helium, pork, rare earth metals and oil, coal, and gas. These kinds of breakdowns were troublesome enough in the economic landscape of the early and mid-20th century, when the last global wars occurred. But in today's ultra-globalized and ultra-specialized economy? The level of economic adaptation — even for large countries like Russia and the United States with lots of land and natural resources — required to adapt to a world war would be crushing, and huge numbers of business and livelihoods would be wiped out.¶ In other words, global trade interdependency has become, to borrow a phrase from finance, too big to fail.¶ It is easy to complain about the reality of big business influencing or controlling politicians. But big business has just about the most to lose from breakdowns in global trade. A practical example: If Russian oligarchs make their money from selling gas and natural resources to Western Europe, and send their children to schools in Britain and Germany, and lend and borrow money from the West's financial centers, are they going to be willing to tolerate Vladimir Putin starting a regional war in Eastern Europe (let alone a world war)? Would the Chinese financial industry be happy to see their multi-trillion dollar investments in dollars and U.S. treasury debt go up in smoke? Of course, world wars have been waged despite international business interests, but the world today is far more globalized than ever before and well-connected domestic interests are more dependent on access to global markets, components and resources, or the repayment of foreign debts. These are huge disincentives to global war.

#### Data disproves hegemony impacts

Fettweis 11

Christopher J. Fettweis, Department of Political Science, Tulane University, Free Riding or Restraint? Examining European Grand Strategy, Comparative Strategy, 30:316–332, EBSCO 29 November 11.

It is perhaps worth noting that there is no evidence to support a direct relationship between the relative level of U.S. activism and international stability. In fact, the limited data we do have suggest the opposite may be true. During the 1990s, the United States cut back on its defense spending fairly substantially. By 1998, the United States was spending $100 billion less on defense in real terms than it had in 1990.51 To internationalists, defense hawks and believers in hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities,” argued Kristol and Kagan, “doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace.”52 On the other hand, if the pacific trends were not based upon U.S. hegemony but a strengthening norm against interstate war, one would not have expected an increase in global instability and violence. The verdict from the past two decades is fairly plain: The world grew more peaceful while the United States cut its forces. No state seemed to believe that its security was endangered by a less-capable United States military, or at least none took any action that would suggest such a belief. No militaries were enhanced to address power vacuums, no security dilemmas drove insecurity or arms races, and no regional balancing occurred once the stabilizing presence of the U.S. military was diminished. The rest of the world acted as if the threat of international war was not a pressing concern, despite the reduction in U.S. capabilities. Most of all, the United States and its allies were no less safe. The incidence and magnitude of global conflict declined while the United States cut its military spending under President Clinton, and kept declining as the Bush Administration ramped the spending back up. No complex statistical analysis should be necessary to reach the conclusion that the two are unrelated. Military spending figures by themselves are insufficient to disprove a connection between overall U.S. actions and international stability. Once again, one could presumably argue that spending is not the only or even the best indication of hegemony, and that it is instead U.S. foreign political and security commitments that maintain stability. Since neither was significantly altered during this period, instability should not have been expected. Alternately, advocates of hegemonic stability could believe that relative rather than absolute spending is decisive in bringing peace. Although the United States cut back on its spending during the 1990s, its relative advantage never wavered. However, even if it is true that either U.S. commitments or relative spending account for global pacific trends, then at the very least stability can evidently be maintained at drastically lower levels of both. In other words, even if one can be allowed to argue in the alternative for a moment and suppose that there is in fact a level of engagement below which the United States cannot drop without increasing international disorder, a rational grand strategist would still recommend cutting back on engagement and spending until that level is determined. Grand strategic decisions are never final; continual adjustments can and must be made as time goes on. Basic logic suggests that the United States ought to spend the minimum amount of its blood and treasure while seeking the maximum return on its investment. And if the current era of stability is as stable as many believe it to be, no increase in conflict would ever occur irrespective of U.S. spending, which would save untold trillions for an increasingly debt-ridden nation. It is also perhaps worth noting that if opposite trends had unfolded, if other states had reacted to news of cuts in U.S. defense spending with more aggressive or insecure behavior, then internationalists would surely argue that their expectations had been fulfilled. If increases in conflict would have been interpreted as proof of the wisdom of internationalist strategies, then logical consistency demands that the lack thereof should at least pose a problem. As it stands, the only evidence we have regarding the likely systemic reaction to a more restrained United States suggests that the current peaceful trends are unrelated to U.S. military spending. Evidently the rest of the world can operate quite effectively without the presence of a global policeman. Those who think otherwise base their view on faith alone.

### 1AR Mpx Turns

Omitted

## Endowments

#### Non unique -- this is the worst year for endowments in a decade, and decline doesn’t cut aid

CNN Money 1-31-17 http://money.cnn.com/2017/01/31/pf/college/college-endowment-returns/

Last year was the worst year for college endowment returns since the financial crisis. Endowments lost an average of 1.9% after accounting for fees, according to the National Association of College and University Business Officers. Average returns were negative across the board, for public and private colleges with endowments of all sizes. Harvard, which has the biggest endowment in the country, lost about 2%. The disappointing year brings down the 10-year average annual return to 5%, well below the 7.4% that many colleges aim for. Some of the biggest losses came from investments in energy and natural resources, commodities, and alternatives like hedge funds. Private equity and real estate investments performed the best. Related: Harvard endowments cuts jobs But there was some good news. Despite the losses, colleges continued to increase spending from their funds to support financial aid, research, and other programs, according to the report.

#### Non unique – donations are low now.

**Wang:** Wang, Amy X. [Contributor, Quartz] “Why alumni donations to Yale and other US colleges are hitting a new low.” *Quartz.* February 2016. RP

**Some two decades years ago, when asked to give to their alma mater, an enthusiastic 50% of Yale graduates opened their wallets. Last year, roughly 33% did, despite steady increases in university solicitation. Alumni donations are now at their lowest levels in two decades**, according to Yale’s Office of Institutional Research. Why? Administrators aren’t sure, but Yale’s president Peter Salovey blames “trends in society today that probably work against participation,” according to the Yale Daily News this week**. The problem isn’t limited to Yale. For years, colleges and universities across the US have seen their alumni giving rates decline**. One reason is that college graduates face a growing slew of philanthropic options: There are more charities, religious institutions, social groups, and Kickstarter campaigns than one can count, and it’s hard to choose where to put your (finite amount of) money. Schools, especially elite schools with big endowments, can seem less appealing than social justice nonprofits or tech innovations.

#### Turn – alumni support free speech – empirically confirmed – it also non uniques the disad since funding is low now.

**Willinger:** WIllinger, Jeremy [Contributor, Heterodox Academy] “Protests Rise and Donations Drop: Alumni reactions to campus trends.” August 2016. RP

Heterodox Academy was founded at a time during which issues of free speech and censorship were playing out on college campuses nationwide. While we appreciated the issues being brought to the table, many of us also marveled at the hostile and exclusionary methods used to bring them into focus. As it turns out, so did many alumni who have since decreased their support to many universities where these protests and requests for censorship were taking place. In a recent New York Times article “College Students Protest, Alumni’s Fondness Fades and Checks Shrink,” Anemona Hartocollis writes about the backlash from alumni as “an unexpected aftershock of the campus disruptions of the last academic year.” More than just a reaction, this is a repudiation of the tactics used by students and of the capitulation by administrators. From the piece: Alumni from a range of generations say they are baffled by today’s college culture. Among their laments: Students are too wrapped up in racial and identity politics. They are allowed to take too many frivolous courses. They have repudiated the heroes and traditions of the past by judging them by today’s standards rather than in the context of their times. Fraternities are being unfairly maligned, and men are being demonized by sexual assault investigations. And university administrations have been too meek in addressing protesters whose messages have seemed to fly in the face of free speech. While the article focuses specifically on Amherst College, it also mentions Princeton, Yale, and Claremont McKenna— all schools that had protests that made the national news. How far has fundraising fallen? Hartocollis reports: **Among about 35 small, selective liberal arts colleges belonging to the fund-raising organization Staff, or Sharing the Annual Fund Fundamentals, that recently reported their initial annual fund results for the 2016 fiscal year, 29 percent were behind 2015 in dollars, and 64 percent were behind in donors**, according to a steering committee member, Scott Kleinheksel of Claremont McKenna College in California. Important to note are the limited avenues alumni have to truly make their voices heard. Letters to the editor of the alumni magazine and campus paper are but small opportunities in context of how much a monetary gift actually means to the school. **Whether this is a temporary drop as a response to trending topics and issues or indicative of a larger, more permanent state of fundraising is yet to be seen. But as we get further away from the initial burst of protests last fall, other stakeholders are beginning to make their voices felt. Alumni in particular-whether they are now on the right or the left—generally endorse free speech and free inquiry quite strongly. They may play an increasingly strong role as we enter the second year of student protests.**

#### A lack of free speech risks a loss in federal funds – Trump is threatening it now.

**Savransky February 2017:** Savransky, Rebecca [Contributor, The Hill] “Trump Threatens Funding Cut If UC Berkeley ‘Does Not Allow Free Speech’.” *The Hill.* February 2, 2017. RP

**President Trump early Thursday threatened to cut federal funding to the University of California, Berkeley after violent protests broke out on its campus Wednesday in response to a planned appearance by a far-right commentator. "If U.C. Berkeley does not allow free speech and practices violence on innocent people with a different point of view — NO FEDERAL FUNDS?**" the president tweeted Thursday morning. Rep. Barbara Lee (D-Calif.) on Thursday released a statement calling the president's apparent threat an "abuse of power." “President Donald Trump cannot bully our university into silence. Simply put, President Trump’s empty threat to cut funding from UC Berkeley is an abuse of power," she said in the statement. "As a senior member of the education funding subcommittee, I will continue to stand up to President Trump’s overreach and defend the rights of our students and faculty**.” A scheduled appearance by right-wing commentator Milo Yiannopoulos was canceled Wednesday night, about two hours before the Breitbart editor was scheduled to speak.** The university said in a statement the violence was "instigated by a group of about 150 masked agitators who came onto campus and interrupted an otherwise non-violent protest," according to NPR. "This was a group of agitators who were masked up, throwing rocks, commercial grade fireworks and Molotov cocktails at o icers," U.C. Berkeley Police Chief Margo Bennet told The Associated Press. More than 1,500 people had showed up to protest Yiannopoulos's appearance on campus. At least six people were injured, according to CNN. Yiannopoulos called what happened "an expression of political violence," according to CNN. "I'm just stunned that hundreds of people ... were so threatened by the idea that a conservative speaker might be persuasive, interesting, funny and might take some people with him, they have to shut it down at all costs," he said in a Facebook Live video.

#### So many thumpers – non-profits outside of colleges, poor solicitation methods, and college debt.

**Wang:** Wang, Amy X. [Contributor, Quartz] “Why alumni donations to Yale and other US colleges are hitting a new low.” *Quartz.* February 2016. RP

Some two decades years ago, when asked to give to their alma mater, an enthusiastic 50% of Yale graduates opened their wallets. Last year, roughly 33% did, despite steady increases in university solicitation. **Alumni donations are now at their lowest levels in two decades, according to Yale’s Office of Institutional Research. Why? Administrators aren’t sure, but Yale’s president Peter Salovey blames “trends in society today that probably work against participation**,” according to the Yale Daily News this week. The problem isn’t limited to Yale. For years, colleges and universities across the US have seen their alumni giving rates decline. **One reason is that college graduates face a growing slew of philanthropic options: There are more charities, religious institutions, social groups, and Kickstarter campaigns than one can count, and it’s hard to choose where to put your (finite amount of) money. Schools, especially elite schools with big endowments, can seem less appealing than social justice nonprofits or tech innovations. There’s another possible explanation: College solicitation efforts may be getting totally outdated.** A 2014 report from Dan Allenby, founder of the Annual Giving Network and an assistant vice president of annual giving at Boston University, not**es that schools still use terminology like “giving back” when most young alums don’t actually feel indebted to their schools. Considering the record level of college debt in the country, “how can we expect alumni to ‘give back’ when they haven’t finished paying the original bill?” Allenby asks. What proportion of tuition and college expenses did you borrow? Given that most graduates nowadays also communicate through social media rather than alumni channels, it may not be surprising that many feel more disconnected from their schools than their parents did**. Recent social turmoil on college campuses has only added to the feeling of institutional alienation. To snag those precious alumni donations in the future, schools will have to get a lot more persuasive. That’s not to say they’re exactly struggling for cash, though: Thanks to mega-donations from rich individual donors, American universities still netted a record $40 billion in 2015.

#### Donor relationships are resilient

**Woodhouse:** Woodhouse, Kellie [Contributor, Inside Higher Ed] “Appeasing the Ones Who Feed You.” December 2015. RP

**Donor relationships are often built over decades or more of engagement and interaction with a university—creating bonds between donor and college that are not easily broken**, says Ivan Adames, executive director of alumni relations and development at Northwestern University. “**At the end of the day you might have a disagreement, but it doesn't diminish that pride that you have in that relationship,” he said. Northwestern has experienced some student demonstrations over race. And though it has received varying responses from alumni,** giving has not been impacted. “**There would have to be a significant lapse in institutional integrity for it to really be disruptive.”**

#### Donors won’t stop giving – surveys of nearly 1,000 prove.

**Woodhouse:** Woodhouse, Kellie [Contributor, Inside Higher Ed] “Appeasing the Ones Who Feed You.” December 2015. RP

**Strauss recalled an institution his firm worked with about a decade ago that was cracking down on its fraternities after a series of troubling incidents. Alumni were contacting administrators expressing frustration with the crackdown, and the university was worried giving would suffer because of alumni concerns. But a survey of 900 alumni found that less than 1 percent of respondents actually said they’d decrease their giving. “They were hearing from all the squeaky wheels,” recalls Strauss, who added that a relatively small proportion of alumni at any institution are substantial donors.** It’s the big donors that universities should keep in touch with during times of turmoil on campus. “**We used to talk about the 80–20 rule, that 80 percent of the money comes from 20 percent of the donors**. For many of these institutions it’s now the 95–5 rule. The concentration has become just amazing,” Strauss said. At Yale University, minority students have issued a set of demands and staged a series of protests after Erika Christakis, an associate master of one of Yale’s residential colleges, sent out an email that many students believe was racially insensitive. In her email Christakis questioned whether Yale should advise students on what types of Halloween costumes to avoid, asking, “Is there no room anymore for a child or young person to be a little bit obnoxious ... a little bit inappropriate or provocative or, yes, offensive?” Some students and alumni found the email thought-provoking, but many thought it was offensive and called for her resignation. One video of a student angrily confronting Christakis’ husband went viral. More than 700 people—many of them alumni—signed a letter in support of the Christakis. Meanwhile, more than 2,000 alumni signed a letter in support of the protesters. Christakis has since resigned from her teaching position at Yale but remains an associate master of the residential college. Yale was flooded with reactions from alumni, through email and social media, many of whom wanted to know how the university was going to react to student demands. Yale President Peter Salovey addressed the protests on campus, and the controversy over free speech, directly with alumni at an event earlier this month. He said discussions over diversity, race, and academic freedom, while difficult, are not “something we should be running from or spinning” and he encouraged alumni to be part of a larger community conversation. Meanwhile, Christakis’ resignation prompted concerns from many alumni who were already worried about the state of free speech on Yale’s campus. “As one of many alumni who defended you for [your] defense of free speech, [please] reconsider leaving or risk emboldening censors!” one alumnus, Glenn Hurowitz, wrote to Christakis on Twitter. Erin Hennessy, vice president of TVP Communications, a public relations agency focused on higher education, said that as institutions communicate with alumni about protests on campus, they need to underscore that the expectations of the modern-day student are different from what many alumni “wanted or needed” when they were on campus. “These are institutions that change and live and grow every day, so the student body we served today may not be the same we served 20 years ago,” she said. At Hamilton College a group of black students using the moniker the Movement have a list of at least 39 demands aimed at bettering race relations and increasing diversity on campus. A few of the demands have rankled some alumni, including a demand that white faculty be discouraged from leading departments about “societies colonized, massacred and enslaved.” Explained one alumnus on a Facebook post: “I’m inclined not to even give the movement [sic] the time of day. If you’re going to make this many ridiculous demands with this many inaccuracies you don’t really deserve a discussion.” As alumni contact the college—many with concerns over the approach students have taken and the way demands have been communicated to administrators—officials remind them that, even among students, there’s a diverse set of views, including a contingent that disagrees with most of the protesters’ demands. “We remind alumni that students don’t always express their sentiments perfectly, but the fundamental issues are real at Hamilton and throughout society,” explained Mike Debraggio, Hamilton’s assistant vice president of communications, in an email. “Colleges, of course, should be places where differing views and perspectives are shared and debated, and sometimes those discussions are difficult.” During an alumni event in New York on Dec. 5, Hamilton President Joan Hinde Stewart drove this point home: “These are interesting times in higher education. Campus conversations across the country are reaching a level of intensity we haven’t seen in a long time. Is this surprising? Not really,” she said. “It’s not a bad thing for questions previously overlooked to be raised in a civil way.” Hennessy says that colleges will have the best results in communicating with alumni if they send out regular updates and try to educate them about new initiatives on campus. Yale, for example, is responding to each email inquiry from alumni directly. “The institutions that [have] threaded this needle are ones that have stayed in touch so that alumni are hearing regularly from their institution,” she continued. Added Adames, “It’s one thing for them to submit their comments and not have anything in response, as opposed to saying, ‘We hear you—this is what our response has been.’ All of us just want to be heard.” Yet even with constant communication, it’s impossible to appease everyone. “With some of these more difficult issues, you’re going to have alumni say, ‘Well, that’s not my college or university anymore,’ and that’s unfortunate,” Hennessy said. “But on the flip side, a lot of alumni may be re-engaged in the institution” because they are sympathetic to protesters’ demands. **Whatever the case, institutions can’t stop having hard conversations for fear of upsetting alumni,** she said. “This is the current atmosphere and these are important conversations, and putting aside these conversations because we might upset one of these constituencies, even if they are very important constituencies, isn’t the best solution for this day and age.”

#### Alumni love free speech – Yale proves that hundreds will cut back on donations ABSENT free speech.

**Elavia:** Elavia, Serena [Contributor, Fox Business] “Yale’s Alumni Donations May Suffer Amid Free Speech Debate.” *Fox Business.* November 2015. RP

**In light of the recent campus protests at Yale University in New Haven, CT, many in the alumni community are upset with the current campus climate and are threatening to cease donations if the University censors free speech**. This Ivy League institution has become the center of a free speech debate a er two conflicting emails were sent out to students about Halloween costumes. The first email, sent to the campus by the Intercultural A airs Committee, which seeks to promote an inclusive and diverse campus, requested that students avoid wearing “culturally unaware or insensitive” Halloween costumes, including Native American dress, redface and blackface. In response, faculty member Erika Christakis, sent an email saying students should be free to wear whichever costumes they choose. Both were cited by the Foundation for Individual Rights in Education (FIRE). A er the second email, many students felt that Christakis had created an unsafe space on campus according to reports. Since then, students have held a 1,000 person protest, submitted demands to the University and even shouted down Christakis’ husband, who is also a Yale faculty member. That account was captured on YouTube (GOOG). According to the Yale Daily News, the student newspaper, students have skipped classes and midterm exams, or requested extensions citing emotional distress as rendering them unable to fulfill academic obligations. Now, hundreds of alumni are frustrated with how Yale has handled the crisis. For many, they’ve threatened to withhold future donations if the administration favors protesting students. Michael Knowles, a 2012 alum, started a Fundly campaign called Concerned Yale Alumni that is raising money to send copies of free speech books to Yale President Peter Salovey, faculty and students. **“The implicit message of this campaign is that alumni will not be sending a penny to Yale University until they make very clear their unconditional commitment to the exchange of free ideas,” says Knowles who says he has spoken to hundreds of alumni. While the campaign to date only has 17 public donors raising $1,118, Knowles says he has received private checks from alumni totaling several thousand dollars who did not want their names publicly displayed on the campaign**. A 2011 Yale alum who spoke to FOXBusiness.com on the condition of anonymity says that “North of 90% of alumni that I talk to would not donate to Yale currently.” And Yale’s o icial fundraising e orts may also take a hit. Ahead of the 132nd Harvard versus Yale football game on Saturday November 21, a sporting rivalry steeped in tradition between the two institutions, Yale has called o its fi h annual fundraiser, according to sources connected to the campaign and alumni. Historically, the fundraiser runs for ten days leading up to the game and challenges Harvard and Yale alumni to compete for who can raise the most money. According to the fundraiser’s page, Yale has seen upwards of thousands of donors participating in the challenge with 3,870 in 2014, 3,999 in 2013, and 1,010 in 2012. “This could not have come at a less opportune time for Yale fundraising,” says Knowles. Multiple calls and emails for comment to Yale’s O ice of Public A airs regarding both the football fundraiser and the impact on alumni donations were not returned to FOXBusiness.com. Nor was an email to Yale President Peter Salovey. One alumnus who will continue to donate is Stephen Schwarzman, class of 1969, and the founder and CEO of investment bank Blackstone (BX) who gave a landmark $150 million gi to Yale in May 2015. In a statement to FOXBusiness.com, he said: “The gi is intended to bring the Yale community together and the need is more important than ever.” Another one of Yale’s biggest donors, Charles Bartlett Johnson, class of 1954, and a former chairman of the mutual fund company Franklin Resources (BEN) gi ed a $250 million donation to Yale in September 2013. At the time of publication, Johnson had not returned a request for comment to FOXBusiness.com on whether or not he will continue to donate to the University. On Thursday November 12, a group of Yale students referring to themselves as the “Next Yale” submitted a list of demands to President Salovey with a deadline of November 18. Salovey told the Yale Daily News that the administration will “seriously” review the demands and provide a response this week.

#### Federal fill in solves

**Pew:** Pew [Polling and information organization] “Federal and State Funding of Higher Education.” July 2015. RP

**The federal government is the nation’s largest student lender; it issued $103 billion in loans in 2013.** States, by contrast, provided only $840 million in loans that year, less than 1 percent of the federal amount. Although they must be paid back with interest, federal loans allow students to borrow at lower rates than are available in the private market. **Federal loans grew 376 percent between 1990 and 2013 in real terms**, compared with enrollment growth of 60 percent. These figures represent the volume, rather than the cost, of those loans. The federal government also supports higher education through the tax code. In 2013, it provided $31 billion in tax credits, deductions, exemptions, and exclusions to  offset costs, essentially equal to the $31 billion it spent for Pell Grants. Because these expenditures allow taxpayers to reduce their income taxes, they reduce federal revenue and are similar to direct government spending. **The value of federal tax expenditures for higher education is $29 billion larger than it was in 1990 in real terms**.  Much of the growth coincided with the creation of the American Opportunity Tax Credit (formerly Hope Tax Credit) in 1997 (effective 1998) and its expansion and renaming in 2009. Between 1990 and 2013, the number of FTE students grew by 60 percent.

#### Endowments are small, not always cash based, and DON’T GO TOWARDS SCHOLARSHIP

**Rotherham:** Rotherham, Andrew J. [Contributor, Time] “College Endowments: Why Even Harvard Isn’t as Rich as You Think.” *Time Magazine.* February 2012. RP

**It seems everyone has an opinion about what colleges and universities should do with their endowments.** Use them to lower tuition**! Let students attend for free**! Improve facilities! Hire more professors! When the National Association of College and University Business Officers (NACUBO) released its annual report on endowments last week, the big numbers grabbed headlines — Harvard’s endowment, the nation’s largest, grew 15%, to $31.7 billion. Less attention was directed to Southern Virginia University’s endowment of $574,000, which won’t provide too many scholarships at a place that costs more than $18,000 a year. **A few weeks ago I had lunch with a college president whose school has an endowment of about $20 million. It may sound like a lot of money, but he was consumed with fundraising efforts just to make ends meet**. So the next time you hear someone pitching an idea for what a college should do with its endowment, think about these five reasons that the reality of how college endowments work is different from the rhetoric. 1. Most schools don’t have them. There are 2,719 four-year colleges in the U.S. (and another 1,690 two-year colleges), according to the most recent Department of Education figures. Most higher-education institutions have no endowment, says William Jarvis, managing director and head of research at the CommonFund Institute, which helps NACUBO with its endowment surveys. But as with everything else around higher education, it’s the elite schools — which tend to be the ones that have large endowments — that drive the conversation. Endowments just aren’t a big factor at most of the institutions of higher education in this country. 2. Many endowments are not that big. The endowments at schools like Harvard or Yale (No. 2, with $19.3 billion) or even public universities like the University of Texas (No. 3, at $17.1 billion) get the attention. But of the 823 U.S. colleges and universities that responded to a [NACUBO survey](http://www.nacubo.org/Research/NACUBO-Commonfund_Study_of_Endowments/Public_NCSE_Tables_.html) (which also included Canadian schools), only 73 had endowments that topped $1 billion; 137 had less than $25 million. Of the U.S. schools in the NACUBO survey, the median endowment size is $90 million. **Not too shabby, but at the standard expenditure rate, an endowment that size generates only about $4.5 million in spendable dollars per year. That’s a decent chunk of change, but hardly enough to eliminate student debt and rely on investment returns instead.** Even Cooper Union, the famously no-tuition college in New York City (No. 126, at $607 million), is struggling financially, and indicated this past fall that it is [considering charging tuition](http://www.nytimes.com/2011/11/01/education/cooper-union-may-charge-tuition-to-undergraduates.html) for the first time in a century. 3. The recession is still taking a toll. Endowments on average earned 19% returns on their investments in the last fiscal year, according to NACUBO. Who wouldn’t like earnings like that? But they lost about the same amount in 2009. Many schools have not fully rebounded from the downturn: 47% of endowments have less than they did in 2008, according to NACUBO. 4. Donors don’t always write blank checks. When your alma mater calls you and asks for a donation, it’s really hoping you’ll give to its general fund, where the use of your donation is unrestricted. Donations you give for scholarships or specific degrees, programs or activities can be used only for those purposes. It’s the same with large donations, and large donations frequently come with donor restrictions — for instance, a specifically endowed chair for a professor or a particular area of research. Sometimes a school can renegotiate with a donor to increase flexibility, such as using proceeds from an endowed chair for another purpose until a suitable hire can be found. Such revisions get complicated when the donors are no longer living. Bottom line: a lot of the money in those big endowments has claims on it, including at Harvard (where, by the way, I am a member of the visiting committee at the Graduate School of Education.) 5. **Endowments are not all cash.** Remember the various exotic investments that helped trigger the financial meltdown? Just like other big-time investors, endowments were attracted to private-equity deals, real estate, hedge funds, commodities and the like. **NACUBO estimates that 54% of endowments are tied up in these alternative and illiquid investments.** This style of endowment investing was pioneered by Yale’s David Swenson and subsequently became known as the “Harvard-Yale” model. A few years ago, when the downturn began, the endowments of those two schools — and all the others that had followed their example — got hammered. Back then, everyone wanted to be like Harvard and Yale — and they got their wish. When Ken Redd, NACUBO’s director of research and policy analysis, asked endowment leaders what they’re most worried about, they said another fiscal crisis that could trigger a shortage of cash. **In that way, endowments are just like many Americans: overextended, with big dreams and not enough cash on hand.**

#### No link – the topic says public colleges, and those don’t need endowments – their cards are about Amherst which is obviously private.

#### Turn – alumni SUPPORT FREE SPEECH – *this is THEIR AUTHOR*

**Hartocollis:** Hartocollis, Anemona [Contributor, The New York Times] “College Studetns Protest, Alumni’s Fondness Fades, and Checks Shrink.” *The New York Times.* August 2016. RP

**Scott MacConnell cherishes the memory of his years at Amherst College**, where he discovered his future métier as a theatrical designer. But protests on campus over cultural and racial sensitivities last year soured his feelings. Now Mr. MacConnell, who graduated in 1960, is expressing his discontent through his wallet. In June, he cut the college out of his will. “As an alumnus of the college, I feel that I have been lied to, patronized and basically dismissed as an old, white bigot who is insensitive to the needs and feelings of the current college community,” Mr. MacConnell, 77, wrote in a letter to the college’s alumni fund in December, when he first warned that he was reducing his support to the college to a token $5. A backlash from alumni is an unexpected aftershock of the campus disruptions of the last academic year. Although fund-raisers are still gauging the extent of the effect on philanthropy, some colleges — particularly small, elite liberal arts institutions — have reported a decline in donations, accompanied by a laundry list of complaints. **Alumni from a range of generations say they are baffled by today’s college culture.** Among their laments: Students are too wrapped up in racial and identity politics. They are allowed to take too many frivolous courses. They have repudiated the heroes and traditions of the past by judging them by today’s standards rather than in the context of their times. Fraternities are being unfairly maligned, and men are being demonized by sexual assault investigations. And university administrations have been too meek in addressing protesters whose messages have seemed to fly in the face of free speech. Scott C. Johnston, who graduated from Yale in 1982, said he was on campus last fall when activists tried to shut down a free speech conference, “because apparently they missed irony class that day.” He recalled the Yale student who was videotaped screaming at a professor, Nicholas Christakis, that he had failed “to create a place of comfort and home” for students in his capacity as the head of a residential college. “I don’t think anything has damaged Yale’s brand quite like that,” said Mr. Johnston, a founder of an internet start-up and a former hedge fund manager. “This is not your daddy’s liberalism.” “The worst part,” he continued, “is that campus administrators are wilting before the activists like flowers.” Yale College’s alumni fund was flat between this year and last, according to Karen Peart, a university spokeswoman. Among about 35 small, selective liberal arts colleges belonging to the fund- raising organization Staff, or Sharing the Annual Fund Fundamentals, that recently reported their initial annual fund results for the 2016 fiscal year, 29 percent were behind 2015 in dollars, and 64 percent were behind in donors, according to a steering committee member, Scott Kleinheksel of Claremont McKenna College in California. His school, which was also the site of protests, had a decline in donor participation but a rise in giving. At Amherst, the amount of money given by alumni dropped 6.5 percent for the fiscal year that ended June 30, and participation in the alumni fund dropped 1.9 percentage points, to 50.6 percent, the lowest participation rate since 1975, when the college began admitting women, according to the college. The amount raised from big donors decreased significantly. Some of the decline was because of a falloff after two large reunion gifts last year, according to Pete Mackey, a spokesman for Amherst. At Princeton, where protesters unsuccessfully demanded the removal of Woodrow Wilson’s name from university buildings and programs, undergraduate alumni donations dropped 6.6 percent from a record high the year before, and participation dropped 1.9 percentage points, according to the university’s website. A Princeton spokesman, John Cramer, said there was no evidence the drop was connected to campus protests. Carolyn A. Martin, Amherst’s president, said she was not surprised that student protests had contributed to the decline in fund-raising. “I think colleges are places where complicated societywide issues are always thrashed out, sometimes across generations,” Dr. Martin, known as Biddy, said in an interview. **Dr. Martin defended Amherst as a place where free speech and high standards still held sway**, and said she had pushed back against protesters when necessary. Much of the alumni unrest at Amherst crystallized around the college’s decision to renounce its unofficial mascot, Lord Jeffery Amherst, known as Lord Jeff, an 18th-century British commander in the French and Indian War who gave his name to the town and, by extension, the college. A new generation of students has criticized his attitude toward Native Americans; he endorsed the idea of spreading smallpox among enemy tribes by giving them infected blankets. “He hated the Indians, because any general in his position would have,” said Gordon Hall III, class of ’52, a commercial real estate investor. He and Don MacNaughton, class of ’65, a retired lawyer and a history buff, wrote a booklet concluding that Lord Jeff had been unfairly maligned. Mr. MacNaughton paid for his share of its publication and promotion online with thousands of dollars he would have otherwise given to the college. “I feel that money is going to the benefit of Amherst College, in any event,” Mr. MacNaughton said. The older generation remembers Lord Amherst not as a genocidal warmonger, but as the inspiration for a beloved college fight song, written by a member of the class of 1906. The song, which Mr. Hall, 86, can still sing by heart, winks knowingly at Lord Amherst’s misdeeds with the line, “To the Frenchman and the Indians, he didn’t do a thing.” Mr. Hall, whose grandfather, father, uncles and son went to Amherst, archly calls himself “a powerhouse of nepotism.” But he has endowed a scholarship and says he welcomes students whose backgrounds are different from his. “I get letters every year about the recipient of my scholarship fund,” he said. “The name will always be a name that is ethnically or racially — you can tell — not like Hall. And so be it. You’ve got to go with the flow to some degree.” **But, he wonders, “where did this supercorrectness thing come from?” In the category of supercorrectness**, some alumni note that in March, a new director of the Women’s and Gender Center asked to be addressed as “they,” rather than “he” or “she.” “This is not a joke,” Paul Ruxin, who identified himself as “Old Curmudgeon class of ’65,” wrote to his classmates shortly before he died in April. David Pennock, class of ’60, one of four generations of his family to have gone to Amherst, is so invested in the college that he bridles at incorrect pronunciations of the name. “Our Amherst is pronounced without the H,” he said. His Amherst was tough but paternalistic, he said. When he fell behind in classes, the admissions dean, Eugene Wilson, class of ’29 and his father’s fraternity roommate, took him trout fishing on the Deerfield River and warned that he was headed for the “underachiever program,” a forced leave of absence. As class agent, Mr. Pennock did not reduce his giving, but he is one of a group of alumni pushing for the return of a core curriculum. Robert Longsworth, class of ’99, the seventh in his family to have attended Amherst, has been the president of the New York City alumni association and a class agent. But he has withdrawn, he said, because of his sense that the college has become “so wrapped up in this politically charged mission rather than staying in its lane and being an institution of higher education.” Mr. Longsworth, 39, who works in the financial industry, said he thought erasing history only made people more vulnerable to racism. “When the administration and faculty and ultimately a lot of the student body spends a great deal of time on witch hunts, I think that a lot of that intellectual rigor is forgone,” he said. Mr. Longsworth said he had heard from “friends who went to Hamilton, Trinity, Williams, Bates, Middlebury, Hobart, who are not pleased at what’s happened on campus, and they’ve kind of stepped away.” **For these alumni, he said, refusing to write a check “seems to be the only lever that can make a difference.”**

#### No link uniqueness – their link says protests cause decrease in funds, but those happen in the status quo – the only difference is the Aff allows them to be legal

## Subaltern Counterpublics

### Hertzig TOC Cards – To Sort

#### Turn: subaltern counterpublics LEGITIMIZE STIGMA and keep minorities separate, stifling broader change.

**Warner:** Warner, Michael. [Seymour H. Knox Professor of English Literature and American Studies, Yale University] “Publics and Counterpublics.” *Public Culture*, Vol. 14, No. 1, Winter 2002. CH

Like all publics, a counterpublic comes into being through an address to indefinite strangers. (This is one significant difference between the notion of a counterpublic and the notion of a bounded community or group.) **But counterpublic discourse also addresses those strangers as being not just anybody. Addressees are socially** marked **by their participation in this kind of discourse; ordinary people are presumed to not want to be mistaken for the kind of person who would participate in this kind of talk or be present in this kind of scene.** Addressing indefinite strangers in a magazine or a sermon has a peculiar meaning when you know in advance that most people will be unwilling to read a gay magazine or go to a black church. In some contexts, the code-switching of bilingualism might do similar work in keeping the counterpublic horizon salient—just as the linguistic fragmentation of many postcolonial settings creates resistance to the idea of a sutured space of circulation. Within a gay or queer counterpublic, for example, no one is in the closet: the presumptive heterosexuality that constitutes the closet for individuals in ordinary speech is suspended. **But this circulatory space, freed from heteronormative speech protocols, is itself** marked **by that very suspension: speech that addresses any participant as queer will circulate up to a point, at which it is** certain **to meet intense resistance. It might therefore circulate in special, protected venues, in limited publications.** The individual struggle with stigma is transposed, as it were, to the conflict between modes of publicness. The expansive nature of public address will seek to keep moving that frontier for a queer public, to seek more and more places to circulate where people will recognize themselves in its address; but no one is likely to be unaware of the risk and conflict involved. In some cases, such as fundamentalism or certain kinds of youth culture, participants are not subalterns for any reason outside of their participation in the counterpublic discourse. In others, a socially stigmatized identity might be predicated, but in such cases a public of subalterns only constitutes a counterpublic when its participants are addressed in a counterpublic way—as, for example, with African Americans who are willing to speak in a racially marked idiom. **The subordinate status of a counterpublic does not simply reflect identities formed elsewhere; participation in such a public is one of the ways its members’ identities are formed and transformed. A hierarchy or stigma is** the assumed background of practice**. One enters at one’s own risk.**

#### Turn: counterpublics can’t be recognized without the state, so they increase what they try to stop.

**Warner:** Warner, Michael. [Seymour H. Knox Professor of English Literature and American Studies, Yale University] “Publics and Counterpublics.” *Public Culture*, Vol. 14, No. 1, Winter 2002. CH

**Counterpublics tend to be those in which this ideology of reading does not have the same privilege.** It might be that embodied sociability is too important to them; they might not be organized by the hierarchy of faculties that elevates rational-critical reflection as the self-image of humanity; they might depend more heavily on performance spaces than on print; it might be that they cannot so easily suppress from consciousness their own creative-expressive function. How, then, will they imagine their agency? Can a public of She-Romps romp? It is, in fact, possible to imagine that almost any characterization of discursive acts might be attributed to a public. A queer public might be one that throws shade, prances, disses, acts up, carries on, longs, fantasizes, throws fits, mourns, “reads.” **To take such attributions of public agency seriously, however, we would need to inhabit a culture with a different language ideology, a different social imaginary. It is difficult to say what such a world would be like. It might need to be one with a different role for state-based thinking; as things stand now, it might be that the only way a public is able to act is through its imaginary coupling with the state. This is one of the things that happen when alternative publics are cast as social movements—they acquire agency in relation to the state. They enter the temporality of politics and adapt themselves to the performatives of rational critical discourse. For many counterpublics, to do so is to cede the original hope of transforming, not just policy, but the space of public life itself.**

#### NO SOLVENCY – counterpublics cause the SAME HARMS as publics.

**Warner:** Warner, Michael. [Seymour H. Knox Professor of English Literature and American Studies, Yale University] “Publics and Counterpublics.” *Public Culture*, Vol. 14, No. 1, Winter 2002. CH

Over the past three centuries, many such scenes have organized themselves as publics, and because they differ markedly in one way or another from the premises that allow the dominant culture to understand itself as a public, they have come to be called counterpublics. **Yet we cannot understand counterpublics very well if we fail to see that there are contradictions and perversities inherent in the organization of all publics, tensions that are** not **captured by critiques of the dominant public’s exclusions or ideological limitations.** **Counterpublics** are **publics, too. They work by many of the** same **circular postulates. It might even be claimed that, like dominant publics, they are ideological in that they provide a sense of active belonging that** masks **or compensates for the real powerlessness of human agents in capitalist society.** But here I merely leave this question aside; what interests me is the odd social imaginary that is established by the ethic of estrangement and social poesis in public address. The cultural form of the public transforms She-Romps and Spectators alike. **He adds:** Counterpublic discourse is far more than the expression of subaltern culture and far more than what some Foucauldians like to call “reverse discourse.” Fundamentally mediated by public forms, counterpublics incorporate the personal/ impersonal address and expansive estrangement of public speech as the condition of their own common world. **Perhaps nothing demonstrates the fundamental importance of discursive publics in the modern social imaginary more than this—that [E]ven the counterpublics that challenge modernity’s social hierarchy of faculties do so by projecting the space of discursive circulation among strangers as a social entity, and in doing so fashion their own subjectivities around the requirements of** public **circulation and stranger-sociability.37** If I address a queer public, or a public of fellow She-Romps, I don’t simply express the way I and my friends live. I commit myself, and the fate of my worldmaking project, to circulation among indefinite others. However much my address to them might be laden with intimate affect, it must also be extended impersonally, making membership available on the basis of mere attention. My world must be one of strangers. **Counterpublics** are **“counter” to the extent that they try to supply different ways of imagining stranger-sociability and its reflexivity; as publics, they remain oriented to stranger-circulation in a way that is not just strategic, but also constitutive of membership and its affects.** As it happens, an understanding of queerness has been developing in recent decades that is suited to just this necessity; a culture is developing in which intimate relations and the sexual body can in fact be understood as projects for transformation among strangers. (At the same time, a lesbian and gay public has been reshaped so as to ignore or refuse the counterpublic character that has marked its history.) 38 So also in youth culture, coolness mediates a difference from dominant publics and, in so doing, a subjective form of stranger-sociability. **Public discourse imposes a field of tensions within which** any **world-making project must articulate itself. To the extent that I want that world to be one in which embodied sociability, affect, and play have a more defining role than they do in the opinion transposing frame of rational-critical dialogue, those tensions will be acutely felt.**

#### DOUBLE-BIND: either counterpublics RELY on the state for recognition, defeating their purpose, or they aren’t strong enough to do anything.

**Warner:** Warner, Michael. [Seymour H. Knox Professor of English Literature and American Studies, Yale University] “Publics and Counterpublics.” *Public Culture*, Vol. 14, No. 1, Winter 2002. CH

The modern hierarchy of faculties and the modern imagination of the social are mutually implying. The critical discourse of the public corresponds as sovereign to the superintending power of the state. So the dimensions of language singled out in the ideology of rational-critical discussion acquire prestige and power. **Publics more overtly oriented in their self-understandings to the poetic-expressive dimensions of language—including artistic publics and many counterpublics—**lack the power **to transpose themselves to the level of the generality of the state.** Along the entire chain of equations in the public sphere, from local acts of reading or scenes of speech to the general horizon of public opinion and its critical opposition to state power, **the pragmatics of public discourse must be systematically blocked from view. Publics have acquired their importance to modern life because of the ease of these transpositions upward to the level of the state.** Once the background assumptions of public opinion are in place, all discrete publics become part of the public. Though essentially imaginary projections from local exchanges or acts of reading and therefore infinite in number, they are often thought of as a unitary space. This assumption gains force from the postulated relation between public opinion and the state. **A critical opposition to the state, supervising both executive and legislative power, confers on countless acts of opining the unity of public opinion;** those acts share both a common object and a common agency of supervision and legitimation. The unity of the public, however, is also ideological. it depends on the stylization of the reading act as transparent and replicable; it depends on an arbitrary social closure (through language, idiolect, genre, medium, and address) to contain its potentially infinite extension**; it depends on institutionalized forms of power to realize the agency attributed to the public; and it depends on a hierarchy of faculties that allows some activities to count as public or general, while others are thought to be merely personal, private, or particular.** Some publics, for these reasons, are more likely than others to stand in for the public, to frame their address as the universal discussion of the people.

#### NO SOLVENCY: counterpublic members still identify as members of the public.

**Warner:** Warner, Michael. [Seymour H. Knox Professor of English Literature and American Studies, Yale University] “Publics and Counterpublics.” *Public Culture*, Vol. 14, No. 1, Winter 2002. CH

But what of the publics that make no attempt to present themselves this way? **There are as many shades of difference among publics as there are in modes of address, style, and spaces of circulation. Many might be thought of as subpublics, or specialized publics, focused on particular interests, professions, or locales.** The public of Field and Stream, to take an example well within the familiar range of print genres, does not take itself to be the national people, nor humanity in general; the magazine addresses only those with an interest in hunting and fishing, who in varying degrees participate in a (male) subculture of hunters and fishermen. **Yet nothing in the mode of address or in the projected horizon of this subculture requires its participants to cease for a moment to think of themselves as members of the general public as well; indeed, they might well consider themselves its most representative members.**

### TOC – A2 Ghill White Nationalism Add On

#### No link – their link and uniqueness evidence is *terrible* – their uniqueness talks about the Occupy Movement and social justice projects – there’s literally no reason why the Aff trades off with those

#### Non unique – their evidence is from 2012 and cites the occupy Movement as a counterpublic – that movement died years ago – they also haven’t shown any current examples

#### Reading the white nationalism link argument ends the debate – it gives me a thumper – TRUMP IS HERE TO STAY AND WILL ALWAYS COOPT MINORITY SPEECH – no uniqueness counterplan means their impacts are inevitable

#### Turn – plan avoids white nationalism – speech codes cause massive backlash.

Tumulty and Johnson 1-4: Karen Tumulty and Jenna Johnson, “Why Trump may be winning the war on ‘political correctness’” 1-4-16 <https://www.washingtonpost.com/politics/why-trump-may-be-winning-the-war-on-political-correctness/2016/01/04/098cf832-afda-11e5-b711-1998289ffcea_story.html?utm_term=.db9bc85e5b87>

“Driving powerful sentiments underground is not the same as expunging them,” said William A. Galston, a Brookings Institution scholar who advised President Bill Clinton. “**What we’re learning from Trump is that a lot of people have been biting their lips, but not changing their minds**.” One thing is clear: **Trump is channeling a very mainstream frustration**. **In an October** poll by Fairleigh Dickinson University, **68 percent agreed** with the proposition that “**a big problem this country has is being politically correct**.” It was a sentiment felt strongly across the political spectrum, by 62 percent of Democrats, 68 percent of independents and 81 percent of Republicans. Among whites, 72 percent said they felt that way, but so did 61 percent of nonwhites. “**People feel tremendous cultural condescension directed at them**,” and that their values are being “smirked at, laughed at” by the political and media elite, said GOP strategist Steve Schmidt. “‘Political correctness’ are the two words that best respond to everything that a conservative feels put upon,” added pollster Frank Luntz, who has advised Republicans. The label is, he said, a validation that what many on the right see as legitimate policy and cultural differences are not the same as racism, sexism or heartlessness. “**Allegations of racism and sexism have turned into powerful silencing devices**,” Galston agreed. “You can be opposed to affirmative action without being a racist.” The PC backlash does not necessarily mean that people support the kinds of things that Trump is saying, or the way he says them. When the Fairleigh Dickinson pollsters added his name to the same question — prefacing it with “Donald Trump said recently . . . ” — the numbers dropped sharply. Only 53 percent said they agree that political correctness is a major problem. This is not a new debate. It has raged since at least the early 1990s, when college campuses began adopting speech codes. Some went well beyond obvious slurs — with animal rights activists contending, for instance, that the word “pet”was disrespectful and should be changed to “companion animal.” **More recently, the PC wars have flared again in academia, where there is an ongoing argument over whether campuses should be a “safe space” where students are protected from upsetting ideas, and receive “trigger warnings” when course material contains distressing information**. Few would argue that it is wrong to confront and eliminate prejudice. But even some liberals have called political correctness a form of McCarthyism aimed at stifling free expression. **Trump has brought the question from the university quad to the political arena** in a way that no leading candidate has in the past. For many, “it’s satisfying to have a loud tribune like Trump,” said David Axelrod, who was President Obama’s top campaign adviser. “But I don’t think the hunger for authentic plain speech is Trump-specific. One of the appeals of [Democratic presidential candidate] Bernie Sanders is that people think he says exactly what he thinks and is not passing it through a filter. **There is a fundamental yearning for authenticity** that is probably felt more broadly.” The edgy liberal comedian Bill Maher, who for nearly a decade hosted a talk show called “Politically Incorrect,” has said that Trump’s ideas sound “a little ­Hitler-adjacent.” But he has also noted a yearning for “somebody to say, ‘You know what, I just don’t bend to your bull----.’ And Donald Trump, I’ve got to say, I don’t agree with him on a lot, but I kind of get him. We’ve been doing the same thing.” Trump sounded the anti-PC clarion call at the first Republican debate in August, when moderator ­Megyn Kelly of Fox News challenged him on comments that he had made disparaging women. “I think the big problem this country has is being politically correct,” he said. “I’ve been challenged by so many people, and I don’t frankly have time for total political correctness. And to be honest with you, this country doesn’t have time either. This country is in big trouble. We don’t win anymore. We lose to China. We lose to Mexico both in trade and at the border. We lose to everybody.” **It is hard to follow the logic of an argument that insulting women could somehow make the country stronger overseas. But the sentiment behind it came through clearly**. **And it has been picked up by other GOP contenders**. “Political correctness is killing people,” said Sen. Ted Cruz (R-Tex.), because it prevents the Obama administration from focusing on the communications and activities of potential terrorists who are Muslims. “Political correctness is ruining our country,” said former neurosurgeon Ben Carson, after he was criticized for saying a Muslim should not be president. It is corrosive, Carson said in an interview, because “many people will not say what they believe because someone will look askance at them, call them a name. Somebody will mess with their job, their family. This was not supposed to be the way it was in America.” Last month’s terrorist attack in San Bernardino, Calif., carried out by a Muslim couple who appear to have been inspired by the Islamic State, also known as ISIS, has become a case in point for many conservatives. They say political correctness has made the Obama administration too timid in calling it what it is — which is why Cruz and other Republicans taunt the president for not uttering the phrase “radical Islamic terrorism.” “What animates ISIS is an ­apocalyptic religious philosophy. People look at that and don’t understand the unwillingness to say red is red and blue is blue,” Schmidt said. “We live in a post-fact America, where the facts are subordinate to the advancement of an ideology.” Political strategists and others say a number of other forces are behind the backlash. It has both a cultural and an economic component, and it also reflects the continuing polarization that has grown deeper during Obama’s presidency. “For many of these people, they played the game by the rules, and essentially, they got shafted,” Democratic pollster Peter Hart said. **Trump is “the voice of an aggrieved cohort in our society — lower-middle-income working whites who have taken the hit from the big changes in the economy, and are angry about it,” Axelrod said. “He creates a permission structure for others.”**

### Top Level

#### No link – students can create counterpublics themselves – they haven’t won that colleges regulate them or sustain them, and the Aff only affects college action

#### Non unique – they haven’t proven that any of these counterpublics currently exist – make them read examples

#### Restrictions and safe spaces depoliticize oppression, fracturing coalitions that are key to solve.

Halberstam Jack Halberstam, You Are Triggering me! The Neo-Liberal Rhetoric of Harm, Danger and Trauma, Bully Bloggers, 5/7/16.

**What does it mean when younger people who are benefitting from several generations now of queer social activism** by people in their 40s and 50s (who in their childhoods had no recourse to anti-bullying campaigns or social services or multiple representations of other queer people building lives) **feel abused, traumatized, abandoned, misrecognized, beaten, bashed and damaged?** These **younger folks**, with their gay-straight alliances, their supportive parents and their new right to marry regularly **issue calls for “safe space**.” However, as Christina Hanhardt’s Lambda Literary award winning book, Safe Space: Neighborhood History and the Politics of Violence, shows, **the safe space agenda has worked in tandem with urban initiatives to increase the policing of poor neighborhoods and the gentrification of others.** Safe Space: Gay Neighborhood History and the Politics of Violence traces the development of LGBT politics in the US from 1965-2005 and explains how **LGBT activism was transformed from a multi-racial coalitional grassroots movement with strong ties to anti-poverty groups and anti-racism organizations to a mainstream, anti-violence movement with aspirations for state recognition. And, as LGBT communities make “safety” into a top priority** (and that during an era of militaristic investment in security regimes) **and ground their quest for safety in competitive narratives about trauma, the fight against aggressive new forms of exploitation, global capitalism and corrupt political systems falls by the way side. Is this the way the world ends? When groups that share common cause, utopian dreams and a joined mission find fault with each other instead of tearing down the banks and the bankers, the politicians and the parliaments, the university presidents and the CEOs? Instead of realizing**, as Moten and Hearny put it in The Undercommons, **that “we owe each other everything,” we** enact punishments on one another and stalk away from projects that should unite us, and **huddle in small groups feeling** erotically **bonded through our self-righteousness**. I want to call for a time of accountability and specificity: not all LGBT youth are suicidal, not all LGBT people are subject to violence and bullying, and indeed class and race remain much more vital factors in accounting for vulnerability to violence, police brutality, social baiting and reduced access to education and career opportunities. **Let’s call an end to the finger snapping moralism, let’s question contemporary desires for immediately consumable messages of progress, development and access; let’s all take a hard long look at the privileges that often prop up public performances of grie**f and outrage; let’s acknowledge that being queer no longer automatically means being brutalized and let’s argue for much more situated claims to marginalization, trauma and violence. **Let’s not fiddle while Rome** (or Paris) **burns,** trigger while the water rises, weep while trash piles up; **let’s recognize these internal wars for the distraction they have become. Once upon a time, the appellation “queer” named an opposition to identity politics, a commitment to coalition, a vision of alternative worlds. Now it has become a weak umbrella term for a confederation of identitarian concerns. It is time to move on, to confuse the enemy, to become illegible, invisible, anonymous** (see Preciado’s Bully Bloggers post on anonymity in relation to the Zapatistas). In the words of José Muñoz, “we have never been queer.” In the words of a great knight from Monty Python and the Holy Grail, “we are now no longer the Knights who say Ni, we are now the Knights who say “Ekki-ekki-ekki-ekki-PTANG. Zoom-Boing, z’nourrwringmm.”

#### Authenticity tests for blackness get misapplied to oppress students in other ways.

**Johnson 03**: Johnson, E. Patrick. Appropriating blackness: Performance and the politics of authenticity. Duke University Press, 2003.

**The title of this book suggests that ‘‘blackness’’ does not belong to any one individual or group. Rather, individuals or groups appropriate this complex and nuanced racial signifier in order to circumscribe its boundaries or to exclude other individuals or groups.** When blackness is appropriated to the exclusion of others, identity becomes politi- cal. Inevitably, when one attempts to lay claim to an intangible trope that manifests in various discursive terrains, identity claims become embattled, or as noted in the quotation above by Baldwin, ‘‘color’’ or ‘‘blackness’’ becomes a ‘‘dangerous phenomenon.’’ Because the con- cept of blackness has no essence, ‘‘black authenticity’’ is overdeter- mined—contingent on the historical, social, and political terms of its production. Moreover, in the words of Regina Bendix: ‘‘the notion of [black] authenticity implies the existence of its opposite, the fake, and this dichotomous construct is at the heart of what makes authenticity problematic.’’4 **Authenticity, then, is yet another trope manipulated for cultural capital.¶ That said, I do not wish to place a value judgment on the notion of authenticity, for there are ways in which authenticating discourse enables marginalized people to counter oppressive representations of themselves. The key here is to be cognizant of the arbitrariness of authenticity, the ways in which it carries with it the dangers of fore- closing the possibilities of cultural exchange and understanding.** As Henry Louis Gates Jr. reminds us: ‘‘No human culture is inaccessible to someone who makes the effort to understand, to learn, to inhabit another world.’’5¶ **When black Americans have employed the rhetoric of black au- thenticity, the outcome has often been a political agenda that has ex- cluded more voices than it has included.**6 The multiple ways in which we construct blackness within and outside black American culture is contingent on the historical moment in which we live and our ever- shifting subject positions. For example, black Americans, whose vo- cality, leadership, and rhetoric flourished at the historical moment in which they lived, contested popular constructions of blackness in order to further their own political agendas and occasionally to stake out a space from which to argue for the inclusion of other signs of ‘‘blackness.’’¶ Indeed, if one were to look at blackness in the context of black American history, one would find that, even in relation to national- ism, the notion of an ‘‘authentic’’ blackness has always been contested: the discourse of ‘‘house niggers’’ vs. ‘‘field niggers’’; Sojourner Truth’s insistence on a black female subjectivity in relation to the black polity; Booker T. Washington’s call for vocational skill over W. E. B. Du Bois’s ‘‘talented tenth’’; Richard Wright’s critique of Zora Neale Hurston’s focus on the ‘‘folk’’ over the plight of the black man; Eldridge Cleaver’s caustic attack on James Baldwin’s homosexuality as ‘‘anti-black’’ and ‘‘anti-male’’; urban northerners’ condescending attitudes toward rural southerners and vice versa; Malcolm X’s militant call for black Ameri- cans to fight against the white establishment ‘‘by any means nec- essary’’ over Martin Luther King Jr.’s reconciliatory ‘‘turn the other cheek’’; and Jesse Jackson’s ‘‘Rainbow Coalition’’ over Louis Farra- khan’s ‘‘Nation of Islam.’’ All of these examples belong to the long- standing tradition in black American history of certain black Ameri- cans critically viewing a definition of blackness that does not validate their social, political, and cultural worldview. As Wahneema Lubiano suggests, ‘‘**the resonances of [black] authenticity depend on who is doing the evaluating.’’7¶ White Americans also construct blackness.8 Of course, the power relations maintained by white hegemony have different material ef- fects for blacks than for whites. When white Americans essentialize blackness, for example, they often do so in ways that maintain ‘‘white- ness’’ as the master trope of purity, supremacy, and entitlement, as a ubiquitous, fixed, unifying signifier that seems invisible.9 Alter- nately, the tropes of blackness that whites circulated in the past— Mammy, Sapphire, Jezebel, Jim Crow, Sambo, Zip Coon, pickaninny, and Stepin Fetchit, and now enlarged to include welfare queen, pros- titute, rapist, drug addict, prison inmate, etc.—have historically in- sured physical violence, poverty, institutional racism, and second- class citizenry for blacks.¶ An even more complicated dynamic occurs when whites appro- priate blackness. History demonstrates that cultural usurpation has been a common practice of white Americans and their relation to art forms not their own. In many instances, whites exoticize and/or fetishize blackness,** what bell hooks calls ‘‘eating the other.’’10 Thus, when white-identified subjects perform ‘‘black’’ signifiers—norma- tive or otherwise—the effect is always already entangled in the dis- course of otherness; the historical weight of white skin privilege nec- essarily engenders a tense relationship with its Others.

#### Safe spaces are never safe for black people – tough racial dialogue is key – even if hate speech occurs, the discussion is important.

**Leonardo and Porter:** Leonardo, Zeus and Porter, Ronald K.(2010) 'Pedagogy of fear: toward a Fanonian theory of 'safety' in race dialogue', Race Ethnicity and Education, 13: 2, 139 — 157

It **is apparent that both whites and people of color want to avoid violence from being enacted against them. They enter race dialogue from radically different locations – intellectual for the former, lived for the latter – and an unevenness that the critical race pedagogue must accept and becomes the constitutive condition of any progressive dialogue on race. It is the risk that comes with violence but one worth taking if educators plan to shift the standards of humanity. In an apparently common quest for mutual racial understanding, whites and people of color participate in a violence that becomes an integral part of the process and seeking a ‘safe space’ is itself a form of violence insofar as it fails to recognize the myth of such geography in interracial exchange. As it concerns people of color within the current regime, safe space in racial dialogue is a projection rather than a reality. This is the myth that majoritarian stories in education replay and retell in order to perpetuate an understanding of race that maintains white supremacy. Safe spaces are violent to people of color and only by enacting a different form of violence, of shifting the discourse, will race dialogue ultimately become a space of mutual recognition between whites and people of color**. If people of color observe the current call for safety, this process defaults to white understandings and comfort zones, which have a well-documented history of violence against people of color. It is a point of entry that is characterized by denials, evasions, and falsehoods (Frankenberg 1993; Mills 1997). Its shell is non-violent for in public most whites prize self-control. Race dialogue within a white framework is rational, if by that we mean a situation that preserves, as Angela Davis (1998) mentioned, peace and order. This procedural arrangement has much to recommend it if we want to avoid uprisings and outright violence. But its kernel is already violent to people of color because a certain irrational rationality is at work. Both parties leave the interaction relatively ‘intact’, which should not be equated with the absence of violence. Whites depart the situation with their worldview and value systems unchallenged and affirmed, and people of color remain fractured in theirs. Whites would need to experience violence if they expect to change. But this is different from a hegemonic understanding that violence is always a form of dehumanization. In our appropriation of Fanon’s dialectics of violence, we find transformative possibilities in violence depending on the political project to which it is attached. Moreover, in this framework violence is not so much a description of this or that act qualifying as a form of violence, but a theoretical prescription of a different state of affairs, a response to oppression that equals its intensity. Thus, we do not describe what violence looks like, but assess its consequences.

#### No link – subaltern counterpublics are *content neutral* so they’re included in reasonable time place manner restrictions.

#### None of their evidence is in the context of colleges, which means no solvency – colleges can’t just carve out secret underground movements.

#### No link uniqueness – they haven’t won that people would actually join these groups

#### A culture of safety has swallowed our campuses. It locks out hard conversations about race which dooms any efforts at effective change.

**Shulevitz:** Judith Shulevitz, In College and Hiding From Scary Ideas, The New York Times, March 21, 2015

**Safe spaces are an expression of the conviction, increasingly prevalent among college students, that their schools should keep them from being “bombarded” by discomfiting or distressing viewpoints**. Think of the safe space as the live-action version of the better-known trigger warning, a notice put on top of a syllabus or an assigned reading to alert students to the presence of potentially disturbing material. Some people trace safe spaces back to the feminist consciousness-raising groups of the 1960s and 1970s, others to the gay and lesbian movement of the early 1990s. In most cases, safe spaces are innocuous gatherings of like-minded people who agree to refrain from ridicule, criticism or what they term microaggressions — subtle displays of racial or sexual bias — so that everyone can relax enough to explore the nuances of, say, a fluid gender identity. As long as all parties consent to such restrictions, these little islands of self-restraint seem like a perfectly fine idea. **But the notion that ticklish conversations must be scrubbed clean of controversy has a way of leaking out and spreading. Once you designate some spaces as safe, you imply that the rest are unsafe. It follows that they should be made safer.** This logic clearly informed a campaign undertaken this fall by a Columbia University student group called Everyone Allied Against Homophobia that consisted of slipping a flier under the door of every dorm room on campus. The headline of the flier stated, “I want this space to be a safer space.” The text below instructed students to tape the fliers to their windows. The group’s vice president then had the flier published in the Columbia Daily Spectator, the student newspaper, along with an editorial asserting that “making spaces safer is about learning how to be kind to each other.” A junior named Adam Shapiro decided he didn’t want his room to be a safer space. He printed up his own flier calling it a dangerous space and had that, too, published in the Columbia Daily Spectator. “Kindness alone won’t allow us to gain more insight into truth,” he wrote. In an interview, Mr. Shapiro said, “If the point of a safe space is therapy for people who feel victimized by traumatization, that sounds like a great mission.” **But a safe-space mentality has begun infiltrating classrooms, he said, making both professors and students loath to say anything that might hurt someone’s feelings. “I don’t see how you can have a therapeutic space that’s also an intellectual space**,” he said. I’m old enough to remember a time when college students objected to providing a platform to certain speakers because they were deemed politically unacceptable. Now students worry whether acts of speech or pieces of writing may put them in emotional peril. Two weeks ago, students at Northwestern University marched to protest an article by Laura Kipnis, a professor in the university’s School of Communication. Professor Kipnis had criticized — O.K., ridiculed — what she called the sexual paranoia pervading campus life. The protesters carried mattresses and demanded that the administration condemn the essay. One student complained that Professor Kipnis was “erasing the very traumatic experience” of victims who spoke out. An organizer of the demonstration said, “we need to be setting aside spaces to talk” about “victim-blaming.” Last Wednesday, Northwestern’s president, Morton O. Schapiro, wrote an op-ed article in The Wall Street Journal affirming his commitment to academic freedom. But plenty of others at universities are willing to dignify students’ fears, citing threats to their stability as reasons to cancel debates, disinvite commencement speakers and apologize for so-called mistakes. At Oxford University’s Christ Church college in November, the college censors (a “censor” being more or less the Oxford equivalent of an undergraduate dean) canceled a debate on abortion after campus feminists threatened to disrupt it because both would-be debaters were men. “I’m relieved the censors have made this decision,” said the treasurer of Christ Church’s student union, who had pressed for the cancellation. “It clearly makes the most sense for the safety — both physical and mental — of the students who live and work in Christ Church.” A year and a half ago, a Hampshire College student group disinvited an Afrofunk band that had been attacked on social media for having too many white musicians; the vitriolic discussion had made students feel “unsafe.” **Last fall, the president of Smith College, Kathleen McCartney, apologized for causing students and faculty to be “hurt” when she failed to object to a racial epithet uttered by a fellow panel member at an alumnae event in New York. The offender was the free-speech advocate Wendy Kaminer, who had been arguing against the use of the euphemism “the n-word” when teaching American history or “The Adventures of Huckleberry Finn**.” In the uproar that followed, the Student Government Association wrote a letter declaring that “if Smith is unsafe for one student, it is unsafe for all students.” “**It’s amazing to me that they can’t distinguish between racist speech and speech about racist speech, between racism and discussions of racism,”** Ms. Kaminer said in an email. T**he confusion is telling, though. It shows that while keeping college-level discussions “safe” may feel good to the hypersensitive, it’s bad for them and for everyone else.** People ought to go to college to sharpen their wits and broaden their field of vision. **Shield them from unfamiliar ideas, and they’ll never learn the discipline of seeing the world as other people see it. They’ll be unprepared for the social and intellectual headwinds that will hit them as soon as they step off the campuses** whose climates they have so carefully controlled. What will they do when they hear opinions they’ve learned to shrink from? **If they want to change the world, how will they learn to persuade people to join them?** Only a few of the students want stronger anti-hate-speech codes. Mostly they ask for things like mandatory training sessions and stricter enforcement of existing rules. Still, it’s disconcerting to see students clamor for a kind of intrusive supervision that would have outraged students a few generations ago. But those were hardier souls. Now students’ needs are anticipated by a small army of service professionals — mental health counselors, student-life deans and the like. This new bureaucracy may be exacerbating students’ “self-infantilization,” as Judith Shapiro, the former president of Barnard College, suggested in an essay for Inside Higher Ed. But why are students so eager to self-infantilize? Their parents should probably share the blame. Eric Posner, a professor at the University of Chicago Law School, wrote on Slate last month that although universities cosset students more than they used to, that’s what they have to do, because today’s undergraduates are more puerile than their predecessors. “Perhaps overprogrammed children engineered to the specifications of college admissions offices no longer experience the risks and challenges that breed maturity,” he wrote. But “if college students are children, then they should be protected like children.” Another reason students resort to the quasi-medicalized terminology of trauma is that it forces administrators to respond. Universities are in a double bind. They’re required by two civil-rights statutes, Title VII and Title IX, to ensure that their campuses don’t create a “hostile environment” for women and other groups subject to harassment. However, universities are not supposed to go too far in suppressing free speech, either. If a university cancels a talk or punishes a professor and a lawsuit ensues, history suggests that the university will lose. But if officials don’t censure or don’t prevent speech that may inflict psychological damage on a member of a protected class, they risk fostering a hostile environment and prompting an investigation. As a result, students who say they feel unsafe are more likely to be heard than students who demand censorship on other grounds.

#### Backlash disad – whites being excluded from speaking in Black safe spaces causes increases in white nationalism – Trump proves.

Tumulty and Johnson: Karen Tumulty and Jenna Johnson, “Why Trump may be winning the war on ‘political correctness’” 1-4-16 <https://www.washingtonpost.com/politics/why-trump-may-be-winning-the-war-on-political-correctness/2016/01/04/098cf832-afda-11e5-b711-1998289ffcea_story.html?utm_term=.db9bc85e5b87>

“Driving powerful sentiments underground is not the same as expunging them,” said William A. Galston, a Brookings Institution scholar who advised President Bill Clinton. “**What we’re learning from Trump is that a lot of people have been biting their lips, but not changing their minds**.” One thing is clear: **Trump is channeling a very mainstream frustration**. **In an October** poll by Fairleigh Dickinson University, **68 percent agreed** with the proposition that “**a big problem this country has is being politically correct**.” It was a sentiment felt strongly across the political spectrum, by 62 percent of Democrats, 68 percent of independents and 81 percent of Republicans. Among whites, 72 percent said they felt that way, but so did 61 percent of nonwhites. “**People feel tremendous cultural condescension directed at them**,” and that their values are being “smirked at, laughed at” by the political and media elite, said GOP strategist Steve Schmidt. “‘Political correctness’ are the two words that best respond to everything that a conservative feels put upon,” added pollster Frank Luntz, who has advised Republicans. The label is, he said, a validation that what many on the right see as legitimate policy and cultural differences are not the same as racism, sexism or heartlessness. “**Allegations of racism and sexism have turned into powerful silencing devices**,” Galston agreed. “You can be opposed to affirmative action without being a racist.” The PC backlash does not necessarily mean that people support the kinds of things that Trump is saying, or the way he says them. When the Fairleigh Dickinson pollsters added his name to the same question — prefacing it with “Donald Trump said recently . . . ” — the numbers dropped sharply. Only 53 percent said they agree that political correctness is a major problem. This is not a new debate. It has raged since at least the early 1990s, when college campuses began adopting speech codes. Some went well beyond obvious slurs — with animal rights activists contending, for instance, that the word “pet”was disrespectful and should be changed to “companion animal.” **More recently, the PC wars have flared again in academia, where there is an ongoing argument over whether campuses should be a “safe space” where students are protected from upsetting ideas, and receive “trigger warnings” when course material contains distressing information**. Few would argue that it is wrong to confront and eliminate prejudice. But even some liberals have called political correctness a form of McCarthyism aimed at stifling free expression. **Trump has brought the question from the university quad to the political arena** in a way that no leading candidate has in the past. For many, “it’s satisfying to have a loud tribune like Trump,” said David Axelrod, who was President Obama’s top campaign adviser. “But I don’t think the hunger for authentic plain speech is Trump-specific. One of the appeals of [Democratic presidential candidate] Bernie Sanders is that people think he says exactly what he thinks and is not passing it through a filter. **There is a fundamental yearning for authenticity** that is probably felt more broadly.” The edgy liberal comedian Bill Maher, who for nearly a decade hosted a talk show called “Politically Incorrect,” has said that Trump’s ideas sound “a little ­Hitler-adjacent.” But he has also noted a yearning for “somebody to say, ‘You know what, I just don’t bend to your bull----.’ And Donald Trump, I’ve got to say, I don’t agree with him on a lot, but I kind of get him. We’ve been doing the same thing.” Trump sounded the anti-PC clarion call at the first Republican debate in August, when moderator ­Megyn Kelly of Fox News challenged him on comments that he had made disparaging women. “I think the big problem this country has is being politically correct,” he said. “I’ve been challenged by so many people, and I don’t frankly have time for total political correctness. And to be honest with you, this country doesn’t have time either. This country is in big trouble. We don’t win anymore. We lose to China. We lose to Mexico both in trade and at the border. We lose to everybody.” **It is hard to follow the logic of an argument that insulting women could somehow make the country stronger overseas. But the sentiment behind it came through clearly**. **And it has been picked up by other GOP contenders**. “Political correctness is killing people,” said Sen. Ted Cruz (R-Tex.), because it prevents the Obama administration from focusing on the communications and activities of potential terrorists who are Muslims. “Political correctness is ruining our country,” said former neurosurgeon Ben Carson, after he was criticized for saying a Muslim should not be president. It is corrosive, Carson said in an interview, because “many people will not say what they believe because someone will look askance at them, call them a name. Somebody will mess with their job, their family. This was not supposed to be the way it was in America.” Last month’s terrorist attack in San Bernardino, Calif., carried out by a Muslim couple who appear to have been inspired by the Islamic State, also known as ISIS, has become a case in point for many conservatives. They say political correctness has made the Obama administration too timid in calling it what it is — which is why Cruz and other Republicans taunt the president for not uttering the phrase “radical Islamic terrorism.” “What animates ISIS is an ­apocalyptic religious philosophy. People look at that and don’t understand the unwillingness to say red is red and blue is blue,” Schmidt said. “We live in a post-fact America, where the facts are subordinate to the advancement of an ideology.” Political strategists and others say a number of other forces are behind the backlash. It has both a cultural and an economic component, and it also reflects the continuing polarization that has grown deeper during Obama’s presidency. “For many of these people, they played the game by the rules, and essentially, they got shafted,” Democratic pollster Peter Hart said. **Trump is “the voice of an aggrieved cohort in our society — lower-middle-income working whites who have taken the hit from the big changes in the economy, and are angry about it,” Axelrod said. “He creates a permission structure for others.”**

#### This leads to forms of segregation that makes dialogue about racial issues impossible – people run away and hide instead of engaging, retreating to their own private zones

**Pullan:** Pullan, Wendy [Contributor, Saferworld] “Just cities: the role of public space and everyday life.” January 2016. RP

**Recent years have seen private citizens flocking to their city centres in order to protest against abuses and violence, to call for more or better forms of justice and democracy, to make their rights and wishes apparent.** Tahrir Square, Gezi Park, Place de Republique have become synonymous with public demonstrations in Cairo, Istanbul and Paris. **Much has been written about the importance of mobile phones and social networking in forming these events, yet along with effective means of communication, occupying urban space was equally necessary and significant. Without dwelling upon the success or failure of such movements, ‘being in the place’ was a way of establishing civic participation**. To better understand the wider background of such events, I would like to make two observations: first of all, conflicts across the world are becoming increasingly pervasive and complex. In the words of the International Crisis Group’s Jean-Marie Guéhenno, they are more ‘fragmented’. **Rarely are today’s conflicts declared wars with clear beginnings and ends; increasingly, they take the form of prolonged strife with intermittent periods of violence and of relative peace. Many are deeply embedded in ethno-national and religious hostilities as well as economic inequality and class tensions**. Secondly, such conflicts are increasingly played out in urban settings; a 2011 World Bank Report notes that ‘in many cases, the scale of urban violence can eclipse that of open warfare’. Today, cities have become the arena for conflict. The conflicts may originate in national or transnational disputes, but they are played out in cities like Belfast, Baghdad and Jerusalem. Such cities may be targeted as in the siege of Sarajevo during the Yugoslavian civil war or the state-sponsored barrel bombs attacking Syrian cities. But conflicts may also be generated from within by hostile sectors of the population. Whether generated by outside or inside forces, or both, these conflicts increasingly represent cracks in the continuity of urban society. In considering ethno-national and religious conflicts, we find a high level of longevity and uncertainty that is proving resistant to traditional peace processes and political negotiations. Solutions are elusive and we may simply have to learn how to live with certain levels of conflict. Such a realisation affects the place of justice and the role of legal solutions. The dispensing of justice only through policy and official channels may be insufficient, biased or ineffective. One reason for this is because conflicts in cities often concern everyday institutions and practices, played out in ordinary urban life. Examples of everyday life affected by conflict are varied and pervasive: no-go streets in the city; neighbourhood domination by local strong men; regular and sometimes violent demonstrations and parades; streetscapes of graffiti, slogans and other ethnic identifiers; or, more subtle practices that dictate where one chooses to live, work or shop. In the divided cities of the Middle East, urban quarters are increasingly associated with particular ethnic or religious groups; in parts of Belfast, Republicans and Nationalists can be identified by the side of the street on which they walk. Often personal choice is absent; exclusion is pre-determined by religio-political identity and security. The ancient idea of nomos, understood as law and legal order, also has a second and related meaning of convention or custom. Justice, or lack of it, can be played out through customary practice in daily activities. It has to do with how we manage our daily interactions and the urban scenarios that determine where human exchange exists and where not. This is usually a delicate balance. Philosopher Peter Sloterdijk has noted that ‘more communication means above all more conflict’. Understanding each other needs to be supplemented by tactics, actually a ‘code of discretion’, of ‘getting out of each other’s way’. If it were one defined code, legislation would be useful. However, throughout everyday life in urban situations, many codes of behaviour play a role and skills and discretion are necessary to navigate throughout such a complex territory. Protocols shift and respond to a myriad of different powerful forces. Whilst this may be fine when there is good will, it is easy to see how such a delicate series of balances and reactions break down in times of trouble or conflict. Explicit legislation will have an effect at only a very superficial level, but most transactions are rooted in fundamental yet complex forms of praxis, effectively, as architect Peter Carl puts it, ‘in what people do’. Much of this has to do with human activity and the interaction between people, or their ability to ignore each other. **But it is worth noting that the environment also plays a major role in forming a place for these events. In other words, praxis must be located, and customs develop in physical contexts. In cities, public space, as the physical space that diverse peoples share in some way, provides critical environments**. Cities have been built on the fault lines of culture – places of trade and exchange, the coming together of religious individuals and groups, sites to make proclamations, utter judgements, build major structures – and these are inherently the places of diversity and difference. A city is only a city when it encompasses diversity, yet, returning to Sloterdijk’s statement, this, on a grand scale, is a recipe for conflict. **Thus urban public space is inherently diverse, often conflictual and sometimes contested. Many of our most important urban institutions are based upon adversarial relations – parliaments, judicial courts, debating chambers. Debate and disagreement have also traditionally taken place in other less formal bodies: markets, cafes, theatres, demonstrations and protests. In all of these, no absolute agreement is normally expected**. Rather they act as a means of moving forward, with difference and even conflict, as part of the culture, becoming embedded in everyday life. These institutions are physically situated in cities and, effectively, adversarial relations become integral parts of the urban topography. **However, when heavy conflict arises, we see changes in cities, particularly in public space. People tend to shrink back into their own neighbourhoods and communities where they do not have to contend with the ‘other’**. If violence develops, mixed populations become afraid of each other, and everyday life, with all of its ordinary customs and protocols, becomes truncated. Above all, public space becomes a casualty. Public places and facilities – like markets and malls, bus stops and train stations, busy streets and squares – may become magnets for violence and thus closed down and hidden away from public use. In some ways this is not surprising: if violence emerges with threats to safety and human life, you get rid of the places where this is happening**. Yet, I should like to suggest, that whilst this might be effective in the short term, in the medium to long term, public space and the renewal of everyday activities that take place there is key to viable urban relations and the life of a diverse city. We need our urban public space. There are a number of problems with closing down public space and severe disruptions of customary life and practice. Restrictive measures in an emergency often linger on to focus on certain racial or ethnic groups**. So-called temporary measures, like building inner city walls and barricades – prominent features in Jerusalem, Nicosia, Baghdad – have the nasty habit of becoming permanent. In the long term, in very seriously divided cities like Mostar, Beirut or Jerusalem, the possibility of seeing a face that doesn’t look like yours, or hearing a language that is local to the place but you do not understand, becomes increasingly rare and, I would argue, increasingly precious. In examining the effects of conflict in public places, the Centre for Urban Conflicts Research has found two seemingly contradictory phenomena. **In periods of intense violence people from different ethnicities avoid each other but when times are more peaceful, at least some of the populations gravitate back toward mixed areas**. At the same time, entrenched conflicts result in long term or permanent urban changes, often embedded in the physical divisions. So in Nicosia, divided by an uninhabited buffer zone running through the city centre since 1974, it is difficult and may be impossible to rejuvenate this formerly public and shared part of the city. People’s customary practices have been disrupted by what I would call ‘conflict infrastructures’, most visibly in walls and imposed barriers. A tipping point is passed and what has been relatively easy to fracture is almost impossible to knit back together. **Along with such public spaces the customary practices of urban life and the civic rights associated with them also disappear**. Thus we see that cities are both robust and delicate at the same time. If we wish to address the problem of conflict in cities, we must recognise and play to the strengths of both these qualities. **Getting rid of public space, even in times of violence, is clearly not the answer.**

#### No link uniqueness – their evidence is from 1990…if the election of Trump, War on Terror, and more didn’t thump and destroy these counterpublics, then that their scenario is bogus.

#### IMPACT TURN THE NET BENEFIT – THEYRE SAYING TO KEEP MINORITY VOICES UNDERGROUND WHERE NOBODY CAN HEAR THEM – THEY KEEP THE MOST IMPORTANT VOICES SHUT OFF AND SILENCED

#### This leads to policing – they literally say white people aren’t allowed to talk, but that gives college administrators the ability to define who can speak.

#### None of their evidence is in the context of colleges, which means no solvency – colleges can’t just carve out secret underground movements.

#### Counterpublics for minorities makes the root causes worse – they’re alienated from other groups, and racism increases.

**Airaksinen:** Airaksinen, Toni [Contributor, The College Fix] “Black Harvard professor: Giving minorities safe spaces does more harm than good.” *The College Fix.* October 2016. RP

Increased sense of ethnic victimization and a decreased sense of common identity …’ **Accommodating students of color by giving them a safe space doesn’t work — it actually has a harmful effect on their relationships with other ethnic groups on campus**. So says James Sidanius, a Harvard University professor of psychology and African American Studies and the [author](http://scholar.harvard.edu/sidanius/home) of more than 330 scientific papers on race, oppression, diversity and other topics. In 2004, long before the mainstream media started extensively covering the safe space and self-segregation trends in higher education, Professor Sidanius co-authored a [paper](https://dash.harvard.edu/bitstream/handle/1/3205411/Sidanius_EthnicEnclaves.pdf?sequence=1) titled “Ethnic Enclaves and the Dynamics of Social Identity on the College Campus: The Good, the Bad, and the Ugly.” Reached for comment this month by The College Fix, Sidanius said his research can be applied to today’s trends, but it’s nothing really new. “I don’t see any signs that [ethnic enclaves have] gotten worse, it’s probably remained relatively constant, we’re just paying more attention to it now,” he said. Sidanius investigated the effects of membership in “ethnic organizations,” otherwise known as “ethnic enclaves,” in his research. Examples of such ethnic organizations could include, for example, a Black Student Organization or a Chinese Cultural Association. **For students who are members of these types of ethnic-themed organizations, Sidanius discovered during his research that “effects included an increased sense of ethnic victimization and a decreased sense of common identity and social inclusiveness**.” These ethnic organizations are often very in line with today’s “safe space” ideology — the notion that being segregated from what oppresses you or makes you feel uncomfortable is beneficial. Students of color today frequently demand — [and receive](http://www.thecollegefix.com/post/28168/) — ethnic enclaves of various sorts, seen in everything from housing and social gatherings to protests and grief sessions. While they are not exactly the same as “ethnic organizations” Sidanius’ research looked at, the impact of segregation can still apply. Sidanius’ research points out that “among minority students the evidence suggested that membership in ethnically oriented student organizations actually increased the perception that ethnic groups are locked into zero-sum competition with one another and the feeling of victimization by virtue of one’s ethnicity.” He reiterated those findings in his interview with The Fix. “**Once having joined these [ethnic] organizations, the more likely [students] were to feel that they were in this zero-sum relationship with other ethnic groups on campus, and the greater level of hostility they had towards other members on campus, the greater the degree to which they felt ethnically victimized by other ethnic groups on campus**,” he said. But while his research discovered ethnic segregation actually has a negative effect on its stated goals of multiculturalism, diversity and inclusion, administrations at thousands of colleges continue to justify these groups as having an overall positive effect on the campus community. Sidanius, in his interview, elaborated on what he believes is a better fix for racial tensions: **Cross-ethnic exposure and communication help soothe tensions—not safe spaces and self-segregation**—he explained. In another [study](https://www.washingtonpost.com/opinions/want-greater-diversity-on-college-campuses-increase-the-number-of-interracial-roommates/2016/07/01/d5bcdad6-3d5a-11e6-80bc-d06711fd2125_story.html?utm_term=.09e7feb46f68) he said he found that students who were randomly assigned to roommates who were a different racial category than themselves “had lower levels of hostility towards other ethnic groups” and that increased contact between students of different backgrounds “increased the level of positive interchange.” When asked whether his research had any effect on college diversity programming, Sidanius said it’s complicated. “They were in a bind about what to do with the ethnic student organizations, because they didn’t want to forbid or outlaw fraternities, sororities, or ethnic organizations, so they didn’t do much of anything,” he said. **Sidanius told The College Fix that if administrators wanted to help improve race-relations on campus, that they could try to offer programming that brings students of different racial backgrounds together, not pulls them apart.**

#### Undercommons radical speech enables the state to easily target and isolate minorities who speak out.

**The Anarchist Library:** The Anarchist Library [Organization dedicated to revolution] “Not Just Free Speech, but Freedom Itself: A Critique of Civil Liberties.” *The Anarchist Library.* 2010. RP

In the US, many take it for granted that it is easier for the state to silence and isolate radicals in countries in which free speech is not legally protected. If this is true, who wouldn’t want to strengthen legal protections on free speech? **In fact, in nations in which free speech is not legally protected, radicals are not always more isolated—on the contrary, the average person is sometimes more sympathetic to those in conflict with the state**, as it is more difficult for the state to legitimize itself as the defender of liberty. Laws do not tie the hands of the state nearly so much as public opposition can; given the choice between legal rights and popular support, radicals are much better off with the latter. One dictionary defines civil liberty as “the state of being subject only to laws established for the good of the community.” This sounds ideal to those who believe that laws enforced by hierarchical power can serve the “good of the community”—but who defines “the community” and what is good for it, if not those in power? **In practice, the discourse of civil liberties enables the state to marginalize its foes: if there is a legitimate channel for every kind of expression, then those who refuse to play by the rules are clearly illegitimate.** Thus we may read this definition the other way around: under “civil liberty,” all laws are for the good of the community, and any who challenge them must be against it. **Focusing on the right to free speech, we see only two protagonists, the individual and the state.** Rather than letting ourselves be drawn into the debate about what the state should allow, anarchists should focus on a third protagonist—the general public. We win or lose our struggle on the terrain of how much sovereignty the populace at large is willing to cede to the state, how much intrusion it is willing to put up with. **If we must speak of rights at all, rather than argue that we have the right to free speech let us simply assert that the state has no right to suppress us. Better yet, let’s develop another language entirely.**

#### Allowing speech for particular groups fails to do anthing when that group is hateful to OTHER SUBORINDATED GROUPS.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**What of hateful racist and anti-Semitic speech by non-whites? The phenomena of one subordinated group inflicting racist speech upon another subordinated group is a persistent and touchy problem**. Simi- larly, members of a subordinated group sometimes direct racist lan- guage at their own group. The victim's privilege becomes problematic when it is used by one subordinated person to lash out at another. **While I have argued here for tolerance of hateful speech that comes from an experience of oppression, when that speech is used to attack a subordinated-group member, using language of persecution, an adopting a rhetoric of racial inferiority, I am inclined to prohibit such speech. History and context are important in this case because the custom in a particular subordinated community may tolerate racial insults as a form of word play**.224 Where this is the case, community members tend to have a clear sense of what is racially degrading and what is not. The appropriate standard in determining whether language is persecutorial, hateful, and degrading is the recipient's community standard. **We should avoid further victimization of subordinated groups by misunderstanding their linguistic and cultural norms.**

#### Their legal separation of people based on race based categories kills coalitions

Mike Cole 9, “Critical Race Theory and Education: A Marxist Response” 2009. p. 33

Antiracists have made some progress, in the United Kingdom at least, after years of ‘establishment’ opposition, in making antiracism a mainstream rallying point, and this is reflected, in part, in legislation (e.g., the (2000) Race Relations Amendment Act).11 Even if it were a good idea, the chances of making ‘the abolition of whiteness’ a successful political unifier and rallying point against racism are virtually non-existent. For John Preston (2007, p. 13), ‘[t]he abolition of whiteness is . . . not just an optional extra in terms of defeating capitalism (nor something which will be necessarily abolished post-capitalism) but fundamental to the Marxist educational project as praxis’. Indeed, for Preston (2007, p. 196) ‘[t]he abolition of capitalism and whiteness seem to be fundamentally connected in the current historical circumstances of Western capitalist development’. From a Marxist perspective, coupling the ‘abolition of whiteness’ to the ‘abolition of capitalism’ is a worrying development which, if it gained ground in Marxist theory in any substantial way would most certainly undermine the Marxist project, even more than it has been undermined already (for an analysis of the success of the Ruling Class in forging consensus to capitalism in the United Kingdom, see Cole, 2008g, 2008h). Implications of bringing the ‘abolition of whiteness’ into schools are discussed in chapter 7 of this volume. As is argued in this volume, racism, xeno-racism, racialization, and xeno-racialization, when informed by Marxism, are far more conducive to understanding racism in contemporary societies than is the CRT concept of ‘white supremacy’. ‘White supremacy’, I believe, should be restricted to its conventional usage.

## Rape Culture DA

#### Non unique – they haven’t proven anywhere that speech codes are working – in fact, all of their examples are of the status quo.

#### Rulings have established sexual harassment isnt protected

**Schuster**: Schuster, Saundra K. [Esq., Partner, NCHERM] “Sexual Harassment and the First Amendment: Will Your Policies Hold Up In Court?” The National Center for Higher Education Risk Management, Winter 2011. CH

Discussion of the Conflict **The conflict of harassment policies with First Amendment freedoms generally stems from two factors. First, institutions frequently apply workplace language related to sexual harassment to their student sexual harassment policies. Restrictions on expression in the workplace are far more expansive and legal than the restrictions on student expression. Second, many institutions do not create clear distinctions about expression versus conduct, thus overreaching through their sexual harassment policies to limit verbal or written interaction among and toward students. Title VII of the Civil Rights Act of 1964 set forth the standard prohibiting gender discrimination in the workplace. In** a 1986 U.S. Supreme Court case, Meritor Savings Bank, FSB v. Vinson, 477 U.S. 5, the Court stated that sexual harassment was a form of gender discrimination, subject to Title VII regulations. Subsequent cases established the framework for holding an employer liable for sexual harassment in the workplace. 2 The standard for sexual harassment in the workplace includes a prohibition of “quid pro quo” behavior that involves a power differential, and of a “hostile environment”. The standard for liability for hostile environment-based sexual harassment includes behavior that “alters the conditions of one’s employment and creates an abusive work environment”. The Equal Employment Opportunity Commission (EEOC) is the governmental agency charged with overseeing workplace discrimination issues, including sexual harassment. The EEOC publishes language adopted by institutions to describe sexual harassment. Many public institutions have adopted the sexual harassment language prescribed by the EEOC as the standard for prohibited conduct by students. **Sexual harassment behavior related to students is governed by Title IX.** Title IX of the Educational Amendments of 1972 is a Federal law that prohibits gender discrimination in the education context. Like Title VII, Title IX was interpreted by the U. S. Supreme Court to apply gender discrimination to sexual harassment (Franklin v. Gwinnet Cty. Public Schools, 503 U.S.60 (1992). The Court further established the contextual parameters of hostile environment sexual harassment under Title IX in Davis v. Monroe County Board of Education, 526 U.S. 629 (1999). The Court stated that the conduct or expression must be so “severe, pervasive and objectionably offensive such that it undermines the victim’s educational experience and denies equal access to an institution’s resources and opportunities”. Although Title VII and Title IX are similar, in that they both prohibit discrimination based on gender, they are not identical laws, and the scope and context to which they are applied are distinctly different. **Unfortunately, many public institutions begin with publication of their student sexual harassment policy using the broader language of sexual harassment from the employment context, and then they embellish the context to incorporate prohibition of expression that reinforces the institutional mission related to civility and respect**. Freedom of Expression Issues Certainly civility, respect and support for diversity are important institutional values, and most institutions strive to reinforce these aspirations. However, using institutional policies that incorporate campus conduct and discipline to enforce these values make the institution vulnerable to challenge by prohibiting forms of expression that are protected under the First Amendment. The U.S. Supreme Court, in Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969) stated, “a school may not prohibit speech unless the speech will materially and substantially interfere with the requirements of appropriate discipline on the operation of the school, and further, the Court stated Healy v. James, 408 U.S. 169 (1972) that, “the 3 vigilant protection of constitutional freedom is nowhere more vital than in the community of American schools”. These cases underscore the Court’s adherence to the principles of free expression in the educational context. **In order to avoid First Amendment challenges, institutions should also ensure that their student sexual harassment policies contain language that clearly articulates what behavior or expression is prohibited and the context within which this prohibited behavior will rise to the level of sexual harassment. Incorporating words such as “offends”, “denigrates”, “belittles an individual” in a sexual harassment policy makes the institution vulnerable to challenges of having a policy that is vague (the student must guess at how this would translate to their actions), and overbroad (the language encompasses a substantial amount of protected speech along with prohibited speech).** A successful challenge to the language of a sexual harassment policy could result in a court issuing an injunction against application of the policy or even an outright declaration that the language of the policy is unconstitutional. In extreme cases, it might lead to personal liability under §1983 for administrators who implement unconstitutional policies. Recent Cases Saxe v. State College Area School District, 240 F. 3d 200 206 (3rd Cir. 2001). The 3rd Circuit Court of Appeals struck down the school’s sexual harassment policy because it was overbroad and encompassed expression the court stated was constitutionally protected. The court stated that the free speech clause of the First Amendment protects a wide variety of speech that listeners may consider deeply offensive”. DeJohn v. Temple University, 537 F. 3d 301 (3d Cir. 2008). The 3rd Circuit Court of Appeals held that Temple’s use of broad terms such as “hostile” and “offensive” without qualifying language rendered its sexual harassment policy sufficiently overbroad and subjective that it could conceivably be applied to cover any speech of a gender motivated nature. The court issued a permanent injunction against Temple, from applying its sexual harassment policy as originally written and from re-implementing its originally challenged policy. Lopez, et al. v. Candaele, et al., U.S. Dist. Ct. Central Dist. of Calif, (2009). In July, a federal district court issued an injunction against the school, prohibiting it from applying parts of its sexual harassment policy. The court, finding the school’s policy was too broad and vague and prohibited a substantial amount of protected speech, held that a school may not prohibit speech unless the speech will “materially and substantially” interfere with the requirements of appropriate discipline in the operation of the school”. 4 Summary **Colleges and universities must carefully review sexual harassment policies to ensure that language specifying prohibited expression is clearly articulated, consistent with the standard established in Davis. In addition, institutions must analyze the language of sexual harassment policies to ensure the prohibited language is not unconstitutionally vague, ambiguous or overbroad. As the court in Saxe emphasized, school administrators must avoid careless expansion of institutional harassment policies to include protected expression.**

#### Non unique – Trump will rollback all sexual harassment legislation on campuses.

**Van Syckle:** Van Syckle, Katie [Contributor, The Cut] “Here’s What a Trump Administration Could Mean for Campus Sexual Assault.” *The Cut.* January 2017. RP

**During Betsy DeVos’s Senate confirmation hearing yesterday afternoon, Trump’s nominee for Department of Education secretary dodged questions about how she would address college sexual assault** — a top concern under the Obama administration. Over the last eight years, the White House took bold steps to combat high rates of sexual violence and harassment on college campuses. In 2011, the Obama administration issued [Title IX guidance](https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html), which said that schools were responsible for protecting students from sexual harassment and sexual violence on their campuses. In response, the Department of Education’s Office of Civil Rights [launched investigations](http://www.huffingtonpost.com/entry/title-ix-investigations-sexual-harassment_us_575f4b0ee4b053d433061b3d) into more than 300 schools for failing to comply. During the hearing, DeVos said it would be “[premature](https://www.theguardian.com/us-news/2017/jan/17/betsy-devos-hearing-prompts-fears-for-campus-sexual-assault-protections)” to commit to upholding Obama’s Title IX guidance, and she wanted to know more about the issue, setting off alarm bells for sexual-assault activists and educators. Andrea Pino, co-founder of End Rape on Campus, co-wrote a letter with the group Know Your IX to DeVos, calling on the nominee to support survivors. “[The Obama] administration has been so influential in getting the things we once thought of as dreams to be a reality. I think there is a lot of fear and uncertainty now,” Pino said. “**We can still step backwards.” How far can Trump and DeVos go in rolling back initiatives protecting college students on campus? And what would the consequences be?** We unpacked the fine print. What is Title IX?  Title IX is one part of the Educational Amendments of 1972, which prohibits discrimination on the basis of sex, and applies to all schools, public and private, that receive federal funding. (Almost every educational institution from kindergarten through graduate school receives federal funding.) Why did the Obama administration send a letter in 2011 telling colleges how to interpret Title IX? [According](http://www.nsvrc.org/saam/campus-resource-list) to data from National Institute of Justice, one in five women experienced completed or attempted rape while in college, and the Obama administration felt this impacted a student’s right to an equal education as guaranteed under Title IX. Many students who experienced sexual violence while in school said when they reported these incidents to their schools, their cases were often ignored or mishandled. As a result, these students, who may have had to face a perpetrator in their classes, were often at risk of dropping out of school, or developing mental-health issues like anxiety, depression, and PTSD. What did the 2011 Title IX guidance letter do?  The Title IX guidance, also known as the “Dear Colleague” letter, interpreted Title IX more broadly than ever before. The letter told schools it was their responsibility under Title IX to guarantee an educational atmosphere free of gender-based violence and take “immediate and effective” steps to respond. Students began bringing complaints against their universities, and the Department of Education’s Office of Civil Rights has since launched more than 340 investigations into how colleges across the country have mishandled reports of sexual violence. How could a Trump administration undo these efforts? **Because Obama’s 2011 guidance letter is just his administration’s interpretation of Title IX, a Trump administration could ignore this interpretation and instead encourage the police to handle these crimes, and tell colleges these reports are not their responsibility to address. This could discourage survivors from reporting assaults, and remove the pressure from high schools, colleges, and universities to address and reduce sexual violence on their campuses. Between Betsy DeVos not committing to uphold Obama’s guidance letter, and Trump’s own distaste for the Department of Education, anything is possible. (Trump has said, he would like to eliminate the Department of Education entirely, calling it “massive and largely unnecessary**” — although his nomination of DeVos suggests the Department of Education will be around for a little bit longer.) One of Trump’s advisers during the presidential campaign, New York state co-chairman, Carl Paladino, said the Office for Civil Rights is also unnecessary and “self-perpetuating absolute nonsense.” He argued that all discrimination cases should be handled by U.S. attorneys. Republican leaders have repeatedly argued that Obama’s interpretation of Title IX is too broad, and college sexual-assault cases should be handled by the criminal-justice system. The GOP platform, released at the RNC this year, said sexual assault is a “terrible crime,” but cases should be “investigated by civil authorities and prosecuted in a courtroom, not a faculty lounge.” The Foundation for Individual Rights in Education has also expressed concern that leaving these cases to the schools to adjudicate could violate a student’s right to due process. (DeVos and her husband have donated $10,000 to FIRE.) FratPAC, the lobbying arm of fraternities and sororities, is also concerned that students accused of sexual assault are treated unfairly, and in the past has called for schools to turn to the criminal-justice system. It is unclear. Currently, more than 200 investigations are still ongoing, and staff say they are already overwhelmed by the caseload. (The Chronicle for Higher Education has a full [database](http://projects.chronicle.com/titleix/) of the complaints and their status.) In the 2017 budget, Congress will allocate funds for crisis hotlines, shelters, rape-kit testing, courts, law enforcement, rape crisis centers, and community outreach through the Violence Against Women Act, the Family Violence Prevention and Services Act, and the Victims of Crime Act. These laws could all face cuts under a Republican administration. Yes. The [Campus Accountability and Safety Act](https://www.congress.gov/bill/114th-congress/senate-bill/590), a bill co-sponsored by Senators Claire McCaskill and Kirsten Gillibrand, has nine bipartisan backers, including Sen. Marco Rubio and Senator Lindsay Graham, and is currently working its way through the Senate. The bill aims to improve how public colleges and universities handle sexual assault and other violent crimes by requiring colleges to publish their crime stats on their websites, participate in a campus climate surveys, make confidential advisers available to students, and work closely with local police departments.

#### Sexual harassment codes are overbroad and violate freedom

**Brown:** Brown, Elizabeth Nolan [Elizabeth Nolan Brown is an associate editor for Reason.com. She currently lives in Washington, D.C.] “How Sexual Harrassment Codes Threaten Academic Freedom.” *Hit and Run.* October 2015. RP

**In its zeal to spread "gender justice," the Department of Education's Office of Civil Rights (OCR) threatens to stifle academic freedom and infantilize women**, says feminist legal expert and New York Law School Professor Nadine Strossen. **At a recent talk at Harvard's Shorenstein Center on Media, Politics and Public Policy, the former American Civil Liberties Union head warned that current campus policies to curb sexual harassment are overbroad and dangerous.** And while "safety"-mongering students deserve some of the blame, bureaucrats are the biggest progenitors of this paranoid style in American academia. "By threatening to pull federal funds, the OCR has forced schools, even well-endowed schools like Harvard, to adopt sexual misconduct policies that violate many civil liberties," Strossen said. Sexual misconduct is an umbrella term under which fall school rules against sexual assault, sexual harassment, intimate-partner violence, voyeurism, and stalking. While much of the recent focus in this realm has been on sexual violence, school sexual harassment policies also deserve some scrutiny. "Over the years, there have been many types of overly broad sexual harassment policies," explains Samantha Harris, director of policy research for the Foundation for Individual Rights in Education (FIRE). "FIRE has actually had some success in getting schools to roll these back over the years." But in 2013, an OCR and Justice Department investigation into sexual misconduct at the University of Montana yielded "a findings letter which they made public and which they described as a blueprint for colleges and universities," says Harris. "And that blueprint contained a very broad definition of sexual harassment." **As defined by the OCR, sexual harassment is "any unwelcome conduct of a sexual nature." This leaves out two major elements of standard sexual harassment definitions: that the conduct be offensive to a "reasonable person," and that the conduct be severe and pervasive. Under the OCR definition, therefore, any mention of something sexual could be deemed sexual harassment if anyone at all takes offense. In practice, this has resulted in colleges cracking down on professors and lecturers for offering even the mildest sexual content in their classrooms— even in courses specifically about sex.** "Anecdotally, I see this current moral panic over sexual harassment ... playing out more on the faculty side," says Harris. "**We see a lot of faculty whose speech has been chilled**." In her Harvard speech, Strossen laid out several recent examples of the "sexual harassment" that's been targeted by colleges: **The Naval War College placed a professor on administrative leave and demanded that he apologize because during a lecture that critically described Machiavelli's views about leadership he paraphrased Machiavelli's comments about raping the goddess Fortuna**. In another example, the University of Denver suspended a tenured professor and found him guilty of sexual harassment for teaching about sexual topics in a graduate-level course in a course unit entitled Drugs and Sin in American Life From Masturbation and Prostitution to Alcohol and Drugs. A sociology professor at Appalachian State University was suspended because she showed a documentary film that critically examined the adult film industry. A sociology professor at the University of Colorado was forced to retire early because of a class in her course on deviance in which volunteer student assistants played roles in a scripted skit about prostitution. A professor of English and Film Studies at San Bernardino Valley College was punished for requiring his class to write essays defining pornography. And yes, that was defining it, not defending it. This summer, Louisiana State University fired a tenured professor of early childhood education who has received multiple teaching awards because she occasionally used vulgar language and humor about sex when she was teaching about sexuality and also to capture her student's attention. And I could go on. As you can see, this overzealous enforcement of anti-harassment policies comes with serious academic freedom concerns. "Teachers at Harvard, alarmed by the policy’s expansive scope, are jettisoning teaching tools that make any reference to human sexuality," writes Harvard Law Professor Janet Halley.

#### Speech codes on sexual harassment are paternalizing and offensive to women – they portray women as too weak to stand up for themselves

**Brown:** Brown, Elizabeth Nolan [Elizabeth Nolan Brown is an associate editor for Reason.com. She currently lives in Washington, D.C.] “How Sexual Harrassment Codes Threaten Academic Freedom.” *Hit and Run.* October 2015. RP

**Halley and Strossen also worry that these problems are a step in the wrong direction for feminism, with Halley warning that "women’s quest for sexual autonomy is undercut by protectionist images of our sexuality, mandatory reporter requirements, and the newly robust obligation of schools to pursue sexual harassment claims even when the alleged victims don’t want them to." Strossen said "OCR's flawed sexual harassment concept reflects sexist stereotypes that are equally insulting to women and men. For women, it embodies the archaic, infantilizing notion that we're inherently demeaned by any expression with sexual content**." She thinks the goal should be "that classical liberal concept of gender justice," with a focus of "liberation" and "liberty"—not that battle cry of today's campus feminists: safety. Alas, freedom from government offiicals and censorious administrators used to be the goal of progressive students; now they clamor for the state and the staff to step in. Freddie de Boer lamented this turn in a recent New York Times magazine piece, though he, too, places more blame on bureaucratic culture than some sort of uniquely sensitive student populace: If students have adopted a litigious approach to regulating campus life, they are only working within the culture that colleges have built for them. When your environment so deeply resembles a Fortune 500 company, it makes sense to take every complaint straight to H.R. I don’t excuse students who so zealously pursue their vision of campus life that they file Title IX complaints against people whose opinions they don’t like. But I recognize their behavior as a rational response within a bureaucracy. It’s hard to blame people within a system — particularly people so young — who take advantage of structures they’ve been told exist to help them. The problem is that these structures exist for the institutions themselves, and thus the erosion of political freedom is ultimately a consequence of the institutions. When we identify students as the real threat to intellectual freedom on campus, we’re almost always looking in the wrong place. De Boer said he wishes that today's committed campus activists would "remember that the best legacy of student activism lies in shaking up administrators, not in making appeals to them." But college students today have no experience with and seemingly no knowledge about pre-liberalized campuses, official school policies that limited women and minorities, campus administrators colluding with law enforcement to suppress student activism.... And unlike boomers and Gen X, millennials tend to get along well with their parents and have little generalized anti-authority feels. From a certain millennial viewpoint, appealing to campus administrators and federal agents to solve social problems is a no brainer. The good news is that these officials are certain to start cracking down on things that students do support, too—that's the nature of giving bureaucrats broad authority. As more campus SlutWalk organizers get cited for sexual harassment (certainly someone must be offended by a parade of half naked people, no?) and pro-gay t-shirt slogans are deemed too offensive and anti-police speakers are kept off campus... well, at least we can hope that students activists will start to reconsider their tacks. I have much more optimism that the kids will come around than I do for fixing this mess with the Office of Civil Rights, which has only been increasing its micromanagement of campus sexual-misconduct policies in recent years. But perhaps the push-back from elite professors like Strossen and Halley signals the beginning of the demise of this OCR overreach?

#### It’s not constitutionally protected speech --sexual harassment isn’t protected under Title XI

**The ACLU:** The American Civil Liberties Union [Organization that sues for jusitce and writes about the law] “Title XI And Sexual Violence in Schools.” *The ACLU.* No date. RP

**Sexual violence in schools and on campus is a pressing civil rights issue: when students suffer sexual assault and harassment, they are deprived of equal and free access to an education. Title IX of the Education Amendments of 1972 is a federal civil rights law that prohibits discrimination on the basis of sex in any education program or activity that receives federal funding. Title IX is a powerful tool for students who want to combat sexual violence at school and on college campuses. Under Title IX, discrimination on the basis of sex can** include sexual harassment**, rape, and sexual assault**. TITLE IX STATES: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." The Women’s Rights Project, in collaboration with [Students Active For Ending Rape (SAFER)](http://www.safercampus.org/) — a national nonprofit that empowers students to hold colleges accountable for sexual assault in their communities — has put together the [fact sheet](https://www.aclu.org/womensrights/edu/37025res20081002.html), [podcast series](https://www.aclu.org/multimedia/audio/39180res20090326.html), and other resources on this page to get the word out to student activists about how they can use Title IX as an effective tool for change. **Under the requirements of Title IX schools receiving federal funds have a legal obligation to protect students from gender-based violence and harassment** – including sexual assault. Use this to find out more about schools’ obligations under Title IX and students’ rights. The Women’s Rights Project has participated in a number of court cases in which courts have taken important steps to hold schools accountable for ignoring sexual harassment or sexual assault that they knew about in school or on campus. A federal court rejected Arizona State University’s (ASU) argument that it was not responsible under Title IX when a campus athlete raped a student, even though it had previously expelled the athelte for severe sexual harassment of multiple other women on campus. The case settled and ASU agreed to appoint a statewide Student Safety Coordinator who will review and reform policies for reporting and investigating incidents of sexual harassment and assault, and award the plaintiff $850,000 in damages and fees. A federal court found that there was sufficient evidence to suggest that the University of Colorado (CU) acted with “deliberate indifference” with regard to students Lisa Simpson and Anne Gilmore, who were sexually assaulted by CU football players and recruits. The University settled the case and agreed to hire a new counselor for the Office of Victim’s Assistance, appoint an independent Title IX advisor, and pay $2.5 million in damages. The United States Supreme Court held that public school students may challenge sex discrimination under both Title IX and the Constitution’s Equal Protection Clause. Schools and colleges around the country are waking up to the power of Title IX to combat sexual violence on campus. **School administrators can't afford to ignore Title IX.** April is Sexual Assault Awareness Month and students across the country are protesting sexual assault on campus by holding Take Back the Night rallies. "There have been reforms and efforts to improve the climate for study for women in colleges and graduate programs through mechanisms like Title IX enforcement around sexual harassment issues.  However, there is a lot of blockage in the system when it comes to women fulfilling their dreams.  There are very high rates of sexual harassment reported by female students in colleges and universities and graduate programs as well as in elementary and secondary education."

#### Harassment isn’t even considered speech, so the Aff doesn’t affect it.

**The ACLU:** The American Civil Liberties Union [Organization that sues for justice and writes about the law] “Hate Speech on Campus.” *ACLU.* 2016. RP

A: Yes. **The ACLU believes that hate speech stops being just speech and becomes conduct when it targets a particular individua**l, and when it forms a pattern of behavior that interferes with a student's ability to exercise his or her right to participate fully in the life of the university. **The ACLU isn't opposed to regulations that penalize acts of violence, harassment or intimidation, and invasions of privacy**. On the contrary, we believe that kind of conduct should be punished. **Furthermore, the ACLU recognizes that the mere presence of speech as one element in an act of violence, harassment, intimidation or privacy invasion doesn't immunize that act from punishment**. For example, threatening, bias-inspired phone calls to a student's dorm room, or white students shouting racist epithets at a woman of color as they follow her across campus -- these are clearly punishable acts. Several universities have initiated policies that both support free speech and counter discriminatory conduct. Arizona State, for example, formed a "Campus Environment Team" that acts as an education, information and referral service. **The team of specially trained faculty, students and administrators works to foster an environment in which discriminatory harassment is less likely to occur, while also safeguarding academic freedom and freedom of speech.**

## White Supremacy DA

#### No uniqueness read – their links are all to the status quo – they haven’t proven the Aff makes things worse

#### No link – this is literally just reasons why the First Amendent is bad but not empirical about the results of speech codes, nor specific to campuses

#### Speech codes make hate into a “forbidden fruit”, increasing the prevalence of racial slurs

**Burrus:** Burrus, Trevor [Contributor, Forbes] “Why Offensive Speech Is Valuable.” March 2015. RP

Offensive speech contributes to the marketplace of ideas by expanding its borders. If the marketplace of ideas is the area where “acceptable” ideas are freely exchanged, then outside is the “black” marketplace of ideas. There, people talk about things that are not allowed in the “official” marketplace. That sometimes includes conspiracy theories, racial hatemongering, and other pure lunacy, but it also includes things desperately needing a public airing. For years, if not centuries, the field of sex research was hindered by taboo and puritanical censorship. Bigotry and prejudice towards homosexuality, divergent sexual desires of any sort, women’s sexual health, and sexual dysfunction caused researchers to be relegated to the black marketplace of ideas. In order to get out of the black market, they needed to offend. By being offensive, comedians, authors, and artists helped bring sex research out of the darkness. By saying forbidden words in jokes and skits, by looking censors in the eyes and saying “cocksucker”—one of the words that famed comic Lenny Bruce was arrested for in 1961 in a San Francisco nightclub—the crass and the boorish opened up avenues of thought and discussion that were previously forbidden. Bruce said, “you break it down by talking about it.” Slowly, conversations about sex were freed from puritanical oversight, sex researchers illuminated a crucial part of human existence, and couples had more fun. Those comics from the 60s who were “edgy” now seem quaint to our modern sensibilities. But there are always new innovators in the world of offensive speech, and no amount of government regulation will stop that. People define themselves by being offensive. They express themselves through their willingness to stomp on prevailing sensitivities and, yes, even other's feelings. **Fostering self-expression and self-development is another important reason we have a strong and uncompromising First Amendment. As homosexuals who have “come out” know all too well, expressing something publicly is crucial to defining oneself**. Does this apply to those who hate other races, religions, and ethnicities? Yes. They have as much right to define themselves through speech as anyone. And those who abhor the hateful have a right to shun them, expose them, and call them out. **Government prohibitions on hate speech drive the hateful underground, where they can proliferate freely and without pushback from those who dare not enter. Sunlight, not government, is the best disinfectant. I, for one, would like racists and bigots to speak freely. I want to know who not to invite to my parties. Government is not as effective as civil society in properly squelching and shaming hateful speech. If the government defines the parameters of acceptable speech, then many people will break those boundaries just because the government told them not to do it. They will explore the hidden, underground world of hate speech** just because it is a forbidden fruit**. There they will find whole new ways to offend people because offensive people, like water, will always find a way**. In fact, there is no correlation between the strength of a country’s hate speech laws and the eradication of hateful views. **Greece, for example, has passed laws that try to combat “certain forms and expressions of racism and xenophobia by means of criminal law.” Yet according to the Anti-Defamation League, 69 percent of Greeks hold anti-semitic views, compared to just 9 percent of Americans.** Just like drug laws, driving hate speech underground will do little to eliminate the habit, and could make the situation worse. So go forth and offend and be offended. Do it for Lenny Bruce.

#### Speech codes take resources away from better methods of combatting hate

**Strossen:** Strossen, Nadine. [John Marshall Harlan II Professor of Law, New York Law School] “Incitement to Hatred: Should There Be a Limit?” *New York Law School.* 2000. RP

**Now I will comment on yet another reason why censoring hate speech may well undermine, rather than advance, equality causes: its diversionary nature. Focusing on biased expression diverts us from both the root causes of prejudice-of which the expression is merely one symptom-and from actual acts of discrimination**. The track record of campus hate speech codes highlights this problem, too, just as it highlighted the previous problem I discussed, of discriminatory enforcement. **Too many universities have adopted hate speech codes at the expense of other policies that would constructively combat bias and promote tolerance. In fact, some former advocates of campus hate speech codes have become disillusioned for this very reason**. One example is the minority student who was initially a leading advocate of one of the earliest campus hate speech codes, at the University of Wisconsin, Victor DeJesus. After the ACLU successfully challenged that code under the First Amendment, Mr. DeJesus opposed the University's efforts to rewrite the code in the hope of coming up with something that would pass constitutional muster. As the New York Times reported: Victor DeJesus, co-president of the Wisconsin Student Association, said that he initially supported the hate speech rule, but that he had changed his mind because he felt the regents were using it as an excuse to avoid the real problems of minority students. "**Now they can finally start putting their efforts into some of our major concerns like financial aid, student awareness, and recruitment retention**," Mr. DeJesus said.76

#### *All* free speech should be heard – even bad ideas shouldn’t be silenced –Britain empirically confirms that censorship makes violence worse.

**Malik:** Malik, Kenan [I am a writer, lecturer and broadcaster. My latest book is *The Quest for a Moral Compass: A Global History of Ethics*.] “Why hate speech should not be banned.” *Pandaemonium.* 2012. RP

PM: **Do you support content-based bans of ‘hate speech’ through the criminal law, or do you instead agree with the American and Hungarian approach**, which permits prohibition only of speech that creates imminent danger? KM: I believe that no speech should be banned solely because of its content; **I would distinguish ‘content-based’ regulation from ‘effects-based’ regulation and permit the prohibition only of speech that creates imminent danger. I oppose content-based bans both as a matter of principle and with a mind to the practical impact of such bans**. Such laws are wrong in principle because free speech for everyone except bigots is not free speech at all. It is meaningless to defend the right of free expression for people with whose views we agree. **The right to free speech only has political bite when we are forced to defend the rights of people with whose views we profoundly disagree. And in practice, you cannot reduce or eliminate bigotry simply by banning it. You simply let the sentiments fester underground.** As Milton once put it, to keep out ‘evil doctrine’ by licensing is ‘like the exploit of that gallant man who thought to pound up the crows by shutting his Park-gate’. **Take Britain. In 1965, Britain prohibited incitement to racial hatred as part of its Race Relations Act. The following decade was probably the most racist in British history. It was the decade of ‘Paki-bashing’, when racist thugs would seek out Asians to beat up**. It was a decade of firebombings, stabbings, and murders. In the early 1980s, I was organizing street patrols in East London to protect Asian families from racist attacks. Nor were thugs the only problem. Racism was woven into the fabric of public institutions. The police, immigration officials – all were openly racist. In the twenty years between 1969 and 1989, no fewer than thirty- seven blacks and Asians were killed in police custody – almost one every six months. The same number again died in prisons or in hospital custody. When in 1982, cadets at the national police academy were asked to write essays about immigrants, one wrote, ‘Wogs, nignogs and Pakis come into Britain take up our homes, our jobs and our resources and contribute relatively less to our once glorious country. They are, by nature, unintelligent. And can’t at all be educated sufficiently to live in a civilised society of the Western world’. Another wrote that ‘all blacks are pains and should be ejected from society’. So much for incitement laws helping create a more tolerant society. Today, Britain is a very different place. Racism has not disappeared, nor have racist attacks, but the open, vicious, visceral bigotry that disfigured the Britain when I was growing up has largely ebbed away. It has done so not because of laws banning racial hatred but because of broader social changes and because minorities themselves stood up to the bigotry and fought back. Of course, as the British experience shows, hatred exists not just in speech but also has physical consequences. Is it not important, critics of my view ask, to limit the fomenting of hatred to protect the lives of those who may be attacked? In asking this very question, they are revealing the distinction between speech and action. Saying something is not the same as doing it. But, in these post-ideological, postmodern times, it has become very unfashionable to insist on such a distinction. In blurring the distinction between speech and action, what is really being blurred is the idea of human agency and of moral responsibility. Because lurking underneath the argument is the idea that people respond like automata to words or images. But people are not like robots. They think and reason and act on their thoughts and reasoning. Words certainly have an impact on the real world, but that impact is mediated through human agency. Racists are, of course, influenced by racist talk. It is they, however, who bear responsibility for translating racist talk into racist action. Ironically, for all the talk of using free speech responsibly, the real consequence of the demand for censorship is to moderate the responsibility of individuals for their actions. Having said that, there are clearly circumstances in which there is a direct connection between speech and action, where someone’s words have directly led to someone else taking action. Such incitement should be illegal, but it has to be tightly defined. There has to be both a direct link between speech and action and intent on the part of the speaker for that particular act of violence to be carried out. Incitement to violence in the context of hate speech should be as tightly defined as in ordinary criminal cases. In ordinary criminal cases, incitement is, rightly, difficult legally to prove. The threshold for liability should not be lowered just because hate speech is involved.

#### Speech codes don’t stop racist IDEAS from spreading – sanitized expressions are even worse than epithets.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**Even then, controlling epithets alone will contribute little toward a harmonious campus environment. Epithet restrictions may soften the expressions of hatred in some ways. Still they do not insulate students from the pain of a more nicely phrased statement. For example, I wonder if a black student would regard the following statement as any less offensive than a common epithet: "Black Americans are inherently inferior to whites in intelligence** and capacity for work and other organized behavior. Their presence in this nation is a historical accident which the government should act now to correct by forced repatriation to Liberia." Such is the sort of sanitized, undirected statement which would be permitted in many if not all circumstances under the Wisconsin and Stanford rules. **I cannot imagine that it is any less grievous for a black student to hear the above instead of a standard slur. In fact, the calm, respectable facade of such a statement will probably cause its effects to linger longer than the ring of an epithet. Nor can we stop enterprising bigots from using code words or gleefully converting their banter into respectfully phrased derogatory comments.**

## Morale DA

#### Non unique – military spending will stay the same or decrease – Trump’s increases have massive backlash in Congress.

**Drum February 27:** Drum, Kevin [Contributor, Mother Jones] “Trump Wants to Increase Defense Spending by $54 Billion. Can He Do It?” *Mother Jones.* February 27, 2017. RP

**We learned today that President Trump wants to increase defense spending by $54 billion**. How much is that, anyway? This is tricky. Normally, you'd just take a look at defense spending over the past decade or so and see how it compares to the trend. However, ever since 9/11, a big chunk of defense spending has been for ["Overseas Contingency Operations,"](https://fas.org/sgp/crs/natsec/R44519.pdf) known to the rest of us as "wars." You don't want to count that as part of the baseline. On the other hand, the OCO account sometimes acts as a sort of slush fund for ordinary spending, which basically hides increases in baseline defense expenditures. With that caveat in mind, here is baseline defense spending since 2001:1 There are two ways you can look at this: **All this is doing is getting defense spending back up to its Obama-era levels prior to the sequester. Yikes! That's a 45 percent increase since 2001**. Do we really need to be spending 45 percent more than we did in 2001 for baseline defense? Remember, if we decide to invade Iraq and take their oil, that would get funded separately. The baseline budget is just to support basic military readiness. I guess we can all make up our own minds about this, though I can't say that I've heard any persuasive arguments that the Pentagon is truly suffering too much with a $550 billion budget. **The real question is whether Trump's $54 billion increase can get through Congress.** Normally, Republicans would pass it via reconciliation and they wouldn't need any Democratic votes. **However, this increase would blow past the sequester limits put in place in 2013, and this can only be done via regular order.2 That means Republicans need at least eight Democratic votes in the Senate to overcome a filibuster. Normally, they could probably get that. But if they try to balance this $54 billion increase with a $54 billion cut to the EPA and safety net programs,** there are very few Democrats who will play ball**. So what's the plan here?**

#### No link uniqueness – there are tons of campus protets that happen that didn’t trigger the impact

#### Their link evidence is from 2007 and is about PROTESTS AGAINST THE IRAQ WAR – if that didn’t trigger the impact, I don’t know what will – proves their scenario is bogus

#### Recent marine Revenge Porn scandal thumps morale.

**Chappell March 6:** Chappell, Bill [Contributor, NPR] “Sharing Of Nude Photos Of Female Marines Online Prompts Pentagon Investigation.” *NPR.* March 6 2017. RP

**Hundreds of Marines are reportedly under investigation by the Naval Criminal Investigative Service, after a trove of photographs were shared online that show female service members and veterans in the nude**. The images were spread via a closed Facebook group with thousands of members. When the photos were shared via Marines United — a Facebook group that's intended for male Marines and Marine veterans only — they drew bawdy and obscene comments, according to two nonprofit news sites: the War Horse and the [Center for Investigative Reporting](https://www.revealnews.org/blog/hundreds-of-marines-investigated-for-sharing-photos-of-naked-colleagues/). According to War Horse founder Thomas James Brennan, many of the photos on the Marines United page included personal information about the female service members, from their name, rank and duty station to the names of their social media accounts. The Facebook page also included links to a Google Drive with even more images — and an invitation to any members to contribute photos. The images were obtained in a variety of ways, Brennan reports, from sharing by former partners to stalking and, potentially, the hacking of service members' personal accounts. Almost immediately after the War Horse contacted the Marine Corps about the images in late January, the service asked Google and Facebook to delete accounts linked to the material, and an NCIS inquiry was begun, Brennan writes. **But he adds that more nude photos soon appeared on the Marines United page. "This behavior destroys morale, erodes trust and degrades the individual," the Marine Corps says** [**in a statement**](http://www.marines.mil/News/Press-Releases/Press-Release-Display/Article/1102983/social-media-misconduct-on-marines-united-website/) **about what it calls "social media misconduct." The service says those involved could face charges based on at two portions of the Uniform Code of Military Justice — one that involves consent and an expectation of privacy, and another that centers on distributing indecent material**. "A Marine who directly participates in, encourages, or condones such actions could also be subjected to criminal proceedings or adverse administrative actions," the Marine Corps says. At least two people have already been punished, according to Brennan: a Marine veteran who worked as a government subcontractor was fired after being the first to post a Google Drive link to the photos; and a service member was fired for secretly taking photos of a woman who was picking up gear at Camp Lejeune in North Carolina. "He was standing close enough to smell my perfume," that Marine tells Brennan. She added, "This is going to follow me — just like he did." There's also been backlash against Brennan, according to [Marine Corps Times](https://www.marinecorpstimes.com/articles/marines-nude-photo-scandal): "The news report was authored by Thomas Brennan, an Iraq and Afghanistan combat veteran and Purple Heart recipient who founded The War Horse in 2016. The nonprofit news site focuses on military and veterans affairs, and tales of combat heroism. "**After its publication, several members of the Facebook group lashed out at Brennan, making threats against him and his family." The revelation that hundreds, and perhaps thousands, of female service members have been targeted by their fellow Marines has set off intense reactions from members of the military service that often touts its motto**: Semper Fidelis — "Always Faithful." Here's one reaction to the Marine Corps' statement [on its Facebook page](https://www.facebook.com/marines/posts/10154125029895194), from a female captain: "What bothers me more than the actions of these few and the inaction of their small-unit leaders is the number of commenters here and other places justifying the FB page. These are weak, leaderless men, probably low performers afraid of being outpaced, denigrating women in order to feel superior. And doing it online with Internet bravado. Pathetic. Some of them may be teachable, will learn from this, and grow up to be worthy of the title, but they're not there yet."

#### No impact to terrorism – Terrorists’ nuclear weapons fail, and they’ll only use conventional weapons.

**Muller,** November **08**,( Richard, Prof. Of Physics @ UC-Berkeley, Foreign Policy; *The List: Five Physics* *Lessons for Obama*; http://www.foreignpolicy.com/story/cms.php?story\_id=4555&print=1

Conventional Wisdom: A nuclear attack is the biggest terrorist threat we face.

**The hard science:** Making a nuclear bomb is excruciatingly difficult. North Korean leader Kim Jong Il spent billions making one—starving his people in the process—and even his bomb fizzled. When it was tested in 2006, it released the energy equivalent of about half the jet fuel of each of the planes that crashed into the World Trade Center towers. But even if a nuclear bomb fizzles, can’t it spread deadly radioactivity? And what about a “dirty bomb,” a smaller weapon specifically designed to do just that? This threat is also mostly exaggerated. In reality, a dirty bomb would leave very few immediate casualties. That’s because radioactivity, once spread after an explosion, drops below the threshold for radiation illness. A dirty bomb might not even cause an observable increase in cancer rates. Perhaps that’s why al Qaeda instructed Chicago gang member José Padilla to abandon his goal of making a dirty bomb and told him instead to blow up apartment buildings using natural gas—which would have a greater chance of killing a large number of people. What is most scary is that al Qaeda seems to understand this fact better than many politicians.

#### No impact to terrorism – Terror attacks will only be small—not huge.

**Roberts 02** Brad Roberts, member of the research staff at the Institute for Defense Analyses, and Michael Moodie, president of the Chemical and Biological Arms Control Institute, July 2002, “Biological Weapons: Toward a Threat Reduction Strategy, Defense Horizons, http://www.ndu.edu/inss/DefHor/DH15/DH15.htm

The argument about terrorist motivation is also important. Terrorists generally have not killed as many as they have been capable of killing. This restraint seems to derive from an understanding of mass casualty attacks as both unnecessary and counterproductive. They are unnecessary because terrorists, by and large, have succeeded by conventional means. Also, they are counterproductive because they might alienate key constituencies, whether among the public, state sponsors, or the terrorist leadership group. In Brian Jenkins' famous words, terrorists want a lot of people watching, not a lot of people dead. Others have argued that the lack of mass casualty terrorism and effective exploitation of BW has been more a matter of accident and good fortune than capability or intent. Adherents of this view, including former Secretary of Defense William Cohen, argue that "it's not a matter of if but when." The attacks of September 11 would seem to settle the debate about whether terrorists have both the motivation and sophistication to exploit weapons of mass destruction for their full lethal effect. After all, those were terrorist attacks of unprecedented sophistication that seemed clearly aimed at achieving mass casualties--had the World Trade Center towers collapsed as the 1993 bombers had intended, perhaps as many as 150,000 would have died. Moreover, Osama bin Laden's constituency would appear to be not the "Arab street" or some other political entity but his god. And terrorists answerable only to their deity have proven historically to be among the most lethal. But this debate cannot be considered settled. Bin Laden and his followers could have killed many more on September 11 if killing as many as possible had been their primary objective. They now face the core dilemma of asymmetric warfare: how to escalate without creating new interests for the stronger power and thus the incentive to exploit its power potential more fully. Asymmetric adversaries want their stronger enemies fearful, not fully engaged--militarily or otherwise. They seek to win by preventing the stronger partner from exploiting its full potential. To kill millions in America with biological or other weapons would only commit the United States--and much of the rest of the international community--to the annihilation of the perpetrators.

#### No scenario for nuclear terror---consensus of experts

Matt Fay 13, PhD student in the history department at Temple University, has a Bachelor’s degree in Political Science from St. Xavier University and a Master’s in International Relations and Conflict Resolution with a minor in Transnational Security Studies from American Military University, 7/18/13, “The Ever-Shrinking Odds of Nuclear Terrorism”, webcache.googleusercontent.com/search?q=cache:HoItCUNhbgUJ:hegemonicobsessions.com/%3Fp%3D902+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a

For over a decade now, one of the most oft-repeated threats raised by policymakers—the one that in many ways justified the invasion of Iraq—has been that of nuclear terrorism. Officials in both the Bush and Obama administrations, including the presidents themselves, have raised the specter of the atomic terrorist. But beyond mere rhetoric, how likely is a nuclear terrorist attack really?¶ While pessimistic estimates about America’s ability to avoid a nuclear terrorist attack became something of a cottage industry following the September 11th attacks, a number of scholars in recent years have pushed back against this trend. Frank Gavin has put post-9/11 fears of nuclear terrorism into historical context (pdf) and argued against the prevailing alarmism. Anne Stenersen of the Norwegian Defence Research Establishment has challenged the idea that al Qaeda was ever bound and determined to acquire a nuclear weapon. John Mueller ridiculed the notion of nuclear terrorism in his book Atomic Obsessions and highlighted the numerous steps a terrorist group would need to take—all of which would have to be successful—in order to procure, deliver, and detonate an atomic weapon. And in his excellent, and exceedingly even-handed, treatment of the subject, On Nuclear Terrorism, Michael Levi outlined the difficulties terrorists would face

building their own nuclear weapon and discussed how a “system of systems” could be developed to interdict potential materials smuggled into the United States—citing a “Murphy’s law of nuclear terrorism” that could possibly dissuade terrorists from even trying in the first place.¶ But what about the possibility that a rogue state could transfer a nuclear weapon to a terrorist group? That was ostensibly why the United States deposed Saddam Hussein’s regime: fear he would turnover one of his hypothetical nuclear weapons for al Qaeda to use.¶ Enter into this discussion Keir Lieber and Daryl Press and their article in the most recent edition of International Security, “Why States Won’t Give Nuclear Weapons to Terrorists.” Lieber and Press have been writing on nuclear issues for just shy of a decade—doing innovative, if controversial work on American nuclear strategy. However, I believe this is their first venture into the debate over nuclear terrorism. And while others, such as Mueller, have argued that states are unlikely to transfer nuclear weapons to terrorists, this article is the first to tackle the subject with an empirical analysis.¶ The title of their article nicely sums up their argument: states will not turn over nuclear weapons terrorists. To back up this claim, Lieber and Press attack the idea that states will transfer nuclear weapons to terrorists because terrorists operate of absent a “return address.” Based on an examination of attribution following conventional terrorist attacks, the authors conclude:¶ [N]either a terror group nor a state sponsor would remain anonymous after a nuclear attack. We draw this conclusion on the basis of four main findings. First, data on a decade of terrorist incidents reveal a strong positive relationship between the number of fatalities caused in a terror attack and the likelihood of attribution. Roughly three-quarters of the attacks that kill 100 people or more are traced back to the perpetrators. Second, attribution rates are far higher for attacks on the U.S. homeland or the territory of a major U.S. ally—97 percent (thirty-six of thirty-seven) for incidents that killed ten or more people. Third, tracing culpability from a guilty terrorist group back to its state sponsor is not likely to be difficult: few countries sponsor terrorism; few terrorist groups have state sponsors; each sponsor terrorist group has few sponsors (typically one); and only one country that sponsors terrorism, has nuclear weapons or enough fissile material to manufacture a weapon. In sum, attribution of nuclear terror incidents would be easier than is typically suggested, and passing weapons to terrorists would not offer countries escape from the constraints of deterrence.¶ From this analysis, Lieber and Press draw two major implications for U.S. foreign policy: claims that it is impossible to attribute nuclear terrorism to particular groups or potential states sponsors undermines deterrence; and fear of states transferring nuclear weapons to terrorist groups, by itself, does not justify extreme measures to prevent nuclear proliferation.¶ This is a key point. While there are other reasons nuclear proliferation is undesirable, fears of nuclear terrorism have been used to justify a wide-range of policies—up to, and including, military action. Put in its proper perspective however—given the difficulty in constructing and transporting a nuclear device and the improbability of state transfer—nuclear terrorism hardly warrants the type of exertions many alarmist assessments indicate it should.

# Radical Democracy - CP Blocks

## Congress CP

#### Perm do both – we can have colleges eliminate speech codes, and also have Congress do this – double solvency

#### Perm do both – the Aff is an *omission* and is advocating inaction from codes – no reason why two actors can’t omit

#### Counterplan links to all disads – it still results in free speech, and people won’t really care or know if colleges did it or the courts did it.

#### Counterplan fails – it was tried in 2015 and did nothing.

**Lindsay:** Lindsay, Thomas K. [Contributor, Real Clear Policy] “Congress vs. Campus Speech Restrictions.” Real Clear Policy. August 2015. RP

Of late, there has been a deluge of news accounts detailing gross violations of free speech and debate on American campuses. **From campus speech codes, to commencement speaker "dis-invitations," to naked ideological indoctrination in the classrooms, our universities, whose defining mission is the unfettered, nonpartisan quest for truth, are instead becoming havens for conformism, empty shells of the Socratic ideal from which they originally sprang. But this oppressive regime may be beginning to crumble, at least if some members of the U.S. Congress have their way. In June, the House Judiciary Committee's Subcommittee on the Constitution and Civil Justice held a hearing titled, "First Amendment Protections on Public College and University Campuses," which investigated the extent to which free speech is still protected on taxpayer-funded campuses. The findings from the investigation were not heartening, to put it mildly. As a result, Rep. Bob Goodlatte (R., Va.), chair of the House Judiciary Committee, recently sent a pointed letter to 162 public colleges and universities whose policies fail to ensure the First Amendment rights of their professors and students.** The House committee's list of freedom-suppressing public schools comes from research conducted by the nonprofit Foundation for Individual Rights in Education (FIRE), whose announced mission is to protect intellectual liberty on America's campuses. Surveying FIRE's list of offenders, we find a number of public flagships, among them the University of Alabama, the University of Georgia, the University of Iowa, the University of Kansas, the University of Michigan-Ann Arbor, and Ohio State University. In my home state of Texas, taxpayers fund ten named offenders, among them the state's two flagship institutions, the University of Texas-Austin and Texas A&M University-College Station. It is illegal for any public college or university to maintain and enforce speech codes that violate the First Amendment-guaranteed rights of faculty and students. **At the June Subcommittee on the Constitution and Civil Justice hearing, Greg Lukianoff, FIRE's president, testified that "speech codes — policies prohibiting student and faculty speech that would, outside the bounds of campus, be protected by the First Amendment — have repeatedly been struck down by federal and state courts. Yet they persist, even in the very jurisdictions where they have been ruled unconstitutional**. **The majority of American colleges and universities maintain speech codes." ruled unconstitutional.** The majority of American colleges and universities maintain speech codes." Of the schools nationwide in violation of the First Amendment, the 162 recipients of the House committee's letter were found to be the worst offenders. Chairman Goodlatte writes, "In FIRE's Spotlight on Speech Codes 2015, your institution received a ‘red light' rating. According to FIRE, a ‘red light' institution ‘is one that has at least one policy that both clearly and substantially restricts freedom of speech.'" Hence, Goodlatte writes "to ask what steps your institution plans to take to promote free and open expression on its campus(es), including any steps toward bringing your speech policies in accordance with the First Amendment." The named offenders have until August 28 to reply to Chairman Goodlatte's inquiry. How they choose to respond will determine the committee's course of action. **With this strong move by the House committee, we witness the academic world turned upside down: Academic freedom has always been supported, and rightly, as a defense against anti-intellectual pressure brought on universities by the political branches. The deeper defense of academic freedom is its indispensability to the nonpartisan truth-seeking that defines higher education's mission. But what happens when those who would deprive students and faculty of their First Amendment freedoms are within the universities themselves? This, unfortunately, is the crisis in which many universities find themselves today. For the solution, Congress has taken it upon itself to educate the educators in what those who supervise our universities should already know, namely, that when intellectual oppression rises, scientific progress and democratic deliberation decline.** Given the stakes involved, it is encouraging to see that there is growing bipartisan support for restoring freedom on our campuses. **While Representative Goodlatte is a Republican, in the past year, two Democratic governors — Terry McAuliffe of Virginia and Jay Nixon of Missouri — have signed legislation banning "free-speech zones" at all public universities in their states**. As I have argued previously, in America, under the First Amendment to the Constitution, everywhere should be a free-speech zone, not simply the restricted (and restrictive) spaces that the majority of universities today unconstitutionally deign to provide for students. **Although legislative action might prove necessary in the event that universities decline the House committee's plea to follow the Constitution, it would be heartbreaking if these institutions had to be compelled by a political branch to jettison their political agendas and return to disinterested inquiry**. It would mean that American higher education has so lost any sense of its defining — and ennobling — purpose that it now has to be guided by those outside it, rather than guiding them, as it ought. As a former university professor, I have seen firsthand the effect that the intolerance on our campuses has on the minds and souls of our students. As is the case in political regimes that suppress free speech, university policies that stifle debate produce an atmosphere of anxiety, distrust, and ultimately cynicism among those who suffer it. "Students' education suffers when colleges and universities infringe on free speech," observed Azhar Majeed, director of FIRE's Individual Rights Education Program. Rightly said. Fear, intimidation, and uniformity are usurping the free, robust inquiry and debate that is the lifeblood of a genuine institution of higher learning, undermining both academic truth-seeking and democracy, which depends on an informed citizenry. The effect of campus-promoted intolerance is to jettison an informed, independent-minded citizenry and to replace it with a cowed, guilty, uncritical herd. From the students suffering under this regime will in time come our nation's leaders. Will they be able to face without blinking the profound moral challenges that every generation must face? If so, it won't be due to their education. It will be in spite of it.

#### Case is key to counterplan solvency – obviously Congress won’t just monitor every single college – colleges upholding it is independently key

#### Congress has no jurisdiction to regulate colleges.

**Denniston:** Denniston, Lyle [Contributor, Constitution Daily] “Constitution Check: Does Congress have the authority to require universities to monitor campus crimes?” *Constitution Daily.* July 2012. RP

In a continuing series of posts, Lyle Denniston provides responses based on the Constitution and its history to public statements about its meaning and what duties it imposes or rights it protects. Campus crimes are, of course, matters of primary concern to state and local government, under their broad “police powers” that are protected under the 10th Amendment. **Although Congress for decades has been expanding the federal role in criminal law enforcement, there are constitutional limits on its authority to do so, and the Supreme Court recently has been doing a good deal more to enforce those limitations**. It has been clear for more than a generation that the Supreme Court has been quite skeptical about Congress’ power to reach deeper into local activity, including local crime. **In the 1995 decision in *U.S. v. Lopez*, it ruled that Congress could not regulate the carrying of guns near schools**. In the 2000 decision in *U.S. v. Morrison*, it ruled that Congress had gone too far in the Violence Against Women Act in regulating domestic violence, a local crime. Both of those laws had been based explicitly upon Congress’s power over interstate commerce. But the court concluded that it was a stretch to treat the carrying of guns and acts of domestic violence as commercial activity or as interstate in impact. The court’s decision in the health care case this June went further than the court has gone in decades to restrict Commerce Clause legislation that does not involve actual voluntary activity in the stream of commerce. That decision, as reader “Bill” said, might raise new problems for the Clery Act. The health care decision also embraced—for the first time in history—the constitutional argument that Congress may act unconstitutionally in the use of its spending power if it imposes too heavy a burden on states as the price of receiving federal funds. States, the court said, cannot be coerced into a program, and must be given the choice of opting out rather than satisfying such conditions. **There is another potential constitutional argument that universities might think about advancing should one or more of them take on the Clery Act in court. That is the argument that running a campus, and controlling student life, is protected by concepts of academic freedom under the First Amendment**. That might not be a very strong argument against law enforcement by local police, but it might have more to it as a challenge to federal management of campus life. Examining the possible constitutional vulnerability of the Clery Act, though, may not have much to do with the real world of campus life in the wake of the Penn State scandal. **Governing boards and academic leaders of universities may well find—in the current atmosphere—that it would be very politically risky to try to fend off a law as popular as this legislation is.**

#### Congress never upholds SCOTUS decisions

Slocum 7 (Brian, Assistant Professor of Law, Florida Coastal School of Law. J.D. @  Harvard Law School, “Reforming U.S. Immigration  Policy: Courts vs. The Political Branches: Immigration "Reform" and The Battle for the Future of Immigration Law,” 5 Geo. J.L. & Pub. Pol'y 509, Lexis)

Both a decision striking down aspects of the administrative adjudication process on due process grounds and a decision requiring habeas corpus review of discretionary determinations would be consistent with the plenary power doctrine. The government does not receive the benefit of the doctrine in cases involving due process or a claim that a statute violates a structural provision of the Constitution rather than an amendment to the Constitution.83 In addition, such decisions would be relatively modest because they would allow Congress to decide substantive immigration issues, and would thus not interfere with the foreign affairs concerns underlying the plenary power doctrine.84 Of course, the judiciary would not need to make bold constitutional decisions if the political branches enacted reforms that were designed to improve the immigration system.85 As other immigration commentators have argued, Congress should reform judicial review and provide for judicial review of all aspects of a final order of deportation.86 Unfortunately, if recent history is any indication, Congress’s efforts at reform of judicial review are not likely to involve attempts to improve the judicial review process for aliens. Indeed, recent legislative proposals have included provisions that would consolidate immigration appeals in the U.S. Court of Appeals for the Federal Circuit or would provide for a screening process under which a single federal appellate judge could deny a petition for review.87

## States CP

#### Perm do both – we can have colleges eliminate speech codes, and also have Congress do this – double solvency

#### Perm do both – the Aff is an *omission* and is advocating inaction from codes – no reason why two actors can’t omit

#### State laws won’t be enforced

**Winkler:** Winkler, Adam [Professor, UCLA School of Law] “Free Speech Federalism.” *Michigan Law Review.* Volume 108. 2009. RP

First, federal courts might defer to federal lawmakers relative to state and local lawmakers. A growing literature in political science and law ar- gues that judges often act strategically when exercising judicial review.'9 In deciding cases, judges often anticipate the potential reaction of other governmental actors and shape their decisions in ways designed to minimize backlash-what has been termed a "separation of powers" game.'° **In the federal government, Congress and the Executive have both carrots and sticks to encourage judicial compliance with their policies.** Among the carrots are judicial promotion; numerous scholarly studies suggest that federal judges may shape their behavior to enhance their chances of being elevated to a higher court. **Among the sticks are constitutional amendment**, 22 intentional reshaping of the judiciary through a politicized nomination process, 23'court packing24 (or unpacking25), impeachment, and budget and salary reduction. Congress can also adopt laws stripping the courts of jurisdiction over particular matters, as happened during Reconstruction2 and has been threatened repeatedly since the Warren Court days. 3 According to William Eskridge and Philip Frickey, "there is a growing body of empirical evidence indicating that the Court bends its decisions to avoid overrides or other political discipline."'" **In contrast to Congress and the Executive, state and local governments have relatively little ability to discipline federal courts for overly aggressive judicial review.** Prior to the adoption of the Seventeenth Amendment, state officials had "institutional weapons" that "could be used to influence out- comes at the Supreme Court and other federal courts if those courts threatened the institutional interests of state legislatures."" For example, state legislators could appoint Senators who might threaten to vote against judicial nominees thought to be hostile to state interests. But once Senators were popularly elected rather than accountable to state legislatures, courts were "free to hold state laws unconstitutional without significant fear [of] ...retaliation."'33 Local lawmakers have even less ability than state lawmakers to discipline federal judges, with little more than the power to complain about judicial rulings. State interests are still presumably represented, at least in part, by popularly elected senators-even though the direct interests of the state legislature no longer impinge on the confirmation process. Local lawmakers don't even have that small remnant of influence on federal judicial nominees. William Landes and Richard Posner have recognized that federal courts tend to be reluctant to invalidate federal laws, yet such hesitation diminishes "as we move from regulation that is less local to regulation ' that is more local. Even if federal judges do not fear discipline, they might still defer to federal lawmakers because they trust them more than state and local law- makers when it comes to matters of fundamental rights.3 The Supreme Court has given voice to a certain prejudice against state and local governments before. In West Virginia Board of Education v. Barnette, the famous flag salute case, the Court wrote that "small and local authority may feel less sense of responsibility to the Constitution, and agencies of publicity may be less vigilant in calling it to account. In terms of individual rights the state and local governments earned a reputation for being untrustworthy in the most important high-profile constitutional controversy of the twenti- eth century: the struggle for civil rights for racial minorities. Localism in particular has suffered from its association with an ideology of racial segre- gation. According to David Barron, there is a "deep-seated intuition that local governments are islands of private parochialism which are likely to frustrate the effective enforcement of federal constitutional rights.",3s By con- trast, the modem constitutional tradition "asserts that rights-protecting institutions like the Court or the federal government are required to con- strain local exercises of power that oppress minorities."' 9 **Another reason federal laws might survive more often than state or local laws stems from the supply side of constitutional adjudication: federal laws may be of higher quality than state laws,** and state laws may be of higher quality than local laws. "Quality," as I use the term here, refers to the expected fit between the law and existing constitutional doctrine. A high- quality law is one that, ex ante, would be predicted to have a strong likelihood of surviving judicial review because it corresponds to controlling precedent. A poor-quality law, by contrast, is one that a reasonable lawyer would predict will be invalidated based on the case law.

#### States are more likely to implement the plan in a discriminatory manner, worsening racism.

**Stanford Journal of Civil Rights & Civil Liberties 6:** (Aug 2006, "Arizona's Proposition 200 and the Supremacy of Federal Law: Elements of Law, Politics, and Faith")

Though not a major problem given the political legitimacy and responsiveness of state government vis-a-vis the federal government, I do pause here to flag one civic concern: **the legacy of oppression and discrimination that particular minority communities associate with their state governments has not yet**, **unfortunately**, **been relegated** to the annals of ancient history. Not only do segregationist **policies, denial of the franchise, and ruthless state-sponsored violence come to mind for many poor black southerners** when they think about their relationship to the state government; they may also have salient memories of King v. Smith types of intrusive, humiliating home visits related directly to welfare administration. n167 In light of PRWORA's abandonment of federal welfare entitlements, **the oppressive and discriminatory policies and attitudes of the 1950s and 1960s, which had been reined in by the federal protections afforded by way of Goldberg and King, may potentially be revived.** Indeed**, institutional racism at the state and local level is alarmingly enduring**. Professor Cashin, for one, devotes considerable attention to how states profoundly discriminate against their African-American welfare populations. N168 and another, **Professor** Susan **Gooden**, presents a particularly salient case study of Virginia welfare services. In her study, she **documents and contrasts state administrators' disparaging and ungenerous treatment of black welfare recipients with their treatment of similarly situated white clients who were always given first notice of new jobs, offered the "newest" work clothes, and given access to automobiles. N169** Understanding discrimination is not just an academic exercise, but also a visceral part of the welfare experience. **The civic harms associated with returning power to the states cannot be disregarded as historically contingent. Such harms persist today.**

#### State laws enable less dialogue and give certain factions a larger voice.

**Winkler:** Winkler, Adam [Professor, UCLA School of Law] “Free Speech Federalism.” *Michigan Law Review.* Volume 108. 2009. RP

**To understand why the level of government might affect the constitutional quality of a law, we can return to our original and greatest constitutional theorist: James Madison**. Madison in Federalist10 focused on the problem of "faction"-groups of citizens united by a "common impulse of passion . . . adverse to the rights of other citizens' 40 who threatened core rights, such as speech. **Although Madison believed that "the causes of fac- tion cannot be removed," he reasoned that the national government would better protect against their tyranny than state and local governments.** Ac- cording to Madison, "[tlhe smaller the society, the fewer probably will be the distinct parties and interests composing it," the more risk of "local pre- judices and schemes of injustice," and "the more easily will they concert and execute their plans of oppression."43 **In contrast, the national government would be sufficiently large that no faction could easily achieve dominance. "Extend the sphere and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizen**s .... Modem public-choice theory largely concurs with Madison's assess- ment. Lawmaking is often the product of bargains between politically influential interest groups and government officials. But because of differ- ences in interest group pressures-akin to Madison's "factions"46--one would expect, in the words of Jonathan Macey, federal law to be a "higher quality product than state law.' 47 **Owing to the relatively large number of interests represented by both elected officials and lobbying groups, federal lawmaking tends to require compromise and moderation**, 48 diluting the like- lihood of any piece of legislation catering to a specific, potentially oppressive interest. 49 Such bargaining is especially hard for an interest that is out of the mainstream, as it must co-opt mainstream elements in order to be successful. **At the state (and even more so, the local) level, by contrast, the range of represented interests tends to be smaller and the constituencies more homogenous** 0 As a result, oppressive legislation is easier to achieve in a single state or municipality than at the national level.5 This is especially true for groups out of the national mainstream that nevertheless fit com- fortably within the culture or demographics of a single state or locality.

## Courts CP

#### Perm do both – we can have colleges eliminate speech codes, and also have Courts rule that they’re illegitimate – double solvency

#### Counterplan links to all disads – it still results in free speech, and people won’t really care or know if colleges did it or the courts did it.

#### The cases won’t even reach the Supreme Court – it’s been ruled on so many times that they’d just throw it out because precedent has already been set

#### Counterplan can’t solve – universities just ignore the courts – empirics go Aff

**Majeed:** Majeed, Azhar [Azhar Majeed is the Director of the Individual Rights Education Program at the Foundation for Individual Rights in Education (FIRE). Azhar received a B.A. in Political Science from the University of Michigan in 2004. He is also a 2007 graduate of the University of Michigan Law School, and has been an attorney with FIRE since 2007.] “Universities Continue to Ignore the Lessons of Litigation on Campus Free Speech Zones.” The Huffington Post. December 2013. RP

A student at Modesto Junior College in California who wanted to silently [distribute copies](http://thefire.org/case/930) of the U.S. Constitution to his fellow students — on Constitution Day — was stopped by the police. A student group at the University of Cincinnati looking to [collect signatures](http://dailycaller.com/2012/02/24/right-to-work-students-sue-university-of-cincinnati-over-free-speech-area/) for a statewide “right to work” ballot initiative is threatened with charges. Students and community members at Sinclair Community College in Ohio who merely sought to [hold signs](http://www.daytondailynews.com/news/news/sinclair-students-sue-over-protest-sign-ban-2/nPwZr/) made for a campus rally were told that they must lay them flat on the ground. What do all of these individuals have in common? All of them attempted to take part in clearly protected speech and expressive activity at a public college or university — and all of them were prevented from doing so by the school’s application of a [“free speech zone”](http://thefire.org/article/16243.html) policy. Sadly, these institutions are not alone in violating their students’ First Amendment rights. **Universities** [**across the country**](http://www.huffingtonpost.com/greg-lukianoff/11-student-and-faculty-vi_b_3913959.html) **continue to maintain and enforce unreasonable restrictions on students’ right to protest, rally, demonstrate or even distribute literature**. My organization, the Foundation for Individual Rights in Education (FIRE), [fought such abuses](http://thefire.org/article/16003.html) throughout 2013 and will take the fight into 2014 and beyond, for as long as universities continue to flout the First Amendment. At Modesto Junior College (MJC), student Robert Van Tuinen found himself being denied the right to peacefully distribute copies of the Constitution on September 17. Making matters worse, September 17 was actually [Constitution Day](http://www.senate.gov/artandhistory/history/common/generic/ConstitutionDay.htm)! Apparently oblivious to this fact — and to the basic requirements of the First Amendment — an MJC police officer stopped Van Tuinen and another student as they were handing out copies of the Constitution outside of the student center. A university administrator then told Van Tuinen that the school’s policies required students to register campus events five days in advance and hold them inside a small “free speech area” (pictured below). [As captured in incredible video footage](http://thefire.org/article/16246.html), the official informed him that the designated area is “in front of the student center, in that little cement area.” That particular expression almost perfectly captures the flippant attitude of many university officials toward campus free speech. Too often, student discourse gets treated like a nuisance that, at best, is to be tolerated — not a vital thing deserving to be celebrated. But the official didn’t even stop there; responding to Van Tuinen’s point about the timeliness of Constitution Day, she dismissively stated, “You really don’t need to keep going on.” Okay, then. Fortunately, Van Tuinen brought the matter to FIRE’s attention, and when our [advocacy](http://thefire.org/article/16244.html) did not convince the school to amend its unconstitutional policies and practices, he decided to [file a lawsuit](http://thefire.org/article/16327.html) to vindicate his First Amendment rights. Earlier this month, MJC agreed to suspend enforcement of its free speech zone policy as it negotiated an end to Van Tuinen’s legal challenge. The [joint stipulation](http://thefire.org/article/16588.html) between MJC and Van Tuinen stated that the parties had agreed on several significant revisions to MJC’s policies and procedures to better protect student free speech and open up more of the campus to First Amendment activity. Those revisions are pending final approval by the Yosemite Community College District, expected this spring. Despite this encouraging development, this is not a matter that should have gone to court in the first place. **The public officials in charge of running MJC should have known that the college had violated one of its students’ basic rights. They should have been aware that courts have previously** [**struck down**](http://thefire.org/article/4894.html) **campus “free speech zones” on constitutional grounds.** They evidently realized neither. **Yet just a year previously, a federal court in Ohio** [**invalidated similar restrictions**](http://thefire.org/article/14797.html) **maintained by the University of Cincinnati (UC), another public institution. In that case, members of the UC student group Young Americans for Liberty (YAL) sought to collect signatures on campus in support of a statewide ballot initiative on the “right to work.” However, UC policy limited all “demonstrations, pickets, and rallies” to a “Free Speech Area” comprising just 0.1 percent of the university’s 137-acre West Campus and further required that all expressive activity even in that area be registered with the university a full 10 working days in advance**. When YAL’s leader, Chris Morbitzer, alerted the university to the group’s planned activity, his request was denied. Chillingly, an administrator told Morbitzer that if any YAL members were seen “walk[ing] around campus” gathering signatures, campus security would be alerted. Despite having been warned by FIRE [for years](http://thefire.org/index.php/article/14205.html) about the policy’s constitutional defects, UC was willing to defend its free speech zone in court in Morbitzer’s subsequent legal challenge. That did not turn out so well for the university. In a June 2012 ruling, the federal district court [strongly agreed](http://thefire.org/article/14568.html) with Morbitzer, finding that the policy “violates the First Amendment and cannot stand.” The court ultimately issued a permanent injunction prohibiting UC from reinstating its free speech zone. As though one recent victory in Ohio were not enough, students at Sinclair Community College (SCC) secured [their own favorable result](http://thefire.org/article/15522.html) in a case dating back to last year. In June 2012, the Traditional Values Club student group held a campus rally to protest health coverage mandates from the U.S. Department of Health and Human Services. Incredibly, SCC police declared that no signs of any kind were allowed at the event, and ordered all signs to be placed on the ground. Moreover, when FIRE wrote to point out the legal ramifications (not to mention the abject silliness) of the policy, SCC President Steven Lee Johnson went so far as to say the restriction was necessary because of “safety and security” concerns, invoking the tragic Virginia Tech shootings in 2007 to say that signs could be used as weapons. This type of rationale is not just offensive to First Amendment advocates — it is just downright offensive. As FIRE President Greg Lukianoff said at the time, “It’s outrageous to use the shooting at Virginia Tech to justify a blanket ban on holding signs at protests on a public campus. A ban on signs is an insult to our liberties and has no value in preventing violence on campus.” The story has a positive ending, however, as the students filed a First Amendment challenge and secured a favorable settlement. Under the revised policy adopted by SCC in the wake of the lawsuit, “any person or group may use, without prior notification, any publicly accessible outdoor area” (with some exceptions) for the purposes of “speaking, non-verbal expressive conduct, the distribution of literature, displaying signage, and circulating petitions.” **So if the cases continue to pile up against free speech zones, with Modesto Junior College merely the latest, why do colleges and universities continue to enforce these policies?** [**A 2013 survey**](http://thefire.org/article/16243.html) **by FIRE found that roughly one in six universities maintains some type of free speech zone policy restricting where, when, and under what circumstances students can protest, distribute literature, or otherwise express themselves on campus**. That is far too high a number to be acceptable. **The good news is that** courts have repeatedly made clear that these restrictions are unconstitutional **and indefensible on public university campuses**. As long as students are willing to stand up to their institutions and challenge these policies, they will continue to fall in court. And of course, FIRE will continue to use both [public](http://thefire.org/article/16246.html) and [legal advocacy](http://thefire.org/article/16244.html) against their stubborn existence. It is likely that in 2014, we will see additional campus free speech zones defeated. Students’ First Amendment rights will be better off for it.

#### Courts aren’t reliable – they can misapply legal precedent at whim.

Lukianoff: Greg Lukianofff, attorney and the president and CEO of the Foundation for Individual Rights in Education (FIRE), Unlearning Liberty: Campus Censorship and the End of American Debate, Encounter Books, 2013. Google Books.

Unfortunately, not all courts have reached the right decision in the last year and a half. In July 2013, **a federal district court judge decided to dismiss the case of Joseph Corlett, the student who submitted the "Hot for Teacher" piece** (see Chapter 9) for his writing class after asking multiple times if he really could write anything he wanted and receiving repeated assurance that he could and encouragement to do so. **The judge let his distaste for Corlett's speech dictate his interpretation of the law, choosing to import a standard from Bethel** School District v. Fraser, **a 1986 case in which the Supreme Court ruled that high schools can punish students for lewd or vulgar speech. The Bethel opinion does not apply to college students, who have far greater expressive rights than those in high school, and is completely incompatible with the Supreme Court's position on freedom of speech in the context of higher education. In 1973, in Papish** v. Board of Curators of the University of Missouri et al., **the Court explicitly ruled that college campuses may not limit speech "based on the conventions of decency alone." Hopefully, judges in future cases won't let their personal discomfort with what a student says interfere with their interpretation of the law**.

#### Counterplan does NOTHING – SCOTUS has already ruled that free speech shouldn’t be restricted in the 90s – disproves their solvency.

**Volokh:** Volokh, Eugene [Contributor, The Washington Post] “No, there’s no ‘hate speech’ exception to the First Amendment.” *The Washington Post.* May 2015. RP

**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.)

#### Perm do the Aff now and the counterplan at the next available time – for the court to rule requires a test case be brought, which isn’t immediate.

#### The counterplan is the status quo – the Aff obviously violates the constitution

#### The counterplan requires absurd fiat – it requires a test case be brought, and fiats that 9 justices rule in a particular way – its multi actor and object.

#### Only Congress solves- courts cannot create change, and unpopular decisions go unenforced.

**Berenji ‘8:** Berenji 8 (Shahin Berenji, magna cum laude, political science at USC, 08, “The US Supreme Court: A “Follower, Not a Leader” of Social Change”, http://www.lurj.org/article.php/vol3n1/supreme.xml)

Lacking either government or popular support, however, the Court's decision was not enforced, demonstrating the Court's inability to stymie change without majority consensus. As President Andrew Jackson jokingly stated, “Chief Justice John Marshall has made his decision…now let him enforce it…” (Burner 310). Consequently, without the protection of the Supreme Court's decision, the Indian population, including the Cherokees, Chickasaw, and Choctaw, were forced to migrate westward along the “trail of tears” by federal and/or state governments (Burner 310). This mass exodus of Indians caused an estimated ten thousand deaths which caused some to rename the “the trail of tears” (as it had been called), “the trail of death” (Burner 311). This example truly illustrates the Supreme Court's incapability of implementing decisions without societal support. More importantly, it shows how “words are not action,” meaning that force is necessary for the implementation of Court precedents (Rosenberg 18). The blatant demonstration of the Court's inability to forcefully implement change set up a judicial trend to support the tendencies of the majority. According to Robert Dahl, the Court adopted the position of keeping their decisions in line “with the policy views dominant among the lawmaking majorities 3 [Congress and the President]... “ (285). Thus, the decision-making powers of the Supreme Court evolved “to confer legitimacy on the fundamental policies of the successful coalition” (Dahl 294). Therefore, from Worcester vs. Georgia, the Supreme Court learned to coordinate its decisions in line with national opinion. As significant issues of social reform generally trigger opposition, the Court learned to align itself with the majority to facilitate the implementation and enforcement of its policies. Moreover, alignment with the majority inadvertently helped confer strength, respect, and legitimacy to the Supreme Court. According to Robert Dahl, “this legitimacy the Court jeopardizes if it flagrantly opposes the major policies of the dominant alliance” (293). However, since the Worcester vs. Georgia case, “such a course of action has been one in which the Court will not normally be tempted to engage” (Dahl 293). For instance, since 1935, seventy-five percent of the Court's decisions have been in support of the majority, indicative of the Court's passivity at opposing society (Rosenberg 13). More recently, sixty-five percent of the Court's decisions have been well supported by the majority of people within the United States, indicative of just how the Court's decisions have been decided in favor of popular or majority opinion (2000 Gallup Poll). In this way, then, the Court's decisions have become relatively predictable, unimportant, and insignificant since its precedents merely reinforce the ideas or opinions that are already prevalent within society. In addition, because the Court's decisions typically reflect the opinions of either the lawmaking or the national majority, it fails to challenge the beliefs or the principles of society. And so, the Court's inability to adjudicate decisions in opposition to the majority prevents it from protecting the rights of minorities and from becoming a true proponent of social change. While many people believe the Court's progressive decisions on civil right issues have been a general exception to this common pattern, those decisions were also fomented by national opinion.

#### Courts can only reinforce existing ideals and prevent any type of cultural change.

Berenji 8 (Shahin Berenji, magna cum laude, political science at USC, 08, “The US Supreme Court: A “Follower, Not a Leader” of Social Change”, http://www.lurj.org/article.php/vol3n1/supreme.xml)

In the United States, the Supreme Court is the highest appellate court or legal institution that can define or interpret the rule of law. According to associate justice Felix Frankfurter, 1 “the Court breathes life, feeble or strong, into the inert pages of the Constitution and the statute books” (Dahl 280). Yet, to consider the Court strictly as a legal institution is to underestimate its significance since the Court must also decide on controversial matters of national policy. In this sense, the Court is a “political institution” that must solve societal disagreements that cannot be “found in or deduced from precedent, statute, and Constitution” (Dahl 281). Nevertheless, although it issues decisions on controversial and divisive matters, the Supreme Court cannot be said to catalyze social change for it utilizes societal and governmental opinion as the medium to interpret, apply, and implement public policy, thus “following, not leading” the United States. Because of its inability to initiate decisions, the Supreme Court has implemented landmark policies usually based upon societal legal challenges.

#### Congress never upholds SCOTUS decisions

Slocum 7 (Brian, Assistant Professor of Law, Florida Coastal School of Law. J.D. @  Harvard Law School, “Reforming U.S. Immigration  Policy: Courts vs. The Political Branches: Immigration "Reform" and The Battle for the Future of Immigration Law,” 5 Geo. J.L. & Pub. Pol'y 509, Lexis)

Both a decision striking down aspects of the administrative adjudication process on due process grounds and a decision requiring habeas corpus review of discretionary determinations would be consistent with the plenary power doctrine. The government does not receive the benefit of the doctrine in cases involving due process or a claim that a statute violates a structural provision of the Constitution rather than an amendment to the Constitution.83 In addition, such decisions would be relatively modest because they would allow Congress to decide substantive immigration issues, and would thus not interfere with the foreign affairs concerns underlying the plenary power doctrine.84 Of course, the judiciary would not need to make bold constitutional decisions if the political branches enacted reforms that were designed to improve the immigration system.85 As other immigration commentators have argued, Congress should reform judicial review and provide for judicial review of all aspects of a final order of deportation.86 Unfortunately, if recent history is any indication, Congress’s efforts at reform of judicial review are not likely to involve attempts to improve the judicial review process for aliens. Indeed, recent legislative proposals have included provisions that would consolidate immigration appeals in the U.S. Court of Appeals for the Federal Circuit or would provide for a screening process under which a single federal appellate judge could deny a petition for review.87

#### Counterplan swamps court legitimacy.

Yoo (John Choon, professor in law and previous Dep. of Justice official, “Who Measures the Chancellor's Foot--The Inherent Remedial Authority of the Federal Courts”, *Cal. L. Rev.*, 84, p. 1137-1138)

Before I address the constitutional difficulties with the extensive use of far-reaching and invasive equitable remedies, I will examine the practical difficulties courts have experienced in managing institutions. Courts, some critics have argued, simply are functionally incapable of addressing "polycentric" problems that involve many different factors and relationships.101 Case studies have found that courts experience great difficulty in weighing policy alternatives and in calculating costs and benefits.IO3 Courts were shown to be unable to gather and to absorb the sort of sufficient, objective data required to make considered decisions.104 In terms of institutional competence, legislatures and bureaucracies appeared much better suited for these tasks. To put it differently, courts are structurally worse off than other arms of government at developing an intellectually coherent solution to social problems. While courts are expert at determining historical fact and causation, structural remedies call upon them to engage in very different activities. They must conduct social fact-finding and must discover and address the political, economic, and social factors that may have created an unconstitutional condition.1" Formulating the correct remedy requires courts to predict how the remedy will affect, and be affected by, the political, economic, and social context within which it is implemented. Courts are ill-suited for these tasks because they have little experience or facility for operating or administering complex institutions and social programs.106 Once a decree is decided upon, courts have proven ineffective at implementing their structural remedies. Courts possess only imperfect tools for communicating their decrees, and, in fact, they usually must rely upon the personnel of the institutional defendant to disseminate and to implement their orders.107 In perhaps the sharpest contrast with bureaucracies and legislatures, courts have few resources for guaranteeing compliance on the part of the defendants or for creating positive incentives to encourage adherence to judicial orders. Aside from the threat of a contempt order, courts must rely upon the moral persuasiveness of their judgments to acquire legitimacy. This highlights another deficiency in a court's ability to implement a remedy: its lack of resources for marshaling political and public support for its decrees, without which the court's efforts likely will fail.108 If courts inject themselves into the political arena, they risk undermining the impartiality and moral authority they need to persuade others to support their orders.

#### Loss of court legitimacy causes Trump overreach and human rights violations.

**Kagan:** Kagan, Robert. [Senior Fellow, Brookings Institution] “Would Checks and Balances Stop Trump? Don’t Bet on It.” *The Washington Post*, June 16, 2016. CH

Will the Republican Party that made Donald Trump its prospective nominee protect us from Trump when he is president? Even as they call him a “textbook” racist and acknowledge his scant regard for the rule of law, Republican leaders assure voters that the U.S. system of checks and balances will contain their candidate’s authoritarian impulses. Congress and the judicial system will keep Trump under control. History and recent events suggest that is a risky[.] proposition. Inflamed popular passions and [O]verreaching presidents have at times not been checked. Presidents have ignored Supreme Court rulings; and the Alien and Sedition Acts[,] of 1798 and 1918, Jim Crow, the mistreatment of German Americans during World War I and of U.S. citizens and noncitizens of Japanese descent during World War II, and the investigations of Sen. Joseph McCarthy all showed how a frightened, angry or simply bigoted majority could deprive individuals of their rights[.] despite the Constitution’s checks and balances. That those rights were eventually restored is no cause for satisfaction: The damage done was permanent. Nor is it reason for complacency, especially now. Never before has a presidential candidate given more reason to fear that he will run roughshod over democratic institutions[.] and abuse the vast powers of the presidency for personal ends. Not a week goes by without Trump providing fresh evidence that he neither understands nor values our political and legal systems[.] but rather sees them as tools to be manipulated or obstacles to be overcome. He threatens to change libel laws to go after media outlets. He attacks federal judges as unfit on grounds of ethnic background. He promises, if elected, to have his attorney general launch investigations of his political opponents. In the past, Americans did not know as they voted that their presidents would seek to abuse their executive powers. This time, and indeed for the first time ever, they do.

## Christianity CP

[Case cross apps – underground and stuff like that]

#### No solvency – the counterplan just mandates censorship, but DOES NOT justify why conversion would result

#### Perm do the counterplan in all other instances – force people to convert to Christianity bnut don’t censor – shields the net benefit.

#### The net benefit doesn’t link to the framework – it’s a question of social equality, not util

#### Forced conversion literally enslaved millions of Blacks, caused the Inquisition, and the Crusades – you should lose for reading this.

**Stone and Fogelman:** John Stone and Hugh Fogelman “CONVERT TO CHRISTIANITY OR DIE.” 2003. RP

**Millions of African−Americans are Christians today because their ancestors were converted against their will to the religion of the slave-master. Hundreds of thousands of American−Indians are Christians today because the Christian missionaries converted their ancestors against their will. In Europe, it was the same thing.** When Rome controlled most of the world, the Roman Emperor, Constantine, in 325 CE forced Christianity onto his subjects. **The people of Lithuania did not become Christians because they read the gospels and decided to accept their teachings. On the contrary, the people of Lithuania were forced into Christianity against their will, as a result of relentless military force**. From The Crusades, by Bernard Hamilton:1 “In 1309 the Teutonic Order moved its headquarters to Marienburg in Prussia.  It had a papal license to wage perpetual war against the pagans and used this to launch annual crusades against Lithuania.  These expeditions were very popular the nobility of northern Europe: campaigns were held twice a year, in the summer and in the winter when the order laid on special Christmas festivities for visiting crusaders.”  “The excuse for men who enjoyed fighting and to lay waste large parts of Lithuania in the name of Christ was removed in 1386 when the King of Lithuania, Ladislas Jagiello, married Queen Jadwiga of Poland and received Catholic baptism.  The two kingdoms were united under Christian rulers and the Teutonic Knights no longer had any justification for crusading against pagans there.” Lithuania was not the first country that fell victim to a campaign of lethal military force, for the purpose of forced conversion to Christianity.  **Three entire European nationalities became victims of genocide because they refused to become Christians**:“...the Vandals, Ostogoths, and Heruli.  The last three were destroyed by the Pope of Rome because they refused to become ‘Christian.’  The armies of Emperor Justinian, in cooperation with the Pope, thrust the Ostrogoths out of the city of Rome. They have become extinct.”2 **Jews had to endure the sword too. Millions of Jews from the fourth century CE until the 20th Century were forced to “kiss the sword” of Christ, or be put to death by that sword.** Therefore, many, many Jews died at the hands of Christians in the name of Jesus. Fortunately, many Jews managed to survive. They survived by lying―they converted, but secretly remained Jews. The Christian Church finally realized what was happening and in 1492, the Spanish Inquisition tried to purge the country of these “Secret” Jews, called Marranos. Christianity should not take any pride for their large numbers of subjects. Almost all Christian ancestors, Catholics and Protestants really had no choice in the matter. **They were forced to accept Jesus as their god ― Invisible Friend in the Sky. Christianity was a forced religion. Today it is being forced in another manner, through an army of missionaries beating on your door and brainwashing your children in school classrooms**, extracurricular activities and intramural sports.“I am now convinced that children should not be subjected to the frightfulness of the Christian religion. ... If the concept of a father who plots to have his own son put to death is presented to children as beautiful and as worthy of society's admiration, what types of human behavior can be presented to them as reprehensible?” —Ruth Hurmence Green (1915-1981)

#### No solvency – their evidence doesn’t say conversion works, nor is it about colleges.

#### Jesus votes Aff – free speech is good

**Short**: Short, Kevin. “A Christian Defense of Free Speech.” *Truth in the Trenches,* October 5, 2016. MZ

One of the great torrents in our society is the debate over free speech in our university culture or, rather the use of speech codes based on European rather than American conceptions of free speech. Thus, we have discussions of various issues, such as trigger warnings, free speech zones. Events at Missouri State university and Yale last year, along with the famous “Chalkening” at Emory have made this a national issue. Books have been written on this topic, most recently by Kirsten Powers.[1] It is not only Liberals, however, who challenge this policy, while Powers writes about the American Left on University campuses today, it was the right who opposed free speech on campuses during the Vietnam War protests. Recent statements by San Francisco forty-niners Colin Kaeperick for not standing during the national anthem reveals that many social conservatives have similar weaknesses on the principle of free speech as many liberals do in questions regarding the Dallas Cowboy’s desire to support police with a decal on their helmet. **But why should a Christian, or anyone else, for that matter, care about free speech? From a practical standpoint, because it is a necessary element for a democracy to function; In a democratic, constitutional republic, one of the necessary prerequisites is a society that agrees to settle its differences by force of argument rather than force of arms, and thus it becomes necessary to allow all comers to make their case. In a sense then the arguments for democracy of separation of powers are therefore arguments for free speech. For many Evangelicals, the points I made in discussing freedom of religion would demonstrate freedom of speech as a corollary. If man [person] has free will, and can accept or reject God’s plan of salvation, then it seems one must also allow them access to the arguments both for an against His plan.** There are three major points where Christians can be accused of hypocrisy on this issue, and one major modern assault. Let’s look at a Christian response on all four. Pornography Christians have long been opposed to pornographic material, and in many cases by legal suppression, so is this a violation of the principle of free speech? The answer is simply, no, because pornography is not speech. Speech is quite simply the ability to communicate an idea, principle or idea. Similarly, when the constitution refers to expression in the first amendment, it refers to word choice, genre, and other elements of “written expression,” which are means to the end of communicating a point. Pornography, however, doesn’t seek to communicate an idea at all – not even ideas about human sexuality – rather it is about exciting the libido. Speech requires thought, pornographic material is antithetical to thinking.[2] Minors A second and related issue is the question of access to speech by minors. But, then, we have never understood minors to possess full access of their constitutional rights. For example, even the staunchest proponent of the most expansive interpretation of the second amendment (say someone who argued citizens should be allowed to buy surface to air missiles) would not argue said right applies to a toddler. Similarly, the right to access speech have long been understood to be filtered through the minor’s parents. When Christians and others argue that the public square should have some elements that are child friendly, or family friendly, what is really being argued is that society should not seek to make end runs around the parent’s obligation to serve as a guardian and protector, or developer of a child’s mind and spirit. Christian Campuses Some have also argued that Christian institutions stifle free speech by imposing speech codes on college campuses. This was an important discussion when the Liberty University Young Democrats club was disallowed recognition as an official club at Liberty University (mysteriously, when Liberty’s subsequent decision to do the same thing with the Young Republican’s club did not create the same stir among the popular press). This goes back to one of the major flaws in modern thought, it seems we assume an institution is either an educational institution or a religious one, I would assume many, if not most are both. The reason, however, why Christian institutions are not enemies of free speech, even when they impose codes involving speech or restricting education to those signing doctrinal statements is that these are decisions made by the student and staff at those institutions before signing those statements. It should be assumed, if a student signs a statement such as that of the creed I regularly signed at Bob Jones University, they do so not because they are being bullied into the decision, but rather because they already agree with the positions espoused. In accepting the limits to a certain breadth of opinion, the theological student at such an institution gains a greater depth of understanding of Christian theology and thought, something a believer may very well prize, similarly, since these institutions serve in part to train pastors, they provide an to associated churches credentials for pastoral ministry, something that requires a doctrinal commitment of some kind. Nor is this uncommon in other fields; an Evangelical systematic theology class begins with the assumptions that Evangelical Christianity is true (it is in a sense, post apologetic and post conversion), this is similar to the physics professor who does not bother trying to prove that the universe we exist in is actually real. A second consideration is the false idea that students in Christian colleges are not being exposed to the breadth of scholarship, simply because the facility is an Evangelical one. While at the Bob Jones Memorial Seminary, I read Bultmann’s New Testament Theology, various pieces written by Karl Barth on the Bible, various writings by Catholic scholars (often in areas where Evangelicals and Catholics disagree), a textbook on Church history written from a decidedly non-Evangelical basis. In short, the marketplace of ideas is perhaps an old fashioned idea, in reality we have an internet of free speech, and even those in Christian research universities interact with those outside of Christianity. **In a sense, the Evangelical university and seminary serves as Christian think-tanks, interacting with the philosophical ideas and worldviews of their non-Christian counterparts.**

#### Free speech about religion is key to safeguard the right to worship – the Aff spills over positively.

**Malik:** Malik, Kenan [I am a writer, lecturer and broadcaster. My latest book is *The Quest for a Moral Compass: A Global History of Ethics*.] “Why hate speech should not be banned.” *Pandaemonium.* 2012. RP

KM: It is as idiotic to imagine that one could defame religion as it is to imagine that one could defame politics or literature. Or that the Bible or the Qur’an should not be criticized or ridiculed in the same way as one might criticize or ridicule The Communist Manifesto or On the Origin of Species or Dante’s Inferno. A religion is, in part, a set of beliefs – about the world, its origins, and humanity’s place in it – and a set of values that supposedly derive from those beliefs. Those beliefs and values should be treated no differently to any other sets of beliefs, and values that derive from them. **I** **can be hateful of conservatism or communism. It should be open to me to be equally hateful of Islam and Christianity.** Proponents of religious defamation laws suggest that religion is not just a set of beliefs but an identity, and an exceptionally deeply felt one at that. It is true that religions often form deep-seated identities. But, then, so do many other beliefs. Communists were often wedded to their ideas even unto death. Many racists have an almost visceral attachment to their beliefs. Should I indulge them because their views are so deeply held? And while I do not see my humanism as an identity with a big ‘I’, I would challenge any Christian or Muslim to demonstrate that my beliefs are less deeply held than theirs. **Freedom of worship – including the freedom of believers to believe as they wish and to preach as they wish – should be protected**. Beyond that, religion should have no privileges. **Freedom of worship is, in a sense, another form of freedom of expression – the freedom to believe as one likes about the divine and to assemble and enact rituals with respect to those beliefs. You cannot protect freedom of worship, in other words, without protecting freedom of expression. Take, for instance, Geert Wilders’ attempt to outlaw the Qur’an in Holland because it ‘promotes hatred’.** Or the investigation by the British police a few years ago of Iqbal Sacranie, former head of the Muslim Council of Britain, for derogatory comments he made about homosexuality. Both are examples of the way that defense of freedom of religion is inextricably linked with defense of freedom of speech. Or, to put it another way, in both cases, had the authorities been allowed to restrict freedom of expression, it would have had a devastating impact on freedom of worship. That is why the attempt to restrict defamation of religion is, ironically, an attack not just on freedom of speech but on freedom of worship too – and not least because one religion necessarily defames another. Islam denies the divinity of Christ, Christianity refuses to accept the Qur’an as the word of God. Each Holy Book blasphemes against the others. One of the ironies of the current Muslim campaign for a law against religious defamation is that had such a law existed in the seventh century, Islam itself would never have been born. The creation of the faith was shocking and offensive to the adherents of the pagan religions out of which it grew, and equally so to the two other monotheistic religions of the age, Judaism and Christianity. Had seventh-century versions of today’s religious censors had their way, the twenty-first-century versions may still have been fulminating against offensive speech, but it certainly would not have been Islam that was being offended. At the heart of the debate about defamation of religion are actually not questions of faith or hatred, but of political power. **Demanding that certain things cannot be said, whether in the name of respecting faith or of not offending cultures, is a means of defending the power of those who claim legitimacy in the name of that faith or that culture**. It is a means of suppressing dissent, not from outside, but from within. What is often called offense to a community or a faith is actually a debate within that community or faith. In accepting that certain things cannot be said because they are offensive or hateful, those who wish to restrict free speech are simply siding with one side in such debates – and usually the more conservative, reactionary side

#### This causes backlash against Christianity

#### Christianity is false – experts prove.

**Runyan:** Runyan, Michael [Contributor, Kyroot] “1431 REASONS CHRISTIANITY IS FALSE.” January 2017. RP

**The Jesus Seminar was a collaborative effort of approximately 200 professionally-trained specialists in the field of religion tasked with the goal to cut through the myth and expose the historical Jesus**.  Membership was limited to scholars with advanced academic degrees (Ph.D. or equivalent) in religious studies or related disciplines from accredited universities worldwide and to published authors who were recognized authorities in the field of religion (by special invitation only).  **The task force convened on and off from 1985 to 2006. The principal finding was that the quotes and deeds of Jesus as written in the Gospels are mostly mythical.  In fact, only 18% of the sayings and 16% of the deeds attributed to Jesus were thought to be authentic.  The scholars used cross-cultural anthropological studies to set the general background, narrowing in on the history and society of first-century Palestine, and used textural analysis along with anthropological**, historical, and archaeological evidence. Other findings of the group included: Jesus of Nazareth was born during the reign of Herod the Great. His mother’s name was Mary, and he had a human father whose name may not have been Joseph. Jesus was born in Nazareth, not in Bethlehem. Jesus was an itinerant sage who shared meals with social outcasts. **Jesus practiced faith healing without the use of ancient medicine or magic, relieving afflictions we now consider psychosomatic. He did not walk on water, feed the multitude with loaves and fishes**, change water into wine or raise Lazarus from the dead. Jesus was arrested in Jerusalem and crucified by the Romans. He was executed as a public nuisance, not for claiming to be the Son of God. **The empty tomb is a fiction – Jesus was not raised bodily from the dead**. Belief in the resurrection is based on the visionary experiences of Paul, Peter and Mary Magdalene. The significance of this effort is that it is the first time that Jesus’s life has been objectively analyzed by a team of highly qualified reviewers.  As such, it remains the best effort to date to ascertain the true historical Jesus, stripped of the myths that have been attached to him over the centuries.  **Although many religious leaders objected to the findings, it must be acknowledged that the level of effort, the range of resources used, and the qualifications of the reviewers lend much weight to their conclusions.**

#### Turn – people have to create the views themselves

#### Forced conversion causes people to just accept religion unquestioningly instead of openly discussing it

#### This violates separation of church and state

#### Chrisainity is false and God is likely Deist

**Bristow:** Bristow, William, "Enlightenment", The Stanford Encyclopedia of Philosophy (Summer 2011 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2011/entries/enlightenment/>. DD

*Deism*. Deism is the form of religion most associated with the Enlightenment. According to deism, **[W]e can know by the natural light of reason that the universe is created and governed by a supreme intelligence[.]**; however, although **[T]his** supreme **being** has a plan for creation from the beginning, the being **does not interfere with creation[.]**; the deist typically rejects miracles and reliance on special revelation as a source of religious doctrine and belief, in favor of the natural light of reason. Thus, **[A] deist typically rejects the divinity of Christ, as repugnant to reason**; the deist typically demotes the figure of **Jesus** from agent of miraculous redemption to **[was an] extraordinary moral teacher. Deism is the form of religion fitted to the new discoveries in natural science, according to which the cosmos displays an intricate machine-like order; the deists suppose that the supposition of God is necessary as the source or author of this order**. Though not a deist himself, **Isaac Newton** inadvertently encourages deism in his *Opticks* (1704) by **[argued] that we must infer from the order and beauty in the world** to **the existence of an intelligent supreme[.]** being as the cause of this order and beauty. Samuel Clarke, perhaps the most important proponent and popularizer of Newtonian philosophy in the early eighteenth century, supplies some of the more developed arguments for the position that the correct exercise of unaided human reason leads inevitably to the well-grounded belief in God. He argues that **[T]he Newtonian physical system implies the existence of a transcendent cause, the creator God**. In his first set of Boyle lectures, *A Demonstration of the Being and Attributes of God* (1705), Clarke presents the metaphysical or “argument *a priori*” for God's existence. This argument concludes from **[T]he rationalist principle that whatever exists must have a sufficient reason or cause of its existence to the existence of a transcendent, necessary being who stands as the cause of the chain of natural causes and effects**. Clarke also supports the empirical argument from design, the argument that concludes from the evidence of order in nature to the existence of an intelligent author of that order. In his second set of Boyle lectures, *A Discourse Concerning the Unchangeable Obligations of Natural Religion* (1706), Clarke argues as well that the moral order revealed to us by our natural reason requires the existence of a divine legislator and an afterlife, in which the supreme being rewards virtue and punishes vice. In his Boyle lectures, Clarke argues directly against the deist philosophy and maintains that what he regards as the one true religion, Christianity, is known as such on the basis of miracles and special revelation; still, Clarke's arguments on the topic of natural religion are some of the best and most widely-known arguments in the period for the general deist position that natural philosophy in a broad sense grounds central doctrines of a universal religion.

## Graffiti PIC

[I think this is saying graffiti bad?]

#### Perm do both – graffiti is a violation of property – it isn’t constitutionally protected speech

## PATRIOT Act CP

#### Perm do both – allow free speech on campus and also repeal the PATRIOT Act – perm gets double solvency

#### Perm do the counterplan – they say the PATRIOT Act prevents free speech on campus, in which case normal means of the Aff would entail eliminating it to prevent a restriction on free speech

#### Doesn’t solve the case – the protests the Aff discuses aren’t being cut back because of the Patriot Act but because of speech codes on campus, which they don’t address.

#### No disad to the Patriot act – there are tons of internal checks and it doesn’t harm free speech.

Sales Nathan Sales, The Patriot Act Is a Vital Weapon in Fighting Terrorism, New York Times, 5/23/11, http://www.nytimes.com/roomfordebate/2011/09/07/do-we-still-need-the-patriot-act/the-patriot-act-is-a-vital-weapon-in-fighting-terrorism

**America needs the Patriot Act because it helps prevent terrorism while posing little risk to civil liberties. The law simply lets counterterrorism agents use tools that police officers have used for decades. And it contains elaborate safeguards against abuse. Consider the three provisions Congress renewed last May. 1. Congress authorized “roving wiretaps” back in 1986** -- court orders that allow police to monitor criminals even if they switch phones. **The Patriot Act allows the same thing in terrorism investigations. The law levels the playing field: If a roving wiretap is good enough for Tony Soprano, it’s good enough for Mohamed Atta. The Patriot Act features strict safeguards. Agents can’t eavesdrop unless they get a judge’s permission. They must demonstrate that the suspect is a terrorist. And they must notify the judge when they go up on a new phone.** 2. Grand juries in criminal cases routinely subpoena “business records” from companies like banks and retailers. The Patriot Act lets counterterrorism agents get the same documents. **The law simply lets counterterrorism agents use tools that police officers have used for decades. The act’s protections are even stronger than the grand jury rules**. Prosecutors issue subpoenas unilaterally, but the Patriot Act requires the F.B.I. to get a judge’s approval. Americans can’t be investigated on the basis of First Amendment activities, and special limits apply to sensitive materials like medical or library records. 3. Before 9/11, it was difficult for authorities to monitor “lone wolves” with murky ties to overseas terrorist groups. The F.B.I. suspected that Zacarias Moussaoui was a terrorist, but agents hadn’t connected him to Al Qaeda, so it wasn’t clear they could search his apartment. Congress fixed that problem. Now, agents can monitor a terrorist even if they haven’t yet found evidence he belongs to a foreign terrorist organization. Again, the Patriot Act has robust safeguards. Agents have to convince a judge to let them track a lone wolf. This tool can only be used to investigate international terrorism, not domestic. **And it doesn’t apply to Americans, only to temporary visitors like tourists**. A decade after 9/11, the Patriot Act remains a vital weapon in the war on terrorism. Al Qaeda hasn’t given up. Neither should we.

#### The Patriot Act is key to fight terror.

Sales Nathan Sales, The Patriot Act Is a Vital Weapon in Fighting Terrorism, New York Times, 5/23/11, http://www.nytimes.com/roomfordebate/2011/09/07/do-we-still-need-the-patriot-act/the-patriot-act-is-a-vital-weapon-in-fighting-terrorism

**America needs the Patriot Act because it helps prevent terrorism while posing little risk to civil liberties. The law simply lets counterterrorism agents use tools that police officers have used for decades. And it contains elaborate safeguards against abuse.** Consider the three provisions Congress renewed last May. 1. Congress authorized “roving wiretaps” back in 1986 -- court orders that allow police to monitor criminals even if they switch phones. The Patriot Act allows the same thing in terrorism investigations. The law levels the playing field: If a roving wiretap is good enough for Tony Soprano, it’s good enough for Mohamed Atta. **The Patriot Act features strict safeguards. Agents can’t eavesdrop unless they get a judge’s permission. They must demonstrate that the suspect is a terrorist. And they must notify the judge when they go up on a new phone**. 2. Grand juries in criminal cases routinely subpoena “business records” from companies like banks and retailers. The Patriot Act lets counterterrorism agents get the same documents. **The law simply lets counterterrorism agents use tools that police officers have used for decades**. The act’s protections are even stronger than the grand jury rules. Prosecutors issue subpoenas unilaterally, but the **Patriot Act requires the F.B.I. to get a judge’s approval. Americans can’t be investigated on the basis of First Amendment activities, and special limits apply to sensitive materials like medical or library records**. 3. **Before 9/11, it was difficult for authorities to monitor “lone wolves” with murky ties to overseas terrorist groups**. The F.B.I. suspected that Zacarias Moussaoui was a terrorist, but agents hadn’t connected him to Al Qaeda, so it wasn’t clear they could search his apartment. Congress fixed that problem. Now, **agents can monitor a terrorist even if they haven’t yet found evidence he belongs to a foreign terrorist organization**. Again, the Patriot Act has robust safeguards. **Agents have to convince a judge to let them track a lone wolf.** This tool can only be used to investigate international terrorism, not domestic. And it doesn’t apply to Americans, only to temporary visitors like tourists. **A decade after 9/11, the Patriot Act remains a vital weapon in the war on terrorism**. Al Qaeda hasn’t given up. Neither should we.

#### Terrorism means extinction and structural violence from attacks.

**Rhodes 9:** RICHARD RHODES He has been a visiting scholar at Harvard and MIT, and currently he is an affiliate of the Center for International Security and Cooperation at Stanford University. Rhodes is the author of The Making of the Atomic Bomb (1986), which won the Pulitzer Prize in Nonfiction, National Book Award, and National Book Critics Circle Award. It was the first of four volumes he has written on the history of the nuclear age. Dark Sun: The Making of the Hydrogen Bomb (1995), Arsenals of Folly: The Making of the Nuclear Arms Race (2007), and The Twilight of the Bombs (forthcoming in autumn 2010) are the others. Reducing the nuclear threat: The argument for public safety 14 DECEMBER 2009

This group of **85 experts judged that the possibility of a WMD attack against a city or other target somewhere in the world is real and increasing over time**. The median estimate of the risk of a nuclear attack somewhere in the world by 2010 was 10 percent. The risk of an attack by 2015 doubled to 20 percent median. **There was strong**, though not universal, **agreement that** **a** **nuclear attack is more likely** to be carried out **by a terrorist organization than by a government.** The group was split 45 to 55 percent on whether terrorists were more likely to obtain an intact working nuclear weapon or manufacture one after obtaining weapon-grade nuclear material. "The proliferation of weapons of mass destruction is not just a security problem," Lugar wrote in the report's introduction. "It is the economic dilemma and the moral challenge of the current age. On September 11, 2001, the world witnessed the destructive potential of international terrorism. But the September 11 attacks do not come close to approximating the destruction that would be unleashed by a nuclear weapon. Weapons of mass destruction have made it possible for a small nation, or even a sub-national group, to kill as many innocent people in a day as national armies killed in months of fighting during World War II. "The bottom line is this," Lugar concluded: "**For the foreseeable future, the United States and other nations will face an existential threat from the intersection of terrorism and weapons of mass destruction**." It's paradoxical that a diminished threat of a superpower nuclear exchange should somehow have resulted in a world where the danger of at least a single nuclear explosion in a major city has increased (and that city is as likely, or likelier, to be Moscow as it is to be Washington or New York). We tend to think that a terrorist nuclear attack would lead us to drive for the elimination of nuclear weapons. I think the opposite case is at least equally likely: **A terrorist nuclear attack would almost certainly be followed by a retaliatory nuclear strike** on whatever country we believed to be sheltering the perpetrators. That response would surely **initiate** **a new round of nuclear armament** and rearmament in the name of deterrence, however illogical. Think of how much 9/11 frightened us; think of how desperate our leaders were to prevent any further such attacks; think of the fact that we invaded and occupied a country, Iraq, that had nothing to do with those attacks in the name of sending a message

## Generic PICs Modeling Cards

-Leonard is a disad to the cp bc ppl learn themselves to reject oppression

-Stroessen proves modeling effect

#### Legal experts and SCOTUS agree that exceptions to the First Amendment undermine the doctrine and are *infinitely modeled*– the PIC doesn’t solve the case

**White:** White, Ken [Blogs about the law, liberty, and more at Popehat] “Lawsplainer: Why Flag Burning Matters, And How It Relates To Crush Videos.” *Popehat.* November 2016. RP

**In free speech analysis, how you** get **to a conclusion often has much more long-lasting impact than the conclusion itself.** Our legal system runs on precedent. The significance of the precedent isn't "the Supreme Court said that flag burning is protected by the First Amendment." The significance of the precedent is "someone wants to punish this speech and we have to figure out whether or not it's protected by the First Amendment. Let's look at the logic and methods the Supreme Court used to resolve that question when flag burning was the issue, and then apply it here." But the Supreme Court has decided lots of cases about the First Amendment. This is just one precedent, one example of a method of reaching a conclusion. What makes it particularly important? **The Supreme Court's flag burning cases are crucial — not because of how they analyze existing exceptions to the First Amendment, but because they address whether the government can create endless exceptions to the First Amendment. Just like crush videos.** You know, videos of women stomping on small helpless animals. That's . . . that's a thing? Of course it's a thing. Ugh. What does that have to do with flag burning? Or the First Amendment? Congress — having salved all of the nation's ills — passed a law banning crush videos. Because who wouldn't vote for someone who stands against hurting baby animals? The law made it a federal crime to create or sell depictions of animal cruelty in interstate commerce. In 2010, in United States v. Stevens,, the Supreme Court found that the statute violated the First Amendment. That sounds pretty straightforward. Why is it significant? It's significant because of the way the government defended the statute. The government's lead argument wasn't that crush videos were outside of First Amendment protection because they fell into an already-recognized exception, like defamation or obscenity or incitement. They argued that the Supreme Court should recognize a new categorical exception to First Amendment protection for animal cruelty, because animal cruelty is so awful. They also argued that courts can recognize new exceptions to the First Amendment by weighing the "value" of the targeted speech against the harm it threatens. The Supreme Court — in an 8 to 1 decision — firmly rejected those two arguments. **First, the Court said, the historically recognized exceptions to First Amendment protection are well-established, and you can't just go around adding new ones: From 1791 to the present,” however, the First Amendment has “permitted restrictions upon the content of speech in a few limited areas,” and has never “include[d] a freedom to disregard these traditional limitations.”** Id., at 382– 383. These “historic and traditional categories long familiar to the bar,” Simon & Schuster, Inc. v. Members of N. Y. State Crime Victims Bd. , 502 U. S. 105, 127 (1991) ( Kennedy, J. , concurring in judgment)—including obscenity, Roth v. United States , 354 U. S. 476, 483 (1957) , defamation, Beauharnais v. Illinois , 343 U. S. 250, 254–255 (1952) , fraud, Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc. , 425 U. S. 748, 771 (1976) , incitement, Brandenburg v. Ohio , 395 U. S. 444, 447–449 (1969) ( per curiam ), and speech integral to criminal conduct, Giboney v. Empire Storage & Ice Co. , 336 U. S. 490, 498 (1949) —are “well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem.” Chaplinsky v. New Hampshire , 315 U. S. 568, 571– 572 (1942) . Second, the Court said, **[T]he government's proposed methodology — that the Court should identify new categorical exceptions by balancing, on a case-by-case basis, the value of speech against its harm — is antithetical to First Amendment analysis and dangerous**: “ The Government thus proposes that a claim of categorical exclusion should be considered under a simple balancing test: “Whether a given category of speech enjoys First Amendment protection depends upon a categorical balancing of the value of the speech against its societal costs.” Brief for United States 8; see also id., at 12. As a free-floating test for First Amendment coverage, that sentence is startling and dangerous. The First Amendment ’s guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits. The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it. The Constitution is not a document “prescribing limits, and declaring that those limits may be passed at pleasure.” Marbury v. Madison , 1 Cranch 137, 178 (1803). So: in 2010, the Supreme Court overwhelmingly and clearly rejected the idea that legislatures and courts can create new exceptions to the First Amendment based on how strongly they hate speech or how awful it is**. He adds:** The flag-burning cases are important, like the crush videos case was important, because they draw a crucial line between having a few strictly limited exceptions to the First Amendment, on the one hand, and having as many exceptions as we feel like having, on the other hand. Flag burning isn't speech that's uniquely valuable or important to protect. **What's important is that we protect the** principled **method by which we determine which speech is protected and which isn't. The argument that flag burning should be outside the First Amendment can be applied with equal force to just about anything — "hate speech," "cyber-bulling," "revenge porn," "pro-ISIS speech," or whatever the flavor of the month is. If think the majority was wrong in the flag burning cases, here's what you're saying: "the Supreme Court makes bad judgments, and I want to give that Supreme Court the power to decide, on a case-by-case basis, whether the harm of speech outweighs its value**. I don't want the courts to be limited to established, well-defined categories outside of First Amendment protection." But **that's ridiculous. You're damn right it is.**

#### Limiting any speech sets a precedent that allows the abolition of ANY controversial idea

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American Univiersity.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**Proponents of speech restrictions, in contrast, tend to think that the damage done to the process of free inquiry would not be significant. The gist of these arguments is that bigoted thought constitutes only a small portion of the speech that enters the marketplace of ideas** and at any rate is so valueless that its absence would have little effect on the advancement of knowledge. In the short term this may be true. **Much of campus life remains unaffected by speech restraints. Once a wall is breached, though, the next attempt is easier. Abolition of hateful thoughts suggests that expressions may be censored if they are sufficiently offensive**. **Certainly there are ideas other than bigotry which deeply offend major segments of our society, for example, proposals for or against abortion, gun control, flag burning, euthanasia, and Marxism. The same logic that supports the suppression of derogatory speech just as easily allows for the suppression of a range of ideas. Any concession which would limit free expression, no matter how well intentioned, opens the door to more limitations.**

## Generic PICs Solvency Deficits

Hate speech answers also apply

#### Censorship doesn’t solve the root cause, increases the power of dominant elites, and suppresses valuable information that’s key to activism

**York:** York, Jillian C. [Writer and contributor for several news sources] “Harassment Hurts Us All. So Does Censorship.” *Medium.* September 2013. RP

**The crux of the interview, and the issue at hand, is whether or not censorship is a good solution to the problem of online harassment and bul- lying. It has become a fairly commonplace response to certain “undesirable” speech—be it misogynistic, racist, homophobic, etc—to call for bans on it, either from government or from online platforms themselves**. I sympathize with the sentiment behind those calls—who amongst us hasn’t wished a certain racist or sexist commentator would just disappear?—but in the end, I just can’t abide. **You see, I don’t see censorship as a solution to anything.** I see it as a band-aid slapped carelessly over a gaping, septic wound. **That is not to deny the effects of harassment, or even “hate speech” (click the link to understand why I use quotes around that term), but to say that the problem is institutional, systemic, and in need of a better solution. It makes me very frustrated when arguments are made to ban a certain type of speech, but seem to go no further, as if ridding our spaces of that speech is the be-all end-all to solving the problem.** Hint: it’s not. Most of all, I don’t believe that censorship offers lasting benefits. **If this were a perfect world, in which we could draw a very solid red line be- tween speech that should be banned and speech that should not, and we were all able to have a voice in making those determinations, and that blocking was done with the utmost oversight, transparency, and accountability, you might be able to convince me. The truth, however, is that efforts to censor hate speech, or obscenity, or pornography, are far too often overreaching, creating a chilling ef- fect on other, more innocuous speech. Microsoft Bing, which I men- tioned in my article, is not the first nor the last platform to block “breast” and with it, “breast cancer” and “chicken breast.” In my years of research, I’ve spoken to doctors whose workplace network blocked important health terms, to women in Saudi Arabia whose ISPs did the same, to queer youth whose schools or public libraries used pornogra- phy filters that took down non-obscene LGBTQ content with it, and so on.** And as such, I’m convinced that the imperfect technologies we put so much stock in to make our world a little better and brighter actually make it darker. I**’ve also talked to activists and others around the world whose content has been taken down from Facebook and YouTube because it doesn’t meet the yes, patriarchal terms of service set forth by the mostly-male teams that design them.** Breastfeeding=bad, violence against women=good, they tell us. They take down important pages (like ‘We Are All Khaled Said’) because their moderator, likely an at-risk activist in an unsafe space, dares use a pseudonym. **And yet you want to trust them to regulate speech even more?** No, thanks. I am not deaf to the argument that in some contexts, removing certain types of speech creates a safer and more inclusive space. To be clear, I want those spaces to exist. That’s the same reason I moderate comments on my blog and block trolls on Twitter. But I view that as very different from a major online platform with more than one billion users making those decisions for me. But I also realize that something I said in that interview was, while rep- resentative of my personal experience, pretty callous. I have dedicated a substantial amount of my time to finding and culti- vating platforms for women’s voices, based on my belief that a solution to the widespread harassment and bullying of women online is to keep pushing women’s voices into the mainstream, louder and stronger. I recognize that this solution doesn’t work for everyone, and therefore acknowledge that it’s a mere piece of the puzzle, rather than a solution on its own. So when I say, “I get really tired of [the argument that women are bullied out of public discussions] because I’m a woman and I don’t feel that way,” the point I’m trying to make is that, while I feel bullied, I’m not going anywhere. No way, no how. I want to be clear: I am not denying that women are frequently “bullied off the Internet,” and I can see why it appears from the interview that I feel that way. Rather, I believe that that refrain ignores the experiences of those of us who would prefer to respond to hate speech with more speech, prefer to shout louder over the din. I’ve been accused many times of upholding the patriarchy for my ideal that sunlight and resolve are even a solution, and I’m tired of it. And so I stand by my position, reflected in the words of the great Jus- tice Louis Brandeis, that the best remedy to “bad” speech is more speech, not enforced silence. I believe this, but I also believe we need to fight to ensure that women—as well as other marginalized groups and individuals—have the opportunity to engage in counter speech. If we are to fight for free expression, we must also fight for greater op- portunity, and we must have each other’s backs. We must call out misogyny where we see it, and we must have zero tolerance for it in the workplace. We must commit to inclusivity, and we must raise up those around us who might not have the same privilege that we do. It is possible to be dedicated to freedom of speech and to the advance- ment of women. I’ve worked at the EFF for a little over two years and have found it to be the most inclusive space in which I’ve had the plea- sure of working. Not to mention, eight out of eleven staffers here with the word “director” in their title are women, and on the whole, we’re very balanced in terms of gender. In the often privi- leged field that is digital rights, this is notable. Interviews are less than ideal in getting one’s point across; quotes are shortened, context is left out, and terrible titles are added for link bait. But while I intend to make no excuses for what I’ve said, I feel compelled to elaborate on my beliefs and how I came to them. I expect disagreement, but I’d prefer it be with my ideas, rather than a context- less shell of them. **I believe that free expression is compatible with a better society**, and I will continue to fight for both.

## Non Verbal Speech – Generic

#### The First Amendment just protects verbal speech

Wells 1: Wells, Thomas R. [Assistant Professor of Philosophy, University of Tilburg] “Freedom of the Press is Not the Same as Freedom of Speech.” The Philosopher’s Beard, January 3, 2013. CH

Freedom of the press is not the same as freedom of speech Freedom of the press is often conflated with freedom of speech, a conceptual error that leads to excessive deference to media corporations. Properly understood, [T]he freedom of the press requires that mass-media corporations be free from government control, but not that they be free from regulation in the public interest. Whether or not the press supports rather than impedes individuals' freedom of expression, public reasoning, and the accountability of politicians depends on how the media market is set up and policed. Freedom of speech is a concept that pertains to individuals and is almost inseparable from respecting freedom of thought (see Mill, On Liberty). Just as every individual should be permitted to think controversial thoughts that many people find disagreeable or offensive (against the existence of god, say), so they should be allowed to say them. Its justification has two components. First, the intrinsic value of freedom of expression to the speakers, who get to share their opinions and ideas with others. Second, the indirect benefits that a diversity of opinions produces for society at large: ideas and arguments can be publicly tested and improved, with the results available for all. Freedom of the press is quite a different kind of thing, since it pertains to a certain group of corporations (mass-media companies), rather than individuals. The key difference is that because corporations are not people their speech can have no intrinsic value[.] (pace Justice Kennedy's majority opinion in Citizens United). Corporations, unlike individuals, are not sophisticated enough agents to have thoughts of their own that they burn to express to others, and so they cannot suffer from censorship as people do. Indeed, because corporations lack moral agency generally, their 'moral' rights can only be justified on utilitarian grounds: recognising corporate personality and property rights is a legal wheeze that makes the capitalist order function more efficiently, rather than a recognition of some underlying intrinsic moral claim. (For corporations to gain real moral rights, they would have to be designed in such a way that they can conduct morally sophisticated reasoning and give themselves a moral law. But that's a subject for another post.)

#### Legal jurisprudence confirms

**Volokh:**  Volokh 12 Eugene Volokh (Gary T. Schwartz Professor of Law, UCLA School of Law), FREEDOM FOR THE PRESS AS AN INDUSTRY, OR FOR THE PRESS AS A TECHNOLOGY? FROM THE FRAMING TO TODAY, University of Pennsylvania Law Review, 2012

**The freedom of the press-as-technology, of course, was not seen as redundant of the freedom of speech**.56 St. **George Tucker, for instance, discussed the freedom of speech as focusing on the spoken word and the freedom of the press as focusing on the printed**: The best speech cannot be heard, by any great number of persons. The best speech may be misunderstood, misrepresented, and imperfectly remembered by those who are present. To all the rest of mankind, it is, as if it had never been. The best speech must also be short for the inves- tigation of any subject of an intricate nature, or even a plain one, if it be of more than ordinary length. The best speech then must be altogether inadequate to the due exercise of the censorial power, by the people. The only adequate supplementary aid for these defects, is the absolute freedom of the press. 57 **Likewise, George Hay, who later became a U.S. Attorney and a federal judge, wrote in 1799 that “freedom of speech means, in the construc- tion of the Constitution, the privilege of speaking any thing without control” and “the words freedom of the press, which form a part of the same sentence, mean the privilege of printing anything without control**.”58

## Advertising PICs – Generic

#### Perm do the counterplan – commercial speech isn’t constitutionally protected.

**Brudney:** Brudney, Victor [Victor Brudney, Robert B. and Candice J. Hass Professor in Corporate Fi- nance Law, Emeritus, Harvard Law School.] “THE FIRST AMENDMENT AND COMMERCIAL SPEECH.” *Boston College Law Review.* 2012. RP

**Commercial speech differs from the “speech” covered by, and spe- cially protected under, the First Amendment.** Commercial speech is much less likely to be challenged by, critically responded to, or cor- rected by third parties. It is the possibility, or, indeed, the likelihood, of such “more speech” that is an essential premise for First Amendment protection of speech against government regulation. The institutional conditions that obstruct the availability of more speech to respond to commercial speech argue against special protection for the latter. Quite apart from such considerations, the context and content of commercial speech also argue against extending the First Amendment’s special protection to such speech. **First Amendment protection exists to serve the interests of the community collectively rather than of individ- ual participants in their personal affairs. Such protection is not available for commercial speech that functions only to benefit its participants in- dividually** (as speakers or as addressees)—except possibly if it contains expression that would be entitled to First Amendment protection if it were uttered other than as a component of commercial speech. **In that case, the entitlement of the commercial speech to the First Amend- ment’s special protection depends upon whether in its commercial con- text the expression would be understood by the normal addressee**— listeners, viewers, or readers—to involve more than consummation of the commercial transaction—that is, to engage consideration of the im- port of the expression for collective matters of the society.

#### Court precedent has established that advertising on campuses isn’t protected speech

**Koon:** Koon, Samantha [Contributor, The Daily Progress] “Federal judge upholds alcohol advertising ban in college newspapers.” *The Daily Progress.* September 2012. RP

If underage University of Virginia students are drinking beer, it is not because they were persuaded by advertisements in The Cavalier Daily. **A federal judge upheld a state ban on alcohol advertisements in college newspapers late last week, saying that student papers do not have a First Amendment-protected right to advertise age-restricted products to their primarily underage readerships. Judge Hannah Lauck said that the Virginia Department of Alcoholic Beverage Control asserted “a substantial interest in combating the serious problem of underage drinking and abusive drinking by college students.” This is enough, she ruled, to limit the papers’ commercial speech.** “We’re disappointed that the original ruling was upheld. I’m of the mind that the ban on alcohol advertisements is unconstitutional ...,” said Cavalier Daily Editor-in-Chief Matthew Cameron. **Virginia state code prohibits alcohol advertisements in college newspapers because they are intended to be primarily distributed to readers under 21**. According to court documents, restaurant ads are legally permitted to mention the sale of “beer,” “wine,” “mixed beverages” and “cocktails,” or use the phrase “ABC on premises.” The judge ruled that the ban on alcohol advertising restricts commercial speech, but noted that “commercial speech is regulated in a manner that might be impermissible for noncommercial speech,” the ruling reads. “While this regulation limits alcohol advertisements, it does not, nor does it tend to, restrict the length, content, or substance of noncommercial speech …,” Lauck ruled. In 2006, Virginia Tech’s Collegiate Times and the UVa’s The Cavalier Daily filed suit against the ABC, claiming that ad restrictions not only violate the newspapers’ right to free speech, but also cost the newspapers valuable ad revenue. “The Cavalier Daily estimates losses of approximately $30,000 per year, based on estimated sales of one alcohol advertisement on one-quarter page per issue,” the ruling, filed last Friday, reads. The Cavalier Daily reported that local restaurants Sakura, Coupe DeVille’s and the now-defunct Satellite Ballroom had expressed interest in placing alcohol advertisements. The Collegiate Times also estimated a $30,000 annual loss in ad sales. Both newspapers are funded almost exclusively through ad revenue, according to court documents. “Almost 80 percent of Virginia Tech students consumed alcohol in 2005 and 2006, even though students under 21 years of age comprised between 46 to 51% of the student population,” the ruling reads. Court documents say that as of Jan. 1, 2007, 36 percent of UVa’s total population and 60 percent of its undergraduate population were not of legal drinking age. Both schools have a higher rate of binge drinking than the national average, according to Lauck’s ruling. Court documents cited a study by Henry Saffer, an economics professor at Kean University, as justification for upholding the ban. “The results suggest that a 28 percent reduction in total alcohol advertising would reduce monthly alcohol participation from about 25% to 21 – 24%. Additionally, a 28% reduction in total alcohol advertising would reduce binge drinking participation from 12% to 8-10%,” the judge’s opinion reads. Saffer noted, however, that “the vast majority of studies” found that advertising had no effect on consumption rates. Moreover, he noted that increased taxation is more likely to reduce underage consumption than advertising bans. Jon P. Nelson, an expert witness provided by the Collegiate Times and The Cavalier Daily, argued that alcohol ads are designed to promote brand loyalty, and have little effect on the overall demand for alcoholic beverages, according to court documents. Cameron said he has not yet had the opportunity to speak with Rebecca Glenberg, the American Civil Liberties Union lawyer representing the newspapers in the matter. “Hopefully we can find a way to move forward,” he said. When asked if he intended to appeal the decision, Cameron said he “would not rule it out.”

#### Even commercial speech should be heard – restrictions on *anything* are an act of privatization that erodes democratic culture – this evidence ends the debate

**Balkin:** Balkin, Jack M. [Knight Professor of Constitutional Law and the First Amendment, Yale Law School] “CULTURAL DEMOCRACY AND THE FIRST AMENDMENT.” *Northwestern University Law Review.* Volume 110. 2016. RP

My argument, however, has been that public discourse serves a constitutional value of freedom of cultural participation beyond merely legitimating the democratic exercise of political power. Suppose that I am correct and that public discourse serves two constitutional values, rather than just one. How does this affect Post’s arguments about commercial speech? **Once we look at public discourse from a cultural perspective, several of Post’s explanations for why commercial speech is not part of public discourse become less compelling. First, there is no clear distinction between people “seeking to advance their commercial interests” and “participating in the public life of the nation.**”76 **Many people try to make money by contributing to public discourse; conversely, many advertisers seek to shape the cultural life of the nation through advancing their commercial interests and selling products. The most famous advertising campaigns are also contributions to the tropes of public culture, and businesspeople like Henry Ford and Steve Jobs famously sought to change culture both through selling their goods and through shaping what those products meant to the general public**. Second, Post argues that commercial advertisers do not “invit[e] reciprocal dialogue or discussion.”77 **But selling goods and services is dialogic, not monologic. The best salespeople have always understood that they must make a connection to their customers, and that connection comes from a cycle of listening and responding to consumer values and interests, and reshaping the salesperson’s message accordingly. The successful salesperson’s message is designed to explain how the good or service will improve a person’s life, often less in terms of efficiency and efficacy than in terms of symbolic values or social meanings.** It is true that salespeople do not enter into a dialogue with their customers willing to be convinced that their product is not right for the consumer, but sometimes this actually happens, and good salespeople often learn from these encounters. Moreover, a speaker’s lack of interest in dialogue generally does not remove expression from public discourse; outside of advertising, many people engage in public discourse without any interest in changing their minds through the give and take of dialogue. The digital age has made the dialogic nature of salesmanship even more salient. Company websites and the websites of places where goods are advertised and sold—like Amazon.com and Walmart.com—invite end- user comments. Companies attempt to measure consumer response to their products, and consumers are not shy about complaining and suggesting improvements. Post’s third argument is that the social meaning of commercial advertisements is not an attempt “to make the state responsive to” the advertiser, but an “attempt[] to sell products.”78 Many, if not most contributions to public discourse, however, cannot reasonably be understood as an attempt to make the state responsive to us. When we engage in art or gossip, when we exchange the latest tricks for engaging in our favorite hobbies, or when we decry the lack of piety, idealism, ethics, or positive attitudes in the public, or in the world at large, we are not necessarily best understood as trying to make the state responsive to us. We may even regard the state as irrelevant to our concerns. But we could well be understood as trying to affect the culture of the world around us, and in that sense we are engaged in public discourse. Moreover, what about the commercial advertiser? **Isn’t the advertiser also trying to reshape the culture to make a better world for selling its products?** So shouldn’t the social meaning of its expression be indistinguishable from the work of the artist or preacher? All three, one might argue, are trying to affect culture by participating in culture. These and other difficulties emerge when we consider commercial speech in light of the definitions of public discourse I’ve offered in this Article. First, I said that public discourse is comprised of those processes of communication that must remain open to the public to ensure cultural democracy—the ability to participate in the forms of meaning-making and mutual influence that constitute us as individuals. Later, I added that public discourse refers to those processes of communication that allow public opinion to serve as the judge of society. **It should be clear enough that commercial speech is a form of meaning-making and influence that attempts to reconstitute individuals as consumers. It hopes to make people into the kind of people who will buy products, and it hopes to remake their desires into commercial desires. It should be equally clear that commercial speech seeks to judge social life. It hopes to persuade people that their values can be judged by their purchases and possessions. From the standpoint of cultural power and cultural influence, commercial speech is clearly an important part of contemporary culture. It is one of the most powerful forms of culture circulating in our world—as powerful, in its own way, as religion in shaping how people understand themselves and their actions.**

## Hate Speech PIC

Open DA blocks

## Byrne Racial Insults PIC

#### No empirical solvency – they say precedent setting, but can’t give any examples of this

#### Perm do the counterplan – it doesn’t restrict any constitutionally protected speech and is narrow enough to meet constitutionality.

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

Universities can justify restraints **on student's extracurricular activities when they substantially interfere with academic values and no independent student value, such as the political rights of students as citizens, outweighs the academic value in the circumstances. Obviously, many student activities can be prohibited because they plausibly can be considered harmful to the educational experience. For example, the Supreme Court long ago held that the fourteenth amendment offers no hindrance to a state university's prohibiting students from belonging to a fraternity**; recently the Court turned back a student's first amendment challenge to a university prohibition of commercial solicitation in dormitories. In contrast, the Court has up- held students' first amendment rights against universities when the students' extracurricular expression touched more closely on their political rights as citizens and the universities failed to articulate valid interests in prohibiting the speech. **This approach directs us to consider carefully the effects of racial insults on the university's academic values and goals in order to bal- ance these effects against the students' rights to free speech.**

#### Byrne’s proposal can’t solve the case – bigoted expressions still mean different things to different people and can backfire.

**Herron:** Herron, Vince [Class of 1994, University of Southern California Law Center. B.A. 1990, University of California, Los Angeles.] “NOTES: INCREASING THE SPEECH: DIVERSITY, CAMPUS SPEECH CODES, AND THE PURSUIT OF TRUTH.” Southern California Law Review. January 1994. RP

Not only do codes suppress ideas which we find profane and unacceptable, but they often censor ideas that should not be censored, ideas which play a legitimate role in academic discourse and should be kept in the university market- place. Opponents of hate speech codes who argue that censorship is bad for the educational environment are pessimistic about the ability of university administrators to censor certain forms of expression without the censorship's de- generating into an attempt to suppress political opposition or cultural differences. But some proponents have argued that codes can selectively censor only ideas which do not play a legitimate role in discussion. They argue that censorship enforced by campus administrators should not be worrisome, because codes are neither attempts by the government to censor political ideas nor attempts to perpetuate majority groups' power over minority groups. This type of censorship is initiated by university administrators solely to further the valid goals of education and scholarship. These proponents must be suggesting, then, that it is possible for university administrators, by exercise of judgment, to promulgate speech codes that only prevent the right amount of speech and will not lead down a slippery slope into gross censorship. This is a dangerous proposition. Surely those proponents of speech codes cannot deny that this nation, throughout its history, has fought censorship that at first seemed innocent and in the public interest but later became excessive. **If we put the power of censorship in the hands of a university administration, we place the university at the mercy of the morals, ethics, and judgment that those administrators possess**. We cannot trust them to be able to proscribe only speech which they do not believe belongs in the university. No one group, and no one set of values, has a monopoly on truth. **The difficulty that administrators face in promulgating speech codes that proscribe only the right amount of speech stems from their inability to articulate a useable definition which distinguishes unacceptable, injury-causing speech from speech which is necessary in academic discourse and which incidentally causes injury.** Without this distinction, administrators are impotent to draw an appropriate boundary inside which censorship is unacceptable, but outside which censorship is not. Those who codify the speech policy are not able to single out a few words or expressions that inflame racial and other tensions and guarantee that those words or phrases have neither value nor an appropriate place in academic debates and formal conversations. **Peter Byrne suggests that racial insults have little or no social value and that not even the staunchest supporter of the most absolute view of first amendment protection argues that racial insults have any significant social or individual value. But what Byrne fails to note is that the words and phrases that make up bigoted epithets simply do not always have one meaning such that society can ban the word or phrase from verbal commerce and feel confident that it will not impede society's ability to communicate completel**y. Perhaps Humpty Dumpty had the luxury to say, When I use a word ... it means exactly what I want it to mean - neither more nor less, but we do not. Supreme Court Justice Stewart stated that he could not define obscenity (in fact, he stated that it may not be possible to define it), but, he said, I know it when I see it. **Campus administrators will face the same inability to define what they are trying to censor, and it is a risky proposition to hope that they will know it when they see it. The Supreme Court has emphasized the government's inability to be a fair and competent censor. Just as the Court has pointed out democratic governments' inability to proscribe speech acceptably and denied governments the right to censor even in situations in which a substantial majority agrees that a certain expression is worthless or harmful, students, faculty, and administrators alike must likewise deny anyone the ability to proscribe categories of speech within the university, no matter how odious the speech.**

#### Lol, even he agrees – vagueness means no solvency

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

**A recurrent concern regarding rules against racial insults is their vague- ness and overbreadth. These, of course, were the bases upon which the Uni- versity of Michigan's policy was declared unconstitutional**, although the demonstrated propensity of the school to apply the policy to presumptively protected speech appears to have steered the Court's conclusions on these issues. In general, university disciplinary rules rarely are struck down for vagueness; courts usually permit universities to regulate student conduct on the basis of generally stated norms, so long as they give fair notice of the behavior proscribed. **Courts generally are more strict regarding vagueness in rules that affect speech, in no small part because of the distrust of the competence and motives of the government censor.**

#### Global empirics prove that hate speech laws increase violence – multiple warrants.

**Ash:** Timothy Garton Ash (Isaiah Berlin Professorial Fellow at St. Antony’s College, University of Oxford; Senior Fellow at the Hoover Institution, Stanford University; prize-winning author of many books of political writing). Free Speech: Ten Principles for a Connected World. Yale University Press. 2016. RP

-Reverse enforcement

-Underground

-Pressure Valve

Moreover, so much depends on the context. Harmless hate speech in Reykjavik is dangerous speech in Rwanda. In the argument that follows, I shall confine myself to mature democracies, having the rule of law, diverse media and a developed civil society. **Here there is a compelling case that the advantages of hate speech laws, as they have actually worked over the last half century, are outweighed by the disadvantages, including their unintended consequences. There is scant evidence that mature democracies with extensive hate speech laws manifest any less racism, sexism or other kinds of prejudice than those with few or no such laws. Take France, which has a relatively high level of hate speech prosecutions. There were about 100 convictions per year in the five-year period from 1997 to 2001, and an annual average of 208 in 2005 to 2007. French courts have convicted Brigitte Bardot five times for incitement to racial hatred, on account of her fulminating attacks on Muslims in France, starting with the way they slaughter animals.** The distinguished intellectual Edgar Morin was found guilty for a fierce attack on Israel’s treatment of the Palestinians, and a member of parliament, Christian Vanneste, for expressing ‘homophobic views’, although both convictions were overturned on appeal. **Yet France has endemic discrimination in its labour market against people of migrant origin and especially Muslims, racist monkey chants in its football stadiums and a xenophobic party, the Front National, which gains the support of a large number of French voters. Similarly, the British writer Kenan Malik has pointed out, recalling his own personal experience of racist attacks, that the decade after Britain passed legislation against incitement to racial hatred in 1965 was probably the country’s worst for racism. Plainly we can’t argue that the persistence of prejudice is a result of the laws, and some will say that, on the contrary, it shows how necessary they are. Indeed, the apparent ineffectiveness of Britain’s 1965 law was one reason it was strengthened in 1976, so that you did not even have to intend to stir up racial hatred; your words or actions just had to be ‘likely to’ stir it up**. A causal connection cannot be proven either way. **What is clear is that there is no correlation between the presence of extensive hate speech laws on the statute books and lower levels of abusively expressed prejudice about human difference.** If, as Errera argues, the main purpose of such laws is to enforce civility, they have not succeeded. Interestingly, even two of the most outspoken American critics of racist hate speech, from the perspective of what they call ‘critical race theory’, Jean Stefancic and Richard Delgado, found the efficacy of such laws to be ‘an open question’. The application of good laws is clear, predictable and proportionate. That of hate speech laws has been unpredictable and often disproportionate. **In Canada, the uncertainty has been even greater because findings on hate speech have in part been delegated to Human Rights Commissions in each individual province.** As a result, the Canadian Human Rights Tribunal found in 2009 that section 13 of the Human Rights Act, which mandated controls over hate speech on the internet, violated the free speech clause of the country’s own Charter of Rights and Freedoms. Section 13 was repealed in 2013. What is more, laws intended to afford protection to ‘vulnerable minorities’ have often ended up being used against members of those minorities. There is a reason for this. **Members of a secure majority, where it still exists, are less likely to express themselves in extreme terms**. They don’t feel the need to scream to make themselves heard. The internet has brought an explosion of offensive, extreme expression, exacerbated by the online norm of anonymity. Reacting instantly, behind the mask of a pseudonym, people jerk out things online that they would never say when using their real name in a face-to-face encounter or public meeting. If we believe in openness and robust civility, we must address this challenge, and I shall say more about how this can be done by civil society, online communities and private powers. **However, this new reality weakens rather than strengthens the case for hate speech laws**. Given this explosion, the law struggles to identify and prosecute even those cases of online abuse which plainly do constitute incitement to violence against particular people, harassment and the online equivalent of ‘fighting words’. It does not catch many of them. If, beyond that, the state attempts to prosecute more general forms of rude and offensive speech, it will be bound to catch only a tiny fraction of what is out there. As the Hungarian scholar Peter Molnar notes, trying to stop extreme speech on the internet is ‘like jumping on a shadow’. The result will be even more legal uncertainty. Again and again, people will ask: ‘why me but not him—and him, and her, and him?’ **The very principle of equality—specifically a claim for equal treatment by the state—which is one of the justifications for such laws will be undermined by their arbitrary application.**

#### Psychology proves that banning hate speech makes it more prevalent

**Stevens:** Stevens, Sean [Contributor, Heterodox Academy] “Free Speech is the Most Effective Antidote to Hate Speech.” Heterodox Academy. December 2016. RP

On December 6, Texas A&M University will play host to Richard Spencer, a leader of the “alt-right” movement, and an open white supremacist. **Many will likely view Spencer’s presence at Texas A & M as confirmation that Donald Trump’s election to the presidency has allowed fringe political views to enter mainstream discussion.** When Spencer, or someone like him, makes a statement like “America was, until this last generation, a white country, designed for ourselves and our posterity. It is our creation and our inheritance, and it belongs to us,” many people may question why we should remain committed to the First Amendment. This post argues why members of an academic community need to remain steadfast in that commitment, even when faced with a figure like Richard Spencer. When hardcore racists and xenophobes remain consigned to obscure message boards and poorly attended events, it’s fairly easy to believe in freedom of speech and expression. But when organized hatred arrives on campus, such defenses can be perceived as granting unacceptable cover to viewpoints that are widely considered despicable and immoral. To many, such viewpoints don’t deserve the protection of the First Amendment. **Unfortunately, the impulse to start limiting speech – either with on- the-books campus speech codes or simply through stepped-up social enforcement of speech taboos – is likely to pour gasoline on the fire and make the problem worse. Research suggests that restrictions perceived to threaten or possibly eliminate behavioral freedoms may trigger “psychological reactance”, and increase one’s desire to engage in the restricted behavior. For instance, Worchel and colleagues (1975) assessed desire to hear censored material among students at the University of North Carolina. The experimenter informed participants that they would soon be hearing a tape recording of a speech and that the study was interested in how personal characteristics impact a speaker’s ability to get their message across. Some participants were then informed that because a student group (either the YM-YWCA or the John Birch Society) on campus was opposed to the content of the speech, the experimenter would not be able to play the taped recording. Consistent with reactance theory, participants who were informed they could not hear the content of the speech, reported a stronger desire to do so. This effect occurred regardless of whether the student group was viewed positively (YM-YWCA) or negatively (the John Birch Society). More recently, Silvia (2005) investigated if interpersonal similarity could override the experience of psychological reactance. In two separate studies, psychological reactance occurred when people felt their attitudinal freedom was threatened when interpersonal similarity was low, but not when interpersonal similarity was high**. More broadly, while ingroup favoritism may depend more on positive affect towards the ingroup, perceived discrimination by an outgroup increases ingroup identification, and can increase anger, hostility and aggression towards outgroups. If we incorporate these findings into our thinking about whether to censor a speaker, the following chain of events does not seem to be an implausible reaction: 1. **Censoring a speaker may increase some people’s desire to hear that speaker’s message, particularly those who perceive the speaker as similar to them in some way. 2. Censoring a speaker may be perceived as threatening to people who perceive the speaker as similar to them**. 3. The perception of threat is likely to increase identification with a salient ingroup. 4. Increased ingroup identification in response to threat may result in anger, hostility, and aggression towards outgroups. **In other words, censoring and disinviting a speaker such as Richard Spencer may actually make him and his views more popular. Instead of acting as an antidote to hatred, censorship may pour gasoline onto an already simmering fire**. Calls to disinvite, and thus censor, Spencer may produce the unintended consequence of promoting his vile, racist views. **People like Spencer revel in the power of their words to arouse emotions and strong reactions in their opponents. They interpret attempts to silence and exile their voices as fear of the truth they possess.** The alt-right movement confidently hoists the pirate flag of rebellion, but it can only claim to be rebellious if it can point to the “powers that be” trying to shut them down. Meeting hate speech with more speech is hard. It is extremely difficult to engage with people who hold beliefs that call another’s humanity into question. But engagement may be the most effective tool we have. **Speech codes and disinvitations may feel good in the moment, but they represent an easy way out. Often, what has been made taboo and socially undesirable comes back stronger than before.**

#### Free speech is empowering – it can be cathartic for the oppressed to engage in bottom up mobilization

**Stevens:** Stevens, Sean [Contributor, Heterodox Academy] “Free Speech is the Most Effective Antidote to Hate Speech.” Heterodox Academy. December 2016. RP

**We believe a stronger antidote is needed, and that antidote is more speech. To challenge Spencer, this speech can take different forms; and on December 6, some may find it cathartic, empowering and/or exciting to do so.** However, we urge that opposition be constructive, not disruptive. **Donating to counter causes, such as the Anti-Defamation League, the Simon Wiesenthal Center, and the National Organization for Advancement of Colored People’s legal defense fund, that are actively combatting people like Spencer and his ideas is one useful tactic. Indeed, shortly after the announcement that Spencer would be speaking on campus, the psychology department at Texas A & M launched a fundraising campaign to protest Spencer and his racism. Joining this protest and funding groups opposed to Spencer is a form of speech and action that makes Spencer weaker, not strong. Same thing for attending his talk and rebutting his speech during the question and answer period. Speech can be deployed as a scalpel, able to cut through vitriol, rhetoric and mendacity to help counter speech that advocates for harmful ideas and outcomes.**

#### Speech codes can’t solve, and counter-speech is better.

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

In the above analysis I have attempted to prove that the Constitution can and should be read to afford universities the authority to prohibit racial in- sults by members of the academic community. **It does not follow from this, however, that every college and university should explicitly proscribe racial insults. Although such a rule might effectively stem verbal abuse, each school must carefully consider whether such regulations would likely be ef- fective in its setting and whether any benefits so gained would exceed the undoubted costs of such regulation of speech.** Permit me to expand on these prudential considerations. **Disciplinary rules are the least effective way that a university can enhance the quality of speech or foster racial tolerance among its members. The educational program must celebrate and instruct its students in the beauty and usefulness of graceful and accurate speech** and writing; a liberal education should leave students intolerant of propaganda and commercial manipula- tion, and competent to directly and forcefully express coherent views as citi- zens. Such teaching is not amoral; the graduate ought freely to prefer the exercise of skill, reflective perception, and an abiding curiosity to desires for acquisition, consumption, and domination. Without the university's consis- tent action on a commitment to reasoned discourse as central to its mission, the university's attempt to prohibit insulting or lewd speech may seem a hyp- ocritical denial of its own failings. **Similarly, prohibiting racial insults will advance racial harmony on a cam- pus only when the university has effectively committed itself to educate lov- ingly the members of every ethnic group**. Although nearly every university admits minority students using criteria that aspire in good faith to be fair, many have failed to transform themselves into truly multi-ethnic institutions. Not to have succeeded at this daunting task does not merit reproach; the university's origins and traditions are explicitly European, growth and ac- commodation to the extent required to create a multi-ethnic community must take time and witness false steps. However, not to have made plain that blacks, hispanics, Asians, Indians, and others who have been excluded in the past are not only now welcome, but are requested to collaborate in shap- ing new university structures and mores so that the benefits of advanced edu- cation will be available without regard to birth and so that the university can continue to spawn for a changing society a cosmopolitan culture based on reason and reflection standing above tribal fears and blind desires, not to have begun this work in earnest merits regret and will provoke anger. **Uni- versities that pass rules against racial insults which are not part of a compre- hensive commitment to ethnic integration will serve only to exacerbate racial tensions. Schools that adopt prohibitions on racially offensive speech ought to en- force them with restraint**. Certainly, when students have sought to intimidate or frighten other students with racial insults, the school should treat this behavior as a fundamental breach of university standards meriting the strongest punitive measures. But often insulting expressions will result from insensitivity or ignorance; complaints about such behavior should be seen as opportunities for teaching, and creative informal measures that make the of- fenders aware of the harmful consequences and injustice of their behavior should be pursued. The school should also provide succor to the victim whose hurt and anger must be acknowledged and meliorated. **But severely punishing ignorant young people for expressions inherited from their parents or neighborhoods may serve to harden and focus their sense of grievance, create martyrs, and prolong racial animosity**. Deans who administer such rules must overcome their personal repugnance at racist speech and enforce the rules for the benefit of the entire community. Controversial interpreta- tive application of the rules should be placed in the hands of faculty and students representative of the entire institution, and the accused, the victim, and the dean should have an opportunity to express their perspectives.

#### Even lines such as racial insults are arbitrary and permit state censorship

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

The case for protecting racist speech against general governmental prohibition or punishment must stand on pessimism about the ability of a pluralistic and democratic society to censor any form of expression without degenerating into an attempt to suppress political opposition or cultural differences.' 0 This argument has two constituent parts. **First, government has no acceptable criteria for distinguishing between valuable and worthless speech. Even a well-meaning censor cannot in principle distinguish between an insult and a good faith assertion that is controversial and offensive to members of a racial group, such as a speech arguing that affirmative action has damaged performance in some city offices because blacks with substandard test scores have been hired. Second, the implementation of governmental criteria will most likely become an expression of the political goals of the group that controls the censor's office. For example, it has been argued that efforts to suppress racial insults in universities reflect the political power of minorities in universities controlled by a liberal elite, and that liberals and minorities should be concerned that the same forms of censorship will be used against them if conservatives gain control of the universities**. This argument is formidable both in practice and in principle. One need only refer to the current controversy about the National Endowment for the Arts sponsorship of "obscene" artistic displays to demonstrate how likely it is that censorship will be incompetent and politically motivated.12 Much of the lingering opposition to prohibitions on pornography stems from memo- ries of government agents seizing copies of Ulysses and Lady Chatterly's Lover.' 3 The specter of Joe McCarthy and the House Un-American Activi- ties Committee still haunts our notions of academic freedom.' 4 These bad experiences only confirm in practice what liberals have long argued in princi- ple: no official orthodoxy should prescribe what citizens may say on any issue.' 5 **Within the confines of the Constitution and the law, government holds only to the preferences held by shifting majorities**. The bright side of this tradition is the citizen's broad liberty to express herself; the dark side is the government's lack of moral principle and authority. Governmental crite- ria for placing some forms of expression beyond the pale are suspect not simply because individual censors may be stupid or venal, but because democratic governments lack permanent commitments to determinate moral val- ues from which a censor could derive acceptable criteria for regulating speech. Our insistence on free speech stems not so much from optimism about the emergence of truth from open debate as from realistic pessimism about the character of representative government. Thus, the argument against regulating racist speech primarily cautions against the precedential effect of permitting censorship. Leading cases on the protection for other types of offensive speech bear out this emphasis on the incompetence of the censor. The Supreme Court's opin- ion in Cohen v. California16 deserves particular mention, both because it is such an excellent opinion and because the case typifies the era in which stu- dent free speech principles were developed. Cohen was arrested for wearing in a courthouse a jacket bearing the message, "Fuck the Draft." The Supreme Court held that his consequent conviction for "offensive conduct" violated the first amendment. 17 In his opinion for the Court, Justice Harlan rejected the State's argument that it could constitutionally punish "public utterance of this unseemly expletive in order to maintain what [it] regard[s] as a suitable level of discourse within the body politic.""' Harlan wrote that in a "diverse and populous society" such as the United States, "no readily ascertainable general principle exists" for the state to decide which expressions should be prohibited.19 After all, "one man's vulgarity is another man's lyric. Indeed, we think it largely because governmental officials can- not make principled distinctions in this area that the Constitution leaves mat- tersoftasteandstylesolargelytotheindividual."20 Cultural pluralism and relativity of values deprive the state of any legitimacy in seeking to limit the forms of speech in order to strengthen overall communication. 2 1 Because the censor cannot know what manner of speech most effectively communicates ideas to people of differing cultures and abilities, it has no principled basis for outlawing any form of speech. Harlan follows his appraisal of governmental incompetence to censor with a warning about the dangers of bad faith: "In- deed, governmental units might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views."' 22 Thus, Cohen relies on a view of the state as an institution at once without moral commitments sufficient to provide justifiable criteria for prohibiting certain forms of speech, and subject to popular control such that prohibition of any form of speech likely will entail the pursuit of the political program of whatever majority might temporarily gain control of government machinery.

### A2 Solves Case – Panels

#### This is an empirical claim without an empirical warrant – the panels could just be a bunch of white guys

#### This is so miscut – the first line of the evidence says “the least effective way is disciplinary”….

## Suicide PIC

#### Suicide-encouraging speech is NOT constitutionally protected – 39 states criminalize it.

**WGBH:** WGBH. [Public Radio Station, Member of NPR] “Is Encouraging Suicide a Crime? The Massachusetts Supreme Judicial Court Takes it Up.” WGBH News*,* April 7, 2016. MZ

It's a case that first made headlines more than a year ago, Michelle Carter was charged with manslaughter after prosecutors say she encouraged her boyfriend, Conrad Roy, to commit suicide. Carter, from Plainville, Massachusetes was 17 at the time and Roy, from Mattapoisett, was 18. Prosecutors say in the [D]ays before Roy died, texts show Carter instructed Roy to stop talking about killing himself and, "just do it." On the day of his death, officials say Carter both texted and spoke on the phone with Roy as he turned on a generator in the cab of his truck with the goal of killing himself with the carbon monoxide and when, at one point, Roy got out of the truck, Carter told him to get back in. Now, **[T]he question before the state's highest court is whether encouraging someone to kill themselves is, in this case, involuntary manslaughter.** Criminal Defense Attorney Brad Bailey (@Brad4Justice) and Criminal Law Attorney Jack Cunha joined Jim on Thursday to discuss. Bailey said he doesn't think the prosecution can meet the elements of manslaughter. "There's no affirmative act here," he said. "We don't have an assisted suicide prohibition [in Massachusetts.] **There are 39 states with laws that make encouraging or assisting in a suicide illegal.**”

#### Perm do the counterplan – it’s not protected speech

**Forliti:** Forliti, Amy [Contributor, The San Diego Union-Tribune] “Prosecutor: Encouraging suicide not free speech.” October 2010. RP

**A former Minnesota nurse charged with aiding the suicides of two people was not covered by free-speech protections when he sought out depressed people online and encouraged them to kill themselves, a prosecutor argued in court documents Wednesday**. William Melchert-Dinkel, 48, of Faribault, is charged with two counts of aiding suicide in the deaths of an English man and a Canadian woman. **His attorney has asked that the case be dismissed on free-speech grounds, and argued the state's aiding suicide law is too vague. In his response Wednesday, Rice County Attorney Paul Beaumaster wrote** there is no case law that says speech is protected if its goal is to obtain someone's death**.** **He also said Melchert-Dinkel knew what he was doing was wrong. He said Melchert-Dinkel's actions are the equivalent of shouting "fire" in a crowded theater and "words meant as an incitement to illegal action or action for the destruction of life do not constitute free speech."** Beaumaster said Melchert-Dinkel was obsessed with suicide and hanging, and cruised the Internet for potential victims. When he found them, he posed as a female nurse, feigned compassion, and offered step-by-step instructions on how they could kill themselves, Beaumaster said. He also entered phony suicide pacts. "**This was not public speech or discourse or honest individual discussion as to the concept of suicide**, this was Mr. Melchert-Dinkel attempting by deception to gratify his own depraved desires to push individuals over the ledge," Beaumaster wrote. Melchert-Dinkel's attorney, Terry Watkins, did not immediately return a phone message seeking comment Wednesday. Watkins filed documents last month arguing that courts have protected speech on the Internet. He cited a U.S. Supreme Court decision that noted regulating content on the Internet "is more likely to interfere with the free exchange of ideas than to encourage it." Melchert-Dinkel was charged in April with two counts of aiding suicide in the 2005 hanging death of Mark Drybrough, 32, of Conventry, England, and the 2008 drowning of Nadia Kajouji, 18, of Brampton, Ontario. Beaumaster wrote that Melchert-Dinkel admitted to participating in online chats with at least 15 to 20 people about suicide and entering into fake suicide pacts with about 10 people, five of whom he believed killed themselves. In Drybrough's case, Beaumaster wrote, Melchert-Dinkel used the handle "Li Dao" and gave Drybrough detailed instructions on how to hang himself. Li Dao also told Drybrough he would soon commit suicide himself by hanging. In e-mails to Li Dao, Drybrough wrote he was ill but afraid to commit suicide and that he wished he had Li Dao's courage, Beaumaster said. Beaumaster said Kajouji told Melchert-Dinkel - who was posing as a nurse named "Cami" - that she would jump into a frozen river, wearing ice skates to make it look like an accident. Beaumaster wrote that Cami stated hanging would be better and promised she would hang herself with Kajouji the next day if her jump was unsuccessful. Minnesota's statute says whomever "intentionally advises, encourages, or assists another in taking the other's own life" is committing a crime. Watkins, Melchert-Dinkel's attorney, has argued the Legislature hasn't specified what type of behavior is prohibited under the aiding suicide law and that it's not clear if speech is prohibited. He said his client had no direct participation in any suicides. But Beaumaster wrote that the law is clear and that Melchert-Dinkel knew he was committing a crime. "The statute leaves no room for wild speculation as to meaning or application," Beaumaster wrote. He added that during the investigation, Melchert-Dinkel admitted to posing as a female nurse online and offering suicide advice, but said he stopped after about five years because he knew it was wrong. He said Melchert-Dinkel also called his own actions "disgusting." It's not clear when Rice County District Court Judge Thomas Neuville will make a decision on the defense request to dismiss the case. Watkins has also asked Neuville to throw out Melchert-Dinkel's confession, and that decision is pending. Kajouji's mother, Deborah Chevalier, said Ottawa police told her Wednesday that they would not be bringing charges against Melchert-Dinkel in connection with her daughter's death because he is already facing trial in the U.S. She said she hopes the Minnesota case goes to trial so a precedent can be set. "No matter what happens with this, he's not going to be punished as he should," Chevalier said. "In reality, he's a serial killer."

#### ASSISTED SUICIDE DISAD: banning suicide “encouragement” makes it too easy to ban needed assistance.

Colb: Colb, Sherry F. [Professor of Law and Charles Evans Hughes Scholar, Cornell University Law School] “Suicide, Speech, and the Constitution.” Dorfonlaw.org, April 16, 2014. CH

In other words, I believe that the U.S. Supreme Court got it wrong in the case of Washington v. Glucksberg, where it upheld a law prohibiting physician assistance in dying. If one accepts, as I do, the proposition that the law should not categorically bar doctors from helping a person commit suicide in all circumstances, then one necessarily believes that a suicide is not always (as it so often is) a lawless act in which other people necessarily have no legitimate role to play. [i]t follows from this view that explaining to a person who wishes to commit suicide how one would go about carrying out the plan is, at least sometimes, the sort of speech that should receive constitutional protection. That is, speaking in order to inform a person who is contemplating the exercise of a constitutional right about how to go about exercising the right ought itself to be a protected form of speech. Accordingly, at least in some situations, [A]pplying a prohibition against ‘assisting’ a suicide to speech could well be thought to violate the First Amendment. And even if the two people who killed themselves in the Minnesota case were not among those with a constitutional right to commit suicide, [I]t might still be inappropriate to ban speech explaining how someone would go about killing [themselves] himself or herself, given the possibility of "chilling" the speech of those legitimately providing useful information to those exercising a constitutional right. The majority in Melchert-Dinkel should therefore perhaps have struck down, instead of upholding, the section of the Minnesota statute prohibiting assistance of suicide, as applied to speech.She adds:One can potentially assist a person who wishes to commit suicide in a number of ways. The suicidal individual, for example, might not have access to lethal doses of medications, and the person assisting the suicide (if a medical professional, for instance), could provide those doses to the suicidal individual. The ‘assistant’ could also explain to the suicidal person who does not know how to commit suicide painlessly that one effective and painless method involves \_\_\_\_\_ (with the knowledgeable person filling in the blanks). Yet another manner of assisting could take the form of presence: [S]omeone who very much wanted to commit suicide but was too fearful to do so in isolation might be assisted by a friend or doctor or relative who visits the suicidal person's home and sits with him [them] as he [they] ends his [their] own life. In each of these cases, the person who "assists" a suicide makes it easier for someone who wants to kill [themselves][.] herself or himself to do so, by providing the means, the necessary information, or the comfort of company. I believe that [S]uicide ought in some cases to be a constitutionally protected[.] option, under controlled circumstances, for someone who no longer wishes to live: such situations might include that of a person who is in tremendous pain that simply cannot be effectively relieved to the patient's satisfaction or that of a person suffering from an illness that will progressively rob him of memory and movement.

#### HARMFUL STRATEGIES: failing to dissuade suicidal people can be seen as encouragement, but is the BEST response – experts confirm.

Smith et al: Smith, Melinda Smith [Editorial Director], Jeanne Segal, Ph.D. [Educational Psychologist, Co-Director], and Lawrence Robinson [Senior Writer and Editor]. “Suicide Prevention: How to Help Someone Who is Suicidal and Save a Life.” HelpGuide.org, 2017. KK

When talking to a suicidal person[,] Do: Be yourself. Let the person know you care, that he/she is not alone. The right words are often unimportant. If you are concerned, your voice and manner will show it.¶ Listen. [l]et the[m] suicidal person unload despair, ventilate anger. No matter how negative the conversation seems, the fact that it exists is a positive sign.¶ Be sympathetic, non-judgmental, patient, calm, accepting. Your friend or family member is doing the right thing by talking about his/her feelings.¶ Offer hope. Reassure the person that help is available and that the suicidal feelings are temporary. Let the person know that his or her life is important to you.¶ Take the person seriously. If the person says things like, “I’m so depressed, I can’t go on,” ask the question: “Are you having thoughts of suicide?” You are not putting ideas in their head, you are showing that you are concerned, that you take them seriously, and that it’s OK for them to share their pain with you.¶ But [D]on’t: Argue with the[m][,] suicidal person. Avoid saying things like: "You have so much to live for," "Your suicide will hurt your family," or “Look on the bright side.”¶ Act shocked, lecture on the value of life, or say that suicide is wrong[,]¶ Promise confidentiality. Refuse to be sworn to secrecy. A life is at stake and you may need to speak to a mental health professional in order to keep the suicidal person safe. If you promise to keep your discussions secret, you may have to break your word.¶ [o]ffer ways to fix their problems, or give advice[.], or make them feel like they have to justify their suicidal feelings. It is not about how bad the problem is, but how badly it’s hurting your friend or loved one.¶ Blame yourself. You can’t “fix” someone’s depression. Your loved one’s happiness, or lack thereof, is not your responsibility.

#### MENTAL HEALTH TREATMENT: schools punish students for even DISCUSSING suicide.

Lukianoff: Lukianoff, Greg. [President, Foundation for Individual Rights in Education] “The 10 Worst Colleges For Free Speech: 2017.” February 22, 2017. CH

Any list of schools that most shocked the conscience with their censorship in the past year would have to include Northern Michigan University (NMU). Until last year, NMU had a long-standing practice of prohibiting students suspected of engaging in or considering self-harm from discussing “suicidal or self-destructive thoughts or actions” with other students. If they did, they faced the threat of disciplinary action. After FIRE brought this information to a national stage, causing a social media firestorm, NMU hastily distanced itself from the practice and publicly committed not to punish students for discussing thoughts of self-harm. Unfortunately, NMU has not answered all of its students’ questions. NMU is currently under investigation by the Departments of Justice and Education for allegations that it threatened to disenroll a student for discussing mental illness with a friend. The school allegedly forced the student to sign a behavioral contract promising not to do so again. Is that student now free from her contract? Is every student who received a letter about discussing self-harm now free to speak out? Will NMU ever acknowledge and apologize to the countless students it hurt in the past, many of whom have spoken up to FIRE and online? Until we get answers, NMU remains on our list of worst schools for free speech.

The risk of students not discussing suicide at all for fear of being punished is too great.

#### Suicide limits spill over – they restrict the ability of people to engage in open dialogue about suicide for educational purposes

**Hudson**: Hudson, Daisy [The Timaru Herald] “Timaru principals back suicide speech ban.” April 2016. RP

**Timaru principals are backing the stance of an Oamaru school over banning a student's speech about suicide. Waitaki Girls' High School student Shania Kohinga, 15, decided she wanted to highlight a very personal issue and talk about suicide as part of an English assignment.  The topic was deemed inappropriate for the assignment, and Shania was told she could not deliver the speech to her classmates.** The school's position has been supported by Timaru principals, who say talking about the issue in a classroom setting could have unintended consequences. Craighead Diocesan School principal Lindy Graham said it was "quite a sensitive issue". "We need to consider all those in the audience, as well as the student wishing to give the speech on a very sensitive topic. "**We try to steer the students towards topics that offer hope and show courage in the face of adversity, etc, instead of dwelling on such deeply personal issues which have tragic consequences.**" A classroom was not always the best forum for such speeches, she said. "However, if the student does want to air such personal issues, they would be invited to do their speech to a different audience - rather than a whole class who could find it upsetting for their own personal reasons. "There would be a need to ensure that there is appropriate support available afterwards." Timaru Girls' High School principal Sarah Davis said she agreed with Waitaki Girls' High School's stance on the issue. Students needed to be able to express their experiences, but they sometimes did not think through the ramifications, she said. "The big way we deal with it is through our guidance system, because it's a very specialist situation." **Ministry of Education head of early learning and student achievement Lisa Rodgers said schools had discretion over how they delivered the national curriculum and how they approached potentially sensitive issues with students**. The decisions schools made depended on a range of factors, including the needs of students, the values of the school and their school community, and the expertise and experience of the teachers. Decisions could also be influenced by recent events in the school community, she said. "For example, it would be understandable if a school decided youth suicide was too sensitive a topic for creative writing assignments if there had been recent incidents within the school community."If parents had concerns, they should raise them with the school or with their representatives on the board of trustees, Rodgers said.

#### Perm do the counterplan – trying to get someone to commit suicide is incitement to violent and manslaughter – it’s not protected speech

**Hawking**: Hawking, Tom [Contributor, Flavorwire] “Should It Be Illegal to Tell Someone to Kill Themselves?” *Flavorwire.* Apil 2015. RP

Is Harper right? **Should it be illegal to tell someone to kill themselves, and/or should someone making such a statement face legal consequences if the person they tell to kill themselves actually does so? The question this immediately raises, of course, is one of freedom of speech.** **But freedom of speech has never been absolute. The classic example (albeit a rather vexed one, given that it was originally used in a**[**case**](http://en.wikipedia.org/wiki/Shouting_fire_in_a_crowded_theater#The_Schenck_case)**about whether or not opposing the draft was permissible free speech) is that you can’t falsely yell “Fire!” in a crowded theater**. The reasoning is simple: you’re saying something malicious in an attempt to bring harm to people. **The actual legal position in the US is subtly different:**[**Brandenburg vs. Ohio (1969)**](http://en.wikipedia.org/wiki/Brandenburg_v._Ohio)**held that banned speech is “that which would be directed to and likely to incite imminent lawless action.”** This [can include](http://www.nytimes.com/roomfordebate/2013/03/05/in-free-speech-a-line-between-offputting-and-illegal/inciting-violence-is-not-protected-speech) incitement to violence: violence is illegal, and thus incitement to violence can satisfy the test of “incit[ing] imminent lawless action,” with the caveat that the “imminent” question is relevant here. No one’s suggesting that killing yourself is illegal, so there’s no question at the moment that I can jump online and tell a vulnerable person to kill themselves, and avoid any sort of legal consequences. Should I be able to do so? That’s a different question. There’s a very American aversion to the idea of any sort of speech being criminalized — it seems to fly in the face of the idea that American citizens should be able to say whatever they want, free of oversight by an overbearing government. **America’s high courts are**[**still debating the legality of online death threats**](http://www.nytimes.com/2014/11/30/magazine/do-online-death-threats-count-as-free-speech.html?_r=0)**. You might argue, however, that trying to convince a person to kill themselves via online harassment is just as harmful — moreso, even, since you can make a death threat without any intention to follow through on it, whereas you have no control over the result of an exhortation to suicide.** Clearly, these are different situations: there’s a significant difference between, say, urging a suicidal person on a bridge to jump and pushing them yourself. The fundamental difference here is one of agency: if you push someone, you’re one who has caused their death, whereas if you convince someone to jump, their death is ultimately a result of their own actions. That’s why killing someone is murder, and convincing them to kill themselves is not. **But should it be something that should be entirely free of legal consequence? Freedom of speech aside, there’s also an instinctive aversion to the idea of suggesting that you can be held responsible for the actions of another.** But again, this isn’t exactly without legal precedent. There are plenty of cases where people have filed lawsuits against several defendants for the actions of a single defendant, the implication being that the other defendants were responsible for the harm caused even if they didn’t actually carry out the damaging action themselves. (See [here](http://en.wikipedia.org/wiki/Summers_v._Tice), for instance.) There are also cases on record where relatives of someone who has killed themselves have [sued someone](http://www.nbclosangeles.com/news/local/Target-Faces-Lawsuit-Over-Employees-Suicide-289662711.html) for “causing” the suicide, and it doesn’t exactly take impressive mental gymnastics to suggest that there might be a [chain of causation](http://en.wikipedia.org/wiki/Causation_(law)) between saying “you should kill yourself” and the person to which you’re saying this proceeding to kill themselves. In a purely moral sense, it’s worth considering whether there might ever be a situation in which incitement to suicide might be morally acceptable. There are cases when killing, after all, is justified: self-defense, the defense of others, etc. One might envisage a situation where, say, a woman is married to a man who is both violently abusive and periodically suicidal; by encouraging his desires to cause his own death, she would effectively be acting in self-defense. But even so, that’s not an argument against any sort of law existing at all — after all, the fact that there are circumstances in which homicide is justified doesn’t change the fact that homicide is fundamentally illegal. Perhaps the best way to answer this question is to think about what law is for. At its most fundamental level, the law exists as part of a social contract, wherein we surrender some part of our liberty in order to be provided with safety and security. This was put most succinctly by John Stuart Mill in On Liberty, wherein he argued that, “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.” This idea, which Mill called the “harm principle,” underpins many of the tenets of liberal democracy. Free speech advocates might argue that restricting someone’s right to speak is causing them harm; but what is the law for if not to protect the most vulnerable? All of which boils down to this fact: words have consequences, and speech carries with it responsibilities. Too often the First Amendment is used as a knee-jerk justification for abrogating those responsibilities — especially online, where anonymity means that pretty much any semblance of human decency is abandoned. **People who are suffering from mental illness and/or are suicidal are among the most vulnerable members of our society, and it should be those people the law aims to protect.** And if you’re heartless and irresponsible enough to tell a clearly suicidal person to kill themselves, then damn right you shouldn’t walk away without any consequences.

## Champions Word PIC

Omitted

## Fake News PIC

#### Fake news can’t be defined

**Calvert:** Calvert, Clay [Professor & Brechner Eminent Scholar in Mass Communication and Director of the Marion B. Brechner First Amendment Project at the University of Florida, Gainesville, Fla. B.A., 1987, Communication, Stanford University; J.D. (Order of the Coif), 1991, McGeorge School of Law, University of the Pacific; Ph.D., 1996, Communication, Stanford University. Member, State Bar of California.] “[Fake News, Free Speech, & the Third-Person Effect: I’m No Fool, But Others Are](http://wakeforestlawreview.com/2017/02/fake-news-free-speech-the-third-person-effect-im-no-fool-but-others-are/).” February 2017. RP

The presidential election season of 2016 brought with it massive news media hand- wringing, if not outright panic in some quarters, about so-called fake news.[1] **As described by the New York Times, fake news is “widely understood to refer to fabricated news accounts that are meant to spread virally online.”[2] According to that newspaper, “[m]ost of the fake news stories are produced by scammers looking to make a quick buck”[3] and “[t]he vast majority of them take far-right positions.”[4] Others, however, contend “[t]he term ‘fake news’ is fuzzy. It can refer to a multitude of problems, including disinformation, propaganda, [and] conspiracy-mongering.”[5] It can even sweep up satirical news articles.[6]**

#### Banning fake news increases state power

**Calvert:** Calvert, Clay [Professor & Brechner Eminent Scholar in Mass Communication and Director of the Marion B. Brechner First Amendment Project at the University of Florida, Gainesville, Fla. B.A., 1987, Communication, Stanford University; J.D. (Order of the Coif), 1991, McGeorge School of Law, University of the Pacific; Ph.D., 1996, Communication, Stanford University. Member, State Bar of California.] “[Fake News, Free Speech, & the Third-Person Effect: I’m No Fool, But Others Are](http://wakeforestlawreview.com/2017/02/fake-news-free-speech-the-third-person-effect-im-no-fool-but-others-are/).” February 2017. RP

Ultimately, as if presciently predicting the controversial rise of fake news in 2016, Gey concluded that “purveyors of nonsense are merely incidental beneficiaries of the ideological agnosticism mandate that has characterized the expansion of First Amendment protections during the twentieth century.”[31] The agnosticism mandate encompasses the notion that “collective political control of speech is inconsistent with democratic self-governance not because it will lead to more social evils in the form of bad political results, but rather because free speech regulation undermines the very character of the democratic political system itself.”[32] **In brief, while fake news possesses no political or social value, allowing the government in the realm of politics—the realm in which today’s concerns about fake news fester and flourish—to define what is true and false improperly vests a deep skepticism about the good faith of those controlling the government. We instinctively assume that the government does everything for a political reason. If the government punishes the expression of factual falsehoods—such as Holocaust denial —it does so because the statement of such facts are bound up with political perspectives that the government seeks to undermine. temporary political majorities with authority that contradicts democratic self-governance.**

#### The counterplan is paternalizing

**Calvert:** Calvert, Clay [Professor & Brechner Eminent Scholar in Mass Communication and Director of the Marion B. Brechner First Amendment Project at the University of Florida, Gainesville, Fla. B.A., 1987, Communication, Stanford University; J.D. (Order of the Coif), 1991, McGeorge School of Law, University of the Pacific; Ph.D., 1996, Communication, Stanford University. Member, State Bar of California.] “[Fake News, Free Speech, & the Third-Person Effect: I’m No Fool, But Others Are](http://wakeforestlawreview.com/2017/02/fake-news-free-speech-the-third-person-effect-im-no-fool-but-others-are/).” February 2017. RP

**The implications of the third-person effect for the regulation of fake news should, by now, be clear. People who scream and cry for its regulation by the government likely believe that they are not influenced or impacted by fake news in any way. They are too smart for that. Instead, it is only the foolish and simple-minded “others”—dare one even say the non-elites or, perhaps, the huddled masses in so-called fly-over states?—out there who surely will be duped by it.** Therefore, the logic goes, it should be censored in the name of promoting a healthy and hearty democracy. This logic, of course, provides a rich vein of research for communication scholars to mine in the near future. But, for now, it should make those calling for censorship take caution in their tone.

## Costumes PIC

#### Costume restrictions are overboard and catch harmless costumes – chills dissent

**Bensimon:** Bensimon, Brian [Contributor, College Fix] “University of Texas issues 29-point checklist on offensive Halloween costumes.” College Fix. October 2016. RP

**Leave your cowboy boots and Hawaiian leis at home this Halloween unless you want to hear from University of Texas-Austin administrators. Sorority and Fraternity Life, part of the Office of the Dean of Students, issued its updated “**[**costume and theme resource guide**](https://drive.google.com/file/d/0B3YCK9fSaQmHVUFfTDRyblZzSnc/view)**” last week, instructing UT Greeks to avoid Halloween party costumes and themes that may “appropriate another culture or experience.” It’s one of many** [**school-sponsored guides**](http://www.thecollegefix.com/post/29668/) **or checklists recently given to the nation’s college students, particularly members of fraternities and sororities, telling them what they** [**can and can’t wear**](http://www.thecollegefix.com/post/29616/) **in the runup to Halloween**. Though schools generally don’t list penalties for wearing a costume considered offensive, a Greek official at Pennsylvania’s Gettysburg College went so far as to warn fellow Greeks their chapters could be shut down if they wear the wrong costumes. The UT-Austin document informs students right away that their costume and theme choices will be scrutinized year-round, not just for Halloween. **It advises them to keep themed social events “safe, appropriate, and fun,” and to avoid offending other subcultures by obeying a 29-point checklist.** The guide encourages students to avoid “exotic” or “unique” themes, especially those which may reference a “living culture” or “current subculture.” It suggests that “sensationalizing” transgender celebrities such as Laverne Cox and Caitlyn Jenner will be frowned upon. “Have we consulted with ‘experts?’ Is it educational?” the guide advises students in the event they decide to portray a culture. **Such “experts” include “community leaders or faculty.”** Students should also be careful to avoid “utilizing generic store-bought costumes” that may not be fully “authentic” if the theme is cultural, the guide says. It suggests hosting a “non-social event” if students want to “educate” each other about a culture. It lists 11 separate “harmful” themes, including any “generalized representation” of Asian culture or “Indigenous” cultures, such as “Cowboys and Indians,” as well as “tropical” or “fiesta.” The guide provides mixed messages when it comes to cultures associated with white people. “Harmful” themes include “Golf Pros & Tennis Hoes,” “Trailer Trash” and “Chicks and Hicks,” but the guide approvingly cites “Catalina Yacht Mixer or ‘Preppy’” in a section on suggested themes that also includes “Rep Your Favorite Team” and “Alphabet Theme.” Reflecting the guide’s overall tone of warning, however, students are admonished to consider how even the themes explicitly endorsed by the guide “can be carried out incorrectly” if party planners don’t provide “information about costuming.” Bias response team asks students to report ‘party with a racist theme’ A spokesperson for the Office of the Dean of Students told The College Fix the resource guide was shared with all “student organizations who host thematic social events,” not just Greek life, and that it’s posted on the dean’s website “year-round.” The document does not represent “rules or policies of the university,” but “students can expect to be accountable to their peers for how they represent themselves and our campus,” she said without elaborating. One such way students can hold each other accountable is by reporting bias incidents to the Division of Diversity and Community Engagement’s [Campus Climate Response Team](http://diversity.utexas.edu/ccrt/). The first potential example of bias on the reporting page is: “Do you know of a student organization hosting a party with a racist theme?” The dean’s spokesperson has yet to answer a Fix query on whether UT-Austin’s response to bias incident reports is anything like the [new reporting process](http://www.thecollegefix.com/bulletin-board/uw-madison-ratchets-back-bias-reporting-process-constitutional/) at the University of Wisconsin-Madison. That revised policy received the [blessing of the Foundation for Individual Rights in Education](https://www.thefire.org/uw-madison-demonstrates-what-a-green-light-definition-of-a-bias-incident-looks-like/) for narrowing the definition of “bias and hate” and removing punitive or even educational consequences for targets of bias complaints. The UT resource guide drew criticism from Allison Peregory, communications director for UT’s Young Conservatives of Texas chapter. “**There are certainly costumes people decide to wear on Halloween that are in poor taste, but the people who decide to wear these costumes have the right to do so,**” she told The Fix in an email. ‘It hurts recruitment, hurts our image’ – and could shut us down Gettysburg College Greek life is on such thin ice that one complaint about costumes could sink an entire chapter, a high-ranking Greek official suggested in a Thursday email obtained by The Fix. Writing on behalf of the Greek Committee on Equity and Inclusion, formed on campus last spring, [Sigma Chi Consul](https://gettysburgsigmachi.2stayconnected.com/index.php?option=com_content&view=article&id=191:undergraduate-officers&catid=36&Itemid=607) Chandler Robertson told Greek members that he “cannot emphasize enough how important it is that you be cautious” in choosing a Halloween costume. “There exists a perception of Greek organizations as backward thinking, and prone to incidents of bias,” he said. “We know this is not true; that does not matter, however. The perception of others is our reality, whether this is fair or not.” Robertson reminded Greeks that “people who might not go out often will likely make it to fraternities this weekend,” and they might be offended by a member’s costume: “It hurts recruitment, hurts our image, and isn’t worth the problems it can cause for your organization.” Even stopping to think about whether a costume might offend someone means “it is not worth the risk” to the entire chapter, he said. “There are chapters across the country that no longer exist because of bias incidents,” Robertson continued. “I do not want to see that happen here, and I believe we are all committed enough to making our campus a better place that we can make it through this weekend without incident.”

## Trigger Warnings PIC

#### Perm do both -- content warnings aren’t a suppression of free speech

**Chemaly:** Chemaly, Soraya [Contributor, The Huffington Post] “What’s Really Important About ‘Trigger Warnings’.” *The Huffington Post.* May 2014. RP

**Additionally, the idea that any trigger [content] warnings constitute censorship is not only incorrect but also definitively misleading. In most cases, no one is saying professors cannot teach texts or show videos. Nor do warnings imply some sort of apology for lessons to follow**. Nor, in the interesting choice of words of one professor quoted in the Times piece, do trigger warnings mean that students “should not be forced to deal with something that makes them uncomfortable.” **Warnings seek mainly to give students information they need in order to decide whether or not to take or stay in a class.**

#### Trigger warnings cause an increase in right wing backlash and nationalism

Tumulty and Johnson 1-4: Karen Tumulty and Jenna Johnson, “Why Trump may be winning the war on ‘political correctness’” 1-4-16 <https://www.washingtonpost.com/politics/why-trump-may-be-winning-the-war-on-political-correctness/2016/01/04/098cf832-afda-11e5-b711-1998289ffcea_story.html?utm_term=.db9bc85e5b87>

“Driving powerful sentiments underground is not the same as expunging them,” said William A. Galston, a Brookings Institution scholar who advised President Bill Clinton. “**What we’re learning from Trump is that a lot of people have been biting their lips, but not changing their minds**.” One thing is clear: **Trump is channeling a very mainstream frustration**. **In an October** poll by Fairleigh Dickinson University, **68 percent agreed** with the proposition that “**a big problem this country has is being politically correct**.” It was a sentiment felt strongly across the political spectrum, by 62 percent of Democrats, 68 percent of independents and 81 percent of Republicans. Among whites, 72 percent said they felt that way, but so did 61 percent of nonwhites. “**People feel tremendous cultural condescension directed at them**,” and that their values are being “smirked at, laughed at” by the political and media elite, said GOP strategist Steve Schmidt. “‘Political correctness’ are the two words that best respond to everything that a conservative feels put upon,” added pollster Frank Luntz, who has advised Republicans. The label is, he said, a validation that what many on the right see as legitimate policy and cultural differences are not the same as racism, sexism or heartlessness. “**Allegations of racism and sexism have turned into powerful silencing devices**,” Galston agreed. “You can be opposed to affirmative action without being a racist.” The PC backlash does not necessarily mean that people support the kinds of things that Trump is saying, or the way he says them. When the Fairleigh Dickinson pollsters added his name to the same question — prefacing it with “Donald Trump said recently . . . ” — the numbers dropped sharply. Only 53 percent said they agree that political correctness is a major problem. This is not a new debate. It has raged since at least the early 1990s, when college campuses began adopting speech codes. Some went well beyond obvious slurs — with animal rights activists contending, for instance, that the word “pet”was disrespectful and should be changed to “companion animal.” **More recently, the PC wars have flared again in academia, where there is an ongoing argument over whether campuses should be a “safe space” where students are protected from upsetting ideas, and receive “trigger warnings” when course material contains distressing information**. Few would argue that it is wrong to confront and eliminate prejudice. But even some liberals have called political correctness a form of McCarthyism aimed at stifling free expression. **Trump has brought the question from the university quad to the political arena** in a way that no leading candidate has in the past. For many, “it’s satisfying to have a loud tribune like Trump,” said David Axelrod, who was President Obama’s top campaign adviser. “But I don’t think the hunger for authentic plain speech is Trump-specific. One of the appeals of [Democratic presidential candidate] Bernie Sanders is that people think he says exactly what he thinks and is not passing it through a filter. **There is a fundamental yearning for authenticity** that is probably felt more broadly.” The edgy liberal comedian Bill Maher, who for nearly a decade hosted a talk show called “Politically Incorrect,” has said that Trump’s ideas sound “a little ­Hitler-adjacent.” But he has also noted a yearning for “somebody to say, ‘You know what, I just don’t bend to your bull----.’ And Donald Trump, I’ve got to say, I don’t agree with him on a lot, but I kind of get him. We’ve been doing the same thing.” Trump sounded the anti-PC clarion call at the first Republican debate in August, when moderator ­Megyn Kelly of Fox News challenged him on comments that he had made disparaging women. “I think the big problem this country has is being politically correct,” he said. “I’ve been challenged by so many people, and I don’t frankly have time for total political correctness. And to be honest with you, this country doesn’t have time either. This country is in big trouble. We don’t win anymore. We lose to China. We lose to Mexico both in trade and at the border. We lose to everybody.” **It is hard to follow the logic of an argument that insulting women could somehow make the country stronger overseas. But the sentiment behind it came through clearly**. **And it has been picked up by other GOP contenders**. “Political correctness is killing people,” said Sen. Ted Cruz (R-Tex.), because it prevents the Obama administration from focusing on the communications and activities of potential terrorists who are Muslims. “Political correctness is ruining our country,” said former neurosurgeon Ben Carson, after he was criticized for saying a Muslim should not be president. It is corrosive, Carson said in an interview, because “many people will not say what they believe because someone will look askance at them, call them a name. Somebody will mess with their job, their family. This was not supposed to be the way it was in America.” Last month’s terrorist attack in San Bernardino, Calif., carried out by a Muslim couple who appear to have been inspired by the Islamic State, also known as ISIS, has become a case in point for many conservatives. They say political correctness has made the Obama administration too timid in calling it what it is — which is why Cruz and other Republicans taunt the president for not uttering the phrase “radical Islamic terrorism.” “What animates ISIS is an ­apocalyptic religious philosophy. People look at that and don’t understand the unwillingness to say red is red and blue is blue,” Schmidt said. “We live in a post-fact America, where the facts are subordinate to the advancement of an ideology.” Political strategists and others say a number of other forces are behind the backlash. It has both a cultural and an economic component, and it also reflects the continuing polarization that has grown deeper during Obama’s presidency. “For many of these people, they played the game by the rules, and essentially, they got shafted,” Democratic pollster Peter Hart said. **Trump is “the voice of an aggrieved cohort in our society — lower-middle-income working whites who have taken the hit from the big changes in the economy, and are angry about it,” Axelrod said. “He creates a permission structure for others.”**

#### A consensus of psychologists agree exposure is good and trigger warnings are bad. Trigger warnings cause more trauma than they’re meant to prevent.

Waters 14 Florence Waters “Trigger warnings: more harm than good?” The Telegraph October 4th 2014 http://www.telegraph.co.uk/culture/books/11106670/Trigger-warnings-more-harm-than-good.html

**Prof Metin Basoglu, a psychologist internationally recognised for his trauma research, agreed to talk to me over the telephone about the issue**. He told me it was now generally acknowledged that anxiety-inducing trauma reminders were frequent in trauma survivors. “We come across the phenomenon a lot,” he said. “Our patients come across these cues, these reminders of trauma, and they can provoke distress in varying intensities. They respond with anxiety and distress; all of the memories come up; occasionally they have flashback episodes, which can be quite dramatic and intense.” Basoglu is the founder of trauma studies at the Institute of Psychiatry, King’s College London, but he returned in September to Turkey, where he advises at the Istanbul Centre for Behaviour Therapy and Research (which he also founded). Over the years he has worked with patients with PTSD as well as survivors of mass trauma events, and has been publishing his findings since the early Nineties. Basoglu gave me an example of how wide-ranging and idiosyncratic such triggers could be: “I worked with a torture survivor who had been forced into signing a blank sheet of paper. The authorities used it to say she had signed a confession. She was conditioned to the colour white. She was not able to come close to white socks, for example.” **According to Basoglu, “an infinite number of situations can act as triggers”, from characteristic smells, conversations, objects and social situations to watching television,** reading a newspaper and listening to the news. In a world increasingly mediated by images and content that we have no control over, does he think it’s advisable for the media to issue trigger warnings? “**There would be no point,” he said. “You cannot get a person to avoid triggers in their day-to-day lives. It would be impossible.” But, given a chance to think it over, Basoglu went much further than that. “The media should actually – quite the contrary… Instead of encouraging a culture of avoidance, they should be encouraging exposure. “Most trauma survivors avoid situations that remind them of the experience. Avoidance means helplessness and helplessness means depression. That’s not good.** “Exposure to trauma reminders provides an opportunity to gain control over them. This is the essence of the treatment that we are using to help trauma survivors. It involves encouraging the patient not to avoid reminders of trauma, but in fact to make a point of exposing themselves to reminders of trauma so that they can develop a tolerance. “I liken it to a vaccination. You get a small dose of the virus so that the body can develop immunity towards it. Psychologically it’s the same phenomenon.” When asked why he thinks the subject is rousing such strong emotions, Basoglu laughed down the telephone from his office in Istanbul. “Any form of anxiety and distress is impermissible in Western culture,” he said. Then, very soberly, he added: “Anxiety is not an undesirable emotion. It’s a human emotion.” Based on his research, Basoglu believes trauma should not be treated with methods that seek to prevent anxiety, but rather the regaining and reconstruction of a sense of control. He **referred to a study carried out after a 1999 earthquake in Turkey, for which thousands of survivors were interviewed, their recovery monitored over a period of time. It showed unexpected results at the time. “To our amazement, those that came across greater opportunities for exposure to trauma reminders recovered faster.”** The study showed that the single most important factor that contributed to decline in PTSD and depression among survivors was the return to living at home or in concrete buildings (as opposed to camps where survivors were living in tents). The report stated that living in concrete housing after an earthquake “leads to self-instigated exposure to feared situations, such as staying alone in the house… **Exposure helps survivors overcome their earthquake-related fears and to recover from PTSD and depression.” This stands for many victims of rape and abuse too**. One of his patients, a woman from Congo who had been gang-raped, was unable to go to the hairdresser because the men who raped her had dragged her on the floor by her hair. “Of course she was in total avoidance of male hairdressers,” Basoglu told me. “Her treatment – her homework – was to go to a male hairdresser and have her hair done. She recovered. Completely.” Basoglu’s team uses various memory triggers for their rehabilitation model. They make a list of avoidance behaviours, based on activities that patients are not able to engage in. The treatment involves going through the list one by one and giving exercises that involve exposure. “Reminders are really the essence of the basic conditions for recovery from trauma,” he said. He claims to have seen a 90 per cent success rate in recovery after six weekly sessions. “We advocate a media campaign whereby the public are encouraged not to avoid trauma-related thoughts or reminders,” he said, talking specifically of mass trauma events. What happens, though, when you take a trauma survivor who is confronted with anxiety and flashbacks out of a mediated or safe environment? Is the outcome the same as it is when it is in therapy? “Many people discover the benefits of exposure for themselves. I’ve seen people who have said, ‘If I hadn’t started driving soon after the accident I’d have never driven again.’ ” There is still the problem of the not insignificant 10 per cent who don’t recover. Also, is it not unreasonable, in a country that is lucky enough to offer myriad paths to trauma recovery, that people might opt for a gentler way to come to terms with their own memories? Still, if there’s a lesson to be learnt from the fury expressed on both sides of the argument, it’s that a culture that panders to the delicate of this world will only feed the more bullying side of the less-than-delicate.

#### Perm do both – trigger warnings are part of a manner restriction, which means that they aren’t infringing on constitutional rights.

**The Legal Dictionary:** The Legal Dictionary “Time Place and Manner Restrictions.” RP

**The** [**First Amendment**](http://legal-dictionary.thefreedictionary.com/first+amendment) **to the U.S. Constitution guarantees** [**Freedom of Speech**](http://legal-dictionary.thefreedictionary.com/Freedom+of+Speech). This guarantee generally safeguards the right of individuals to express themselves without governmental restraint. **Nevertheless, the Free Speech Clause of the First Amendment is not absolute**. It has never been interpreted to guarantee all forms of speech without any restraint whatsoever. **Instead, the U.S. Supreme Court has repeatedly ruled that state and federal governments may place reasonable restrictions on the time, place, and manner of individual expression. Time, place, and manner (TPM) restrictions accommodate public convenience and promote order by regulating traffic flow, preserving property interests, conserving the environment, and protecting the administration of justice.**

#### Trigger warnings and safe spaces shatter coalitions that are key to movements.

Halberstam Jack Halberstam, You Are Triggering me! The Neo-Liberal Rhetoric of Harm, Danger and Trauma, Bully Bloggers, 5/7/16.

**What does it mean when younger people who are benefitting from several generations now of queer social activism** by people in their 40s and 50s (who in their childhoods had no recourse to anti-bullying campaigns or social services or multiple representations of other queer people building lives) fee**l abused, traumatized, abandoned, misrecognized, beaten, bashed and damaged?** These **younger folks**, with their gay-straight alliances, their supportive parents and their new right to marry regularly **issue calls for “safe space**.” However, as Christina Hanhardt’s Lambda Literary award winning book, Safe Space: Neighborhood History and the Politics of Violence, shows, **the safe space agenda has worked in tandem with urban initiatives to increase the policing of poor neighborhoods and the gentrification of others.** Safe Space: Gay Neighborhood History and the Politics of Violence traces the development of LGBT politics in the US from 1965-2005 and explains how **LGBT activism was transformed from a multi-racial coalitional grassroots movement with strong ties to anti-poverty groups and anti-racism organizations to a mainstream, anti-violence movement with aspirations for state recognition. And, as LGBT communities make “safety” into a top priority** (and that during an era of militaristic investment in security regimes) **and ground their quest for safety in competitive narratives about trauma, the fight against aggressive new forms of exploitation, global capitalism and corrupt political systems falls by the way side. Is this the way the world ends? When groups that share common cause, utopian dreams and a joined mission find fault with each other instead of tearing down the banks and the bankers, the politicians and the parliaments, the university presidents and the CEOs? Instead of realizing**, as Moten and Hearny put it in The Undercommons, **that “we owe each other everything,” we** enact punishments on one another and stalk away from projects that should unite us, and **huddle in small groups feeling** erotically **bonded through our self-righteousness**. I want to call for a time of accountability and specificity: not all LGBT youth are suicidal, not all LGBT people are subject to violence and bullying, and indeed class and race remain much more vital factors in accounting for vulnerability to violence, police brutality, social baiting and reduced access to education and career opportunities. **Let’s call an end to the finger snapping moralism, let’s question contemporary desires for immediately consumable messages of progress, development and access; let’s all take a hard long look at the privileges that often prop up public performances of grie**f and outrage; let’s acknowledge that being queer no longer automatically means being brutalized and let’s argue for much more situated claims to marginalization, trauma and violence. **Let’s not fiddle while Rome** (or Paris) **burns,** trigger while the water rises, weep while trash piles up; **let’s recognize these internal wars for the distraction they have become. Once upon a time, the appellation “queer” named an opposition to identity politics, a commitment to coalition, a vision of alternative worlds. Now it has become a weak umbrella term for a confederation of identitarian concerns. It is time to move on, to confuse the enemy, to become illegible, invisible, anonymous** (see Preciado’s Bully Bloggers post on anonymity in relation to the Zapatistas). In the words of José Muñoz, “we have never been queer.” In the words of a great knight from Monty Python and the Holy Grail, “we are now no longer the Knights who say Ni, we are now the Knights who say “Ekki-ekki-ekki-ekki-PTANG. Zoom-Boing, z’nourrwringmm.”

#### Trigger warnings on campus are infinitely expandable – anything can hypothetically trigger anyone, so requiring one before a lesson means teachers can’t teach.

**Lipson:** Lipson, Charles [Contributor, Real Clear Politics] “Social Justice Warriors Against Free Speech.” *Real Clear Politics.* August 2016. RP

**First, let's consider trigger warnings. There is absolutely nothing wrong with a professor or teaching assistant saying, "We are going to discuss Greek myths and some of you might find them troubling." But it’s also perfectly fine if, all of a sudden in a class on Greek myths, the professor discusses one. The students at Columbia University actually wanted warnings before all myth**s. Their demand was not about helping one or two students in a large class. It was simply bullying under the cloak of "sensitivity." Anyway, universities are all about discussing sensitive subjects and raising troubling questions. If a university is really vigorous, then the whole place should be wrapped in a gigantic trigger warning. Finally, as a teacher, how can I possibly anticipate all the things that might trigger students in my class on "Big Wars From Ancient Greece to Early Modern Europe" (a lecture course I am teaching next year)? **When I mention the Roman war with German tribes on the Rhine, how can I know that your grandfather died fighting on the Rhine in World War II? Of course, if your grandfather did die fighting on the Rhine, or if your mother was named Jocasta and you accidentally slept with her, you might be triggered by the class discussions.** What then? Well, that is why universities have mental-health professionals to help you deal with your anxieties, fears, and depression. **Again, it is fine if professors want to give students a heads-up, but it is a mistake to demand it of everyone**. It is a much bigger mistake to stifle class discussion for fear of offending. That's not hypothetical. That is exactly what happens in classrooms now. (So does ideologically rigid teaching that demands students repeat the professor's views. But that's another topic for another day.) Safe spaces are another ruse. Are they really the only places where marginalized groups will feel completely free to voice their opinions, as these fashionable liberal-arts students say? We need to distinguish among three kinds of places on campus: classrooms, public spaces, and private (or semi-private) places like sororities or campus houses for co-religionists. If classrooms do not invite free expression, then something is badly wrong with the university. Actually, some classrooms do not. They are almost always the classrooms run by the ideological comrades of the students demanding safe spaces. If you think diverse viewpoints are welcome in classes for race and gender studies, you are living in a dream world. In public spaces, like dining halls, people do sometimes group themselves voluntarily by race, sports, or dormitories. Nothing wrong with that, although persistent segregation by race, ethnicity, or religion would be a setback for the students' college experience. Finally, it is perfectly fine for people to find their cozy spaces privately, at Hillel House (for Jewish students) or Calvert House (for Catholics) or a fraternity, sorority, or club. Who invades those private spaces? Normally it’s Social Justice Warriors from the Dean's Office who object to students wearing sombreros to a party featuring Mexican food. Of course universities should provide mental-health support for individuals who are genuinely troubled. They should. **What about the argument that "safe spaces aren't about banning dissenting viewpoints but about banning hateful, bigoted speech that is truly harmful"? The obvious problem is this: Who decides? You think your march is to support women's reproductive rights. Your roommate thinks it is about killing unborn babies. Which position is hateful or bigoted? Again, who decides? Which of these is so hateful that it has no place in an academic community?**

#### Limits on free expression create learned helplessness – people are unable to think outside of the bubble colleges create.

**Shuchman:** Shuchman, Daniel [Chairman of the Foundation for Individual Rights in Education] “Free Thought Under Siege.” *The Wall Street Journal.* November 2016. RP

**Rancorous trends such as microaggressions, safe spaces, trigger warnings and intellectual intolerance have taken hold at universities with breathtaking speed.** Last year’s controversy over Halloween costumes at Yale led to the departure of two respected faculty members, and this year made the fall festival a flashpoint of conflict at campuses across the country. The recent explosion in the number of university administrators, coupled with an environment of perpetual suspicion—the University of Florida urges students to report on one another to its “Bias Education and Response Team”—drives students who need to resolve normal tensions in human interaction to instead seek intervention by mediators, diversity officers, student life deans or lawyers. **As Frank Furedi compellingly argues in this deeply perceptive and important book, these phenomena are not just harmless fads acted out by a few petulant students and their indulgent professors in an academic cocoon. Rather, they are both a symptom and a cause of malaise and strife in society at large. At stake is whether freedom of thought will long survive and whether individuals will have the temperament to resolve everyday social and workplace conflicts without bureaucratic intervention or litigation. Mr. Furedi, an emeritus professor at England’s University of Kent, argues that the ethos prevailing at many universities on both sides of the Atlantic is the culmination of an infantilizing paternalism that has defined education and child-rearing in recent decades. It is a pedagogy that from the earliest ages values, above all else, self-esteem, maximum risk avoidance and continuous emotional validation and affirmation**. (Check your child’s trophy case.) Helicopter parents and teachers act as though “fragility and vulnerability are the defining characteristics of personhood.”**The devastating result: Young people are raised into an “eternal dependency.”** Parenting experts and educators insist that the views of all pupils must be unconditionally respected, never judged, regardless of their merit. They wield the unassailable power of a medical warning: **Children, even young adults, simply can’t handle rejection of their ideas, or hearing ones that cause the slightest “discomfort,” lest they undergo “trauma.”** It is not surprising to Mr. Furedi that today’s undergraduates, having grown up in such an environment, should find any serious criticism, debate or unfamiliar idea to be “an unacceptable challenge to their personas.” **He cites a legion of examples from across the Western world, but one Brown University student perhaps epitomizes the psyche: During a campus debate, she fled to a sanctioned “safe space” because “I was feeling bombarded by a lot of viewpoints that really go against my dearly and closely held beliefs.”**

#### The neg reifies a police culture – speech codes allow wide discretion to punish at will – their subjectivity means that ANYTHING can be prohibited, creating a slippery slope.

**Shuchman:** Shuchman, Daniel [Chairman of the Foundation for Individual Rights in Education] “Free Thought Under Siege.” *The Wall Street Journal.* November 2016. RP

**The new demands for “balancing” free speech with sensitivity and respect have several unifying themes, according to Mr. Furedi. One is that they are based on the subjective sensitivities of anyone who claims to be offended. If words can cause trauma and are almost akin to violence, an appeal to health and safety guarantees that “the work of the language police can never cease.”** Microaggressions, by definition, are committed unconsciously and without intent. **Since “it is almost impossible to refute an allegation of microaggression,” the author views them as the ultimate “weaponisation” of offense- taking. Emory University students, for instance, demanded redress for their “genuine concern and pain” after seeing the name of a major presidential candidate written in chalk on campus, an incident proving “that** in a world where anything can be triggering, people will be triggered by anything.” There is a “beguiling” appeal to well-intentioned calls for civility and respect, Mr. Furedi says. After all, “sensitivity is an attractive human feature and essential for minimising conflict.” He cites the Chancellor of the University of California at Berkeley’s seemingly benign exhortation that “we can only exercise our right to free speech insofar as we feel safe and respected.” Yet Mr. Furedi convincingly demonstrates that, by ranking liberty on par with or subordinate to other values, “the deification of the commandment ‘Do Not Offend’” transforms fundamental liberties into liberties “contingent on other people’s sensibility.” **Freedom becomes a “negotiable commodity” that inexorably will be bargained away.** Ironically, Mr. Furedi observes, for a movement that claims to be driven by concern for individual empowerment, respect and autonomy, the new campus values actually represent an astonishingly pessimistic and condescending view of the ability of human beings to deal with the basic challenges of life. They are premised on the “supposition that people lack the intellectual or moral independence to evaluate critically the views to which they are exposed.” **As a practical matter, the notion that human dignity mandates protection from the pain of “hurtful” speech is “possibly the most counterproductive” rationale for constraining freedom; “people acquire dignity” by learning to deal with “the problems that confront them,**” not by relying on the “goodwill” of an administrative elite. Throughout history, the impulse to censorship has been driven by political or religious zealotry. In the 21st century, Mr. Furedi posits, speech suppression has assumed the mantle of mental-health therapy. But policing actual speech and books is not sufficient. **In today’s environment, no matter what you say, it is exclusively the “individual who is hurt or offended . . . who decides what you really meant.” Thus people’s inner lives and imputed motivations, even unconscious ones, have become “legitimate terrain for intervention” by authorities. In an unprecedented twist, students themselves are agitating for the imposition of campus thought control**. Academic freedom is not an academic matter, Mr. Furedi reminds us. It “has a vital significance for the quality of public life.” A generation of litigious college graduates, seeking protection from new ideas and afraid to take any risks, is an ominous glimpse into the future of our public life.

## Police Blotters CP

#### Limits on discussion of crime and sexual assault cause more stigma

**Nunez:** Nunez, Vivian [Vivian Nunez is a recent graduate of Baruch College. She is a freelance writer and the Founder of Too Damn Young, a website for teens dealing with loss.] “Do Gag Orders Protect Or Endanger Sexual Assault Survivors?” *Generation Progress*. July 2015. RP

**No-contact orders, the equivalent of restraining orders for college students, are part of a series of provisions meant to protect students who have been sexually assaulted. Through the collection of various personal accounts, though,**[**a Huffington Post investigation**](http://www.huffingtonpost.com/entry/sexual-assault-victims-punishment_55ada33de4b0caf721b3b61c?utm_hp_ref=breakingthesilence)**found that on some campuses the no-contact order is being used as a gag order against survivors.** The Huffington Post reports: “Colleges issue no-contact orders as a tool to protect victims from their alleged assailants, and apply confidentiality rules to prevent students from airing the school’s dirty laundry. Several students told HuffPost they were threatened with possible suspension if they violated what they consider to be gag orders.” **Many sexual assault survivors, the story notes, are not consulted in the decision to impose a no-contact order. For some, the lack of ability to choose creates a stressful living environment. “I essentially wasted months of my life worrying I’d be suspended**,” [said Vanessa](http://www.huffingtonpost.com/entry/sexual-assault-victims-punishment_55ada33de4b0caf721b3b61c?utm_hp_ref=breakingthesilence), a student at Columbia University, to the Huffington Post. Vanessa, whose name has been changed by the Huffington Post for safety reasons, is a prime example of how detrimental it can be for a school to push a survivor into a situation they have not agreed to. “**In Vanessa’s case, she says the threat of punishment for breaking the no-contact order pushed her even further into her boyfriend’s arms since the rule prevented him from getting checked in to visit her at her dorm**,” the Huffington Post reported. “Instead, Vanessa spent more time off-campus with him, which she now admits was ‘dangerous’ because the university couldn’t protect her there.” Through the progression of Vanessa’s personal account to the Huffington Post it’s apparent how no-contact orders play a role in the likelihood of reporting sexual assault. Once Vanessa made the personal decision to end the relationship, she simultaneously thought about filing a complaint with Columbia. Her initial hesitancy to report stemmed from the no-contact order. [She told the Huffington Post](http://www.huffingtonpost.com/entry/sexual-assault-victims-punishment_55ada33de4b0caf721b3b61c?utm_hp_ref=breakingthesilence) that she felt “she couldn’t bring her case to the university, because that would have meant admitting that she had violated the order.” Under the no-contact order both parties were warned of punishment if the order was violated. **In this instance, Columbia’s no-contact order helped contribute to the oft-cited statistic that only five percent of those who have been sexually assaulted ever report their assaults. Gag orders essentially push survivors, in these accounts, more into the shadows because the no-contact order is not only placed on the alleged attacker, but also on the victim, who at the time of the order being issued may still be in the relationship. “These threats have prevented sexual violence victims from getting protection from their universities or from police, made it difficult to get emotional support from friends and to discuss their experiences in public, shielded the colleges from scrutiny and, in some cases, simply made victims feel like they were the ones on trial**,” [wrote the Huffington Post.](http://www.huffingtonpost.com/entry/sexual-assault-victims-punishment_55ada33de4b0caf721b3b61c?utm_hp_ref=breakingthesilence)

#### Their limits on discussion just cause further criminalization

**Kingkade:** Kingkade, Tyler [Tyler Kingkade covers higher education and sexual violence, and is based in New York.] “He Admitted To Sexual Assault, But She’s The One They Tried To Silence.” Huffington Post. March 2016. RP

**Everything seemed to be done right when American University investigated Faith Ferber’s sexual assault report**. At a hearing this fall, the male student she accused admitted that he was responsible. And that’s when things fell apart, according to Ferber. AU, a private university in Washington, D.C., punished him with just a year of probation. The dean of students told Ferber that her attacker would at least be barred from Greek life, she told The Huffington Post. But last week she learned that was not true. He’s in a fraternity now**.   Moreover, Ferber shouldn’t even be talking about this, because AU made her sign a confidentiality agreement in order to participate in the hearing of her case.** The school did that even though federal law and guidance from the U.S. Department of Education states that [schools are not allowed](http://www.huffingtonpost.com/entry/sexual-assault-victims-punishment_us_55ada33de4b0caf721b3b61c) to require confidentiality once such a case has been resolved. Ferber has already filed a civil rights complaint against AU with the Education Department. **On Tuesday, she is going public with her case along with women lodging similar complaints against Monmouth University in New Jersey, the University of Alabama at Birmingham and Indiana University Bloomington.  The women, two of whom are using pseudonyms, contend that their schools pressured them not to speak out about their attacks**. One university allegedly asked a student to waive her federal privacy rights so that a third party could check out her medical records. The administrator overseeing another woman’s case [was himself accused of sexual assault](http://www.huffingtonpost.com/entry/jason-casares-resigns-sexual-assault_us_56d081d1e4b03260bf769320).  Colleges are [obligated to address reports](http://www.huffingtonpost.com/2014/06/10/title-ix-yale-catherine-mackinnon_n_5462140.html) of sexual assault under the gender equity law Title IX, regardless of whether the victim also takes her case to law enforcement authorities. These women told HuffPost they pursued their cases with the schools because they wanted their alleged assailants removed from campus.   They all said they decided to go public this week after being inspired by Lady Gaga’s performance with 50 sexual assault survivors at the Oscars last month. Included in Gaga’s show were [three co-founders of the activist group End Rape On Campus](http://www.huffingtonpost.com/entry/survivors-lady-gaga-oscars_us_56d4654be4b0871f60ec0806), which helped the women file complaints with the Education Department. All four schools declined to address the details of the accusations, citing federal privacy law and saying they have not had a chance to review the filings with the Education Department. They all vowed to cooperate fully with any federal investigation that may result from the complaints. In Ferber’s case, American University refused to hold a hearing so close to finals in April, so the hearing was delayed until Oct. 30. At that time, the accused student pleaded “responsible” to the charge of sexual assault, according to Ferber. Documents filed with her Education Department complaint show the hearing panel reached that conclusion. University administrators then asked Ferber what she thought her assailant’s punishment should be, and she said she told them suspension and in-person educational sessions about consent. A little more than a week later, the dean of students told Ferber that the punishment would be a year of probation, a ban on participation in Greek life, and review of an online education module about sexual assault, she said.  When Ferber complained that online education would not be effective, she said the dean responded, “Well, we didn’t want it to be that hard for him to finish.” Ferber found out last week that her assailant was also not banned from Greek life. Administrators confirmed that in an email to her, which was shared with HuffPost, and said they hadn’t told his fraternity about his admission of sexual assault.  Ferber is prohibited from telling the fraternity either, because at the hearing, the university required her to sign a gag order about her own case, a copy of which was obtained by HuffPost. The Education Department has been saying clearly [since the George W. Bush administration](https://www.ncherm.org/pdfs/INSIDE_TITLE_IX_INVESTIGATION.pdf) that victims [can’t be required to sign](http://www.publicintegrity.org/2009/12/01/9047/sexual-assault-campus-shrouded-secrecy) such an agreement. While AU wouldn’t comment on the specifics of Ferber’s case, the school said that “all students who participate in a disciplinary hearing, regardless of the type of alleged misconduct,” must sign such an agreement. “Obviously I’m violating my confidentiality agreement now, and I’m OK with that,” Ferber said, “because I would love to see AU try and bring charges against me that’s more harsh than disciplinary probation, because that’s what my perpetrator got for sexual assault.” A woman who asked to be called Shannon accused the University of Alabama at Birmingham of bias against her and of ignoring medical records that showed she’d been drugged the night she says she was assaulted.  Shortly after Shannon reported the matter to the university this past October, a student conduct administrator “told me it’d be best to drop out for the semester,” she told HuffPost.  **A no-contact order was put in place, but Shannon said she was the one who had to avoid encountering him: She would enter campus buildings through the back entrances, had to park in less convenient spots, and wasn’t allowed to use the undergraduate library, which was more centrally located and where her friends studied. She wasn’t even allowed to use elevators in some buildings and instead had to take the stairs, according to documents with her Education Department complaint. “I hate my school,” Shannon told HuffPost. “I hate being there when I don’t have to be. It’s uncomfortable.” After nearly three months, the university’s outside investigator — a divorce lawyer — decided the accused was not responsible. The investigation had not reviewed Shannon’s rape kit evidence, spoken with her psychiatrist or looked at photos that corroborated the bruising she reported, according to her complaint**. The accused was told he could consult with an attorney, but she was not, the complaint said.  Shannon appealed the investigator’s decision. She asked one administrator how students are normally disciplined in sexual misconduct cases and said the administrator replied, “Until you get a lawyer from ‘The Hunting Ground’ that makes us provide you with that information, I cannot tell you that.” (“The Hunting Ground” is a 2015 documentary about college sexual assault.) On March 3, according to Shannon, the university asked her to waive her rights under the Family Educational Rights and Privacy Act so they could hand over her medical records for a third-party review. The school gave her one day to decide.  “**The assault was bad,” Shannon said, “but the way my school has treated me has created more trauma than the original assault did.”** A woman who asked to go by the pseudonym Sarah said she experienced similar problems at Monmouth University, when she reported a sexual assault in February 2015. Sarah said she declined to pursue student conduct charges against the alleged assailant partly due to pressure from administrators not to talk about her case.  Sarah said that she and the accused were barred from having contact with each other directly or through third parties. But she believed that really “they were trying to keep everyone quiet about it.” At one point, an administrator grilled her about speaking to classmates about being assaulted, she said. At another, according to Sarah, Monmouth essentially put a gag order on one of her friends for making a comment on Facebook about rape culture. Sarah said she was also told that if she went forward with conduct charges, the university might not consider as evidence the text messages she had from the accused apologizing for his “actions” that night and saying he was “ashamed” of what he did.  “They couldn’t guarantee I would be able to use the strongest evidence I had,” Sarah said. Hailey Rial said she reported a sexual assault at Indiana University Bloomington in September and requested a protective order, a common step in Title IX cases. But Rial learned two months later that there was no such order because, according to her Education Department complaint, no one at the university had arranged the meeting that it requires before putting protective orders in place.  Rial felt unsafe on campus without a protective order, much less a resolution in her case, she told HuffPost. Since she couldn’t have the accused removed from her dorm, she tried to move and was charged $1,600 for it. Eventually the money was refunded after she and her family complained about a range of fees incurred throughout the case, she said. The case wasn’t resolved until February, by which time Rial had left campus. She therefore participated in the hearing via Skype, which she argues in her complaint put her at an unfair disadvantage: Everyone in the room was given copies of witness statements, but she said the school refused to send her those files through email. The accused was found not responsible. Three days after Rial learned of the school’s decision, the news broke that Jason Casares, the man in charge of her case, was under [criminal investigation for a sexual assault allegation against him](http://www.huffingtonpost.com/entry/asca-sexual-assault_us_56b38334e4b01d80b24556c3). Rial’s case is one of 18 handled by Casares[that are now being reviewed](http://www.huffingtonpost.com/entry/student-conduct-group-sexual-assault_us_56b8f824e4b04f9b57daad2d). (After this article was published, university officials said that they “dispute a number of the assertions,” but couldn’t comment on specifics.) Rial, who transferred to the South Bend campus of the IU system, said that whatever the outcome, she isn’t going back to Bloomington.  “I know that I don’t want to be at that large of an institution,” she said. “I feel like that’s a lot of the problems with this — the school is so large, they just don’t care about students the way that they should be caring about them.”

## Tobacco Ads PIC

Advertising blocks also apply

#### No link- restrictions on tobacco ads are consistent with the First Amendment

**Langvardt 14**: Arlen Langvardt (Professor of Business Law and Graf Family Professor, Kelley School of Business, Indiana University). “Tobacco Advertising and the First Amendment: Striking the Right Balance.” William & Mary Business Law Review, vol. 5, no. 2. 2014. <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1073&context=wmblr>

\*\*Discount Tobacco City & Lottery, Inc. v. United States—Sixth Circuit found that most of the Tobacco Control Act’s restrictions on advertising did not violate the First Amendment

IV. FIRST AMENDMENT LINE-DRAWING AND ITS IMPLICATIONS FOR CURRENT AND FUTURE REGULATORY EFFORTS How did the Discount Tobacco and R.J. Reynolds courts do in regard to soundness of reasoning? Answering that question begins the process of determining what actions Congress and the FDA can and should be able to take in terms of regulating tobacco advertising and promotion without violating the First Amendment. As the following analysis will indicate, “generally quite well” should be the answer regarding the Discount Tobacco court, with the R.J. Reynolds court meriting an “on the whole, poorly” response. A. Assessing Discount Tobacco The range and different natures of the TCA provisions challenged in Discount Tobacco made the Sixth Circuit’s task a difficult one. Add the different lines of potentially applicable reasoning stemming from the Supreme Court’s First Amendment decisions,415 and a court in the Sixth Circuit’s position has an even more difficult assignment. Throw in the not-always-clear suggestions from the Supreme Court that the relevant First Amendment rules and tests may need changing or may already be undergoing subtle shading,416 and a task of the sort faced by the Discount Tobacco court becomes tougher yet. Considering the just-noted factors, the Sixth Circuit produced a solid, well-reasoned, and well-supported decision in Discount Tobacco. In upholding most of the TCA provisions that amounted to restrictions on tobacco advertising and marketing, the court properly rejected the tobacco companies’ arguments that strict scrutiny should be applied to at least some of the restrictions.417 If courts were to give credence to tobacco companies’ argument that restrictions on what they may say in labeling and advertising should be subjected to strict scrutiny because comments on health issues outside the labeling and context would trigger very substantial First Amendment protection, the distinction between commercial speech and noncommercial speech would be all-but obliterated, and the government’s ability to regulate in the interest of promoting public health would be severely impaired. There would also be a paradoxical and indefensible effect: the greater the health risks or dangers associated with a widely used product (and hence the greater the chance that major health concerns would be present), the lesser the ability of government to restrict reasonable amounts of speech in an effort to safeguard public health. Moreover, accepting tobacco companies’ strict scrutiny argument would run contrary to a longstanding line of Supreme Court decisions to which the Court still adheres despite hints about possible changes in the rules.418 A federal court of appeals obviously cannot give Supreme Court hints primacy over actual Supreme Court holdings, especially when the Supreme Court itself has not permitted the hints to translate into new rules despite little check on its doing so except for an easy-to-get-around tradition of adherence to precedent.419 In Discount Tobacco, the Sixth Circuit commendably stuck with the Central Hudson test for commercial speech restrictions and applied it both realistically and with appropriate rigor, not to mention evenhandedly.

#### Smoking rates are declining nationwide—advertising bans aren’t necessary

**Botkin-Kowacki 16**: Eva Botkin-Kowacki (staff writer). “Why US smoking rates are dropping faster than they have in decades.” The Christian Science Monitor. May 25th, 2016. <http://www.csmonitor.com/USA/Society/2016/0525/Why-US-smoking-rates-are-dropping-faster-than-they-have-in-decades>

Cigarette habits seem to be going up in smoke across the United States. The smoking rate dropped faster last year than it has in more than two decades, according to a new report from the Centers for Disease Control and Prevention released Tuesday. Of adults surveyed, just 15 percent said they had recently smoked last year. That smoking rate is down from 17 percent in 2014. In recent years, the smoking rate in the US declines by 1 percentage point or less annually. The last big drop was 1.5 percentage points from 1992 to 1993, the CDC's Brian King told the Associated Press. It's been more than half a century since the surgeon general released the first report that declared smoking to be harmful. Then, about 42 percent of American adults smoked. Following that first surgeon general's report on smoking and health, there have been mandatory warning labels on cigarette packs, anti-smoking campaigns across many platforms, additional taxes, and other programs instituted to reduce smoking. Many states have banned smoking in workplaces, bars, and restaurants. And some cities, like New York City and Boston, have even banned smoking in public parks. A 2014 study found that those efforts collectively saved 8 million lives and a total of 157 million years of life. That means 20 more years of life for each person who quit or never smoked because of these programs. Although smoking habits are being stamped out across the US, the problem is still smoldering. Smoking is still the leading cause of preventable illness in the nation, public health experts say. Smoking is a cause of cancer, heart disease and other serious health problems. The CDC estimates that more than 480,000 people die each year from smoking-related causes. And even as the fight against smoking rages on, a new factor has joined the scene. Electronic cigarettes are largely being advertised as a tool for smokers to wean themselves off nicotine, but they might be attracting new smokers to nicotine use as well. These battery-powered devices, called e-cigarettes or e-cigs, turn liquid nicotine into a vapor so that smokers can receive the chemical they may crave without the byproducts of burning tobacco. But this seemingly safer option still contains the addictive nicotine. And a CDC study published in April suggests that teens who wouldn't otherwise be smokers are reaching for e-cigarettes. "E-cigarette ads use many of the same themes used to sell cigarettes and other conventional tobacco products, such as independence, rebellion and sex," lead author Tushar Singh of the CDC's Office on Smoking and Health in Atlanta told Reuters at the time. That, combined with the ease of access via online vendors, makes it easy for teenagers to get their hands on e-cigarettes. E-cigarettes may not be as harmful as traditional tobacco cigarettes, but previous research has suggested that adolescents who try e-cigarettes are more than twice as likely to try the combustible version. Jonathan Whiteson, a smoking cessation specialist at NYU Langone Medical Center in New York, told the Associated Press that as regulators increasingly focus on e-cigarettes, this problem could be headed off. For example, the Food and Drug Administration extended its regulations on traditional cigarettes to apply also to e-cigarettes, hookah tobacco, pipe tobacco, and nicotine gels. This includes age minimums for use. "We'd expect continued declines in smoking, as we've seen in the past 50 years. But it's hard to say what future holds," the CDC's Dr. King said.

#### Meta studies confirm that bans on smoking ads don’t solve – education is far more effective.

**Swayne:** Swayne, Matt [Researcher, Penn State] “Alcohol and tobacco advertising bans don't work.” *Penn State University.* August 2010. RP

University Park, Pa. -- **Bans on alcohol and tobacco marketing are among the least effective tactics for combating underage drinking and smoking, according to a Penn State economist, who has studied the effects of advertising since 1985.** "My conclusion is that the emphasis on advertising bans and similar regulations in the public health literature is misplaced," said Jon Nelson, professor emeritus of economics. "**More effective policies need to be sought to deal with issues of youthful risk-taking associated with alcohol and tobacco**." Among the deficiencies, Nelson reported that there were problems with how researchers selected people to participate in their studies and how they drew conclusions from the data they collected. "The studies, in fact, are deficient in so many respects that the big question is whether there's any influence of marketing at all, especially the mass media," Nelson said. Policy makers and advocacy groups use these studies to initiate and justify bans on alcohol and tobacco product advertising in order to lower the social costs associated with using these products and to promote youth health. According to Nelson, the American Medical Association and the World Health Organization are among the organizations that uncritically cite these studies in their advocacy of tobacco and alcohol advertising bans. Nelson recommended several ways to improve studies on youth alcohol and tobacco behaviors. Researchers who explore advertising's influence on youth drinking and smoking should better identify why variables, such as peer and parental influences, are included in the study and choose variables that more effectively measure the exposure of alcohol and tobacco marketing in youth behavior. **In a recent review of 20 youth drinking studies and 26 youth smoking studies published in the International Journal of Environmental Research and Public Health, Nelson found that only 33 percent of the results were statistically significant in linking marketing with youth drinking. He considered only 49 percent of the results significant on marketing and youth smoking behavior**. "These studies should be done against a well-defined scientific standard for an empirical investigation," said Nelson. "There is really no such thing as a perfect study, but the object should be to get closer to those acceptable standards." Nelson identified longitudinal studies that measured the influence of a range of alcohol and tobacco marketing efforts including mass media, in-store displays, branded merchandise, movie portrayals and brand recognition. The participant in a longitudinal study is interviewed or surveyed over two or more years. Nelson looked at these studies in two categories, youth drinking and youth smoking. Although these studies had common features, they were treated separately because they used slightly different models to explore advertising receptivity and exposure. Nelson then offered critical assessments of the studies in each category, paying particular attention to the consistency of empirical results among the studies. The review reinforced findings in Nelson's previous work. **In 2001 and 2010 studies, he showed advertising bans in European countries did not reduce adult alcohol consumption. In 2003 and 2006 studies, he reported a similar finding for tobacco advertising bans.**

## Hecklers CP

#### Perm do both -- banning heckling is key to respect free speech for campus speakers

**Jaschik:** Jaschik, Scott [Contributor, Inside Higher Ed] “Is Heckling a Right?” *Inside Higher Ed.* February 2010. RP

Every few minutes during a talk last week at the University of California at Irvine, the same thing happened. A student would get up, shout something critical of Israel, be applauded by some in the audience, and be led away by police. The speaker -- Michael Oren, Israel's ambassador to the United States -- was repeatedly forced to stop his talk. He pleaded for the right to continue, and continued. University administrators lectured the students and asked them to let Oren speak. In the end, 11 students were arrested and they may also face charges of violating university rules. (Video of the event, distributed by a pro-Israel group, can be [found here.](http://www.youtube.com/watch?v=7w96UR79TBw)) Those who interrupted Oren, not surprisingly, are strong critics of Israel who believe that they must draw attention to the Palestinian cause. But an argument put forward by some national Muslim leaders in the last week has sent the discussion in a new direction. Those groups maintain that interrupting a campus speech -- even repeatedly -- should be seen as a protected form of speech. "The students voiced political views to shame the representative of a foreign government embroiled in controversy for its outrageous violations of international humanitarian and human rights law. Delivering this message in a loud and shocking manner expressed the gravity of the charges leveled against Israeli policies, and falls within the purview of protected speech," said [a letter released by the Council on American-Islamic Relations.](http://www.prnewswire.com/news-releases/cair-nlg-ask-calif-university-da-to-drop-charges-against-irvine-11-84310337.html) That statement followed one by Salam Al-Marayati, executive director of the [Muslim Public Affairs Council,](http://www.mpac.org/article.php?id=1027#axzz0fY2X72ca) which said: "These students had the courage and conscience to stand up against aggression, using peaceful means. We cannot allow our educational institutions to be used as a platform to threaten and discourage students who choose to practice their First Amendment right." **Those statements are quite different from the view of Irvine officials. Michael Drake, the chancellor, had** [**this to say after the interruptions:**](http://www.chancellor.uci.edu/100209_disruption.php) **"This behavior is intolerable. Freedom of speech is among the most fundamental, and among the most cherished, of the bedrock values our nation is built upon. A great university depends on the free exchange of ideas. This is non-negotiable. Those who attempt to suppress the rights of others violate core principles that are the foundation of any learning community. We cannot and do not allow such behavior." All of this raises the question: Is interrupting a campus speaker ever a legitimate form of free expression? Most higher education leaders welcome vocal protests outside a speaking venue and quiet protest (leaflets, for example) inside, but draw the line at interrupting speakers. Last year, protesters disrupted a speech at the University of North Carolina at Chapel Hill by the former Rep. Tom Tancredo, a leader of the movement to limit the government and other benefits of those who do not have the legal right to live in the United States. (Video of that incident** [**may be found here.**](http://www.youtube.com/watch?v=m7naTR5QCxo)**) The incident prompted Holden Thorp, chancellor at Chapel Hill, to condemn the protest. He said at the time: "We expect protests about controversial subjects at Carolina. That's part of our culture," he said. "But we also pride ourselves on being a place where all points of view can be expressed and heard. There's a way to protest that respects free speech and allows people with opposing views to be heard. Here that's often meant that groups protesting a speaker have displayed signs or banners, silently expressing their opinions while the speaker had his or her say. That didn't happen last night." Many other experts on free speech and protest agree -- and some are disappointed that national organizations are defending the right to shout repeatedly during a campus talk. "That's definitely not free speech," Jarret S. Lovell, a professor of politics at California State University at Fullerton, said of the interruptions at Irvine and similar tactics elsewhere. Lovell is a scholar of protest and the author of** [**Crimes of Dissent: Civil Disobedience, Criminal Justice, and the Politics of Conscience**](http://www.nyupress.org/books/Crimes_of_Dissent-products_id-11038.html) **(New York University Press). Not only does Lovell think the tactic is wrong in that it denies a hearing to whoever is being interrupted, but he thinks it fails to win over anyone. "When you only hear sound bites" from those interrupting, the students come off as intolerant, he said. "There are so many better ways to demonstrate."** Lovell said that he believes students' willingness to shout down someone they don't like reflects the state of discourse in an era when people pick Fox News or NPR because they want to find information sources whose coverage they agree with. "People think there is no real reason for free speech when you can just change the channel. They believe that the marketplace of ideas means that if they don't buy it, it doesn't go in their shopping-cart." As one who identifies himself as critical of Israel's policies and sympathetic to the Palestinian cause, Lovell said that the Irvine hecklers should realize what will happen next. "It's only a matter of time until [Norman Finkelstein](https://www.insidehighered.com/news/2007/04/03/finkelstein) speaks at UCI and Jewish groups shout him down," Lovell said of the controversial scholar viewed by many Jews as anti-Israel and anti-Semitic (Finkelstein would admit to the former, but not the latter). Wayne Firestone, national president of Hillel, takes a similar view. He said that the interruptions of Israel's ambassador of course mattered to many Jewish students. But Firestone noted that the ambassador was invited by the law school and political science department, and he said that the issues involved would matter regardless of the topic of the talk or the views of the speaker. He said that the idea that interruptions of a speaker are part of free speech is "a candidate for the worst idea of the year." He added that "if a precedent is set on this issue" that it's OK to shout during a campus talk, "then any group that opposes any speaker can literally stop discussion and debate from taking place" by interrupting repeatedly during a talk. Firestone said that there should be many opinions on campus, and that all views should be expressed, but that to do so, you need "a notion of respect and fair play" that allows people to give their talks. **The Foundation for Individual Rights in Education** [**blog featured similar views:**](http://www.thefire.org/article/11560.html) **"Failing to punish offenders appropriately is likely to threaten the free speech of future speakers by effectively condoning a 'heckler's veto' through disruptive actions. That would make a mockery of the First Amendment."** Hussam Ayloush, executive director of the Los Angeles branch of the Council on American-Islamic Relations, defended his group's defense of the interruptions at Irvine. He said that it was unfair to say that the students who interrupted were trying to shut down the talk because they voluntarily left the room after each interruption, and let the talk start again (until the next outburst at least) and eventually let it finish. "Let's put it in perspective. The speaker had an hour to speak, and they each had less than a minute." Ayloush noted that he is frequently interrupted when he gives lectures, and that it goes with the territory. "We firmly believe that both the representative of the foreign government had the full right to speak and the students being addressed have the right to express their speech, too," he said. Asked why it might not be better to organize protests with a rally outside or leaflets or signs that don't interrupt a talk, Ayloush said such approaches might well be better, but that this was beside the point and that he wouldn't exclude the heckling strategy used at Irvine. "These are all tactics and different methods of expressing their free speech, and everyone might have their favorite," he said. "The First Amendment was never intended to be exclusively polite and courteous." Yet another perspective holds that some, modest interruption (less than what took place at Irvine) may be seen as an expression of free speech that doesn't limit the right of a speaker to be heard. Cary Nelson, national president of the American Association of University Professor, said he holds that view, although he said this was not a question on which there was an AAUP policy. And he said that he believes that "most faculty members regard interruption as unacceptable." Nelson said he was a fan of [the speech/protest policy of the University of Michigan.](http://spg.umich.edu/pdf/601.01.pdf) That policy says: "Within the confines of a hall or physical facility, or in the vicinity of the place in which a member of the university community, invited speaker, or invited artist is addressing an assembled audience, protesters must not interfere unduly with communication between a speaker or artist and members of the audience. This prohibition against undue interference does not include suppression of the usual range of human reactions commonly displayed by an audience during heated discussions of controversial topics. Nor does this prohibition include various expressions of protest, including heckling and the display of signs (without sticks or poles), so long as such activities are consistent with the continuation of a speech or performance and the communication of its content to the audience." Along these lines, Nelson said that some brief demonstration against a speaker doesn't strike him as an assault on free speech "so long as the speaker is allowed to continue." He added that "an interruption that signals extreme objection to a speaker's views is part of the acceptable intellectual life of a campus, but you have to let the speech go on," and he said that he did not believe that repeated interruptions were appropriate in that they would disrupt a talk. "Free speech doesn't mean you are able to trample a campus event." While defending such a tactic as potentially consistent with ideals of free expression, Nelson added that he personally always favored other approaches. Nelson was at a speech by John Sexton, the president of New York University, after that institution ended recognition of its graduate student union and fought off a strike by supporters of the union. Nelson said he walked to the front of the auditorium, turned his back on Sexton and stood silently through the talk. While the speech was not about graduate unions, Nelson said he wanted to show "my rejection of everything he stood for." But he said he wouldn't have interrupted. Nelson said that one of the most moving and effective protests he ever attended was as an undergraduate at Antioch College in the early 1960s. George Lincoln Rockwell, the founder of the American Nazi Party, was the speaker. No one shouted at him, although the students considered him hateful. "The audience was totally silent and then, during the question period, no one would ask him a question and he began cursing at the audience, but no one would speak," Nelson said. "To me it was incredibly moving because of the solidarity of the audience, and of the possibility of a certain kind of silent witness," he said. Nelson said he wished more protests today used such an approach in which opposition is totally clear but no one tries to stop the talk. "There is a tremendous sense of dignity in silent witness," he said.

#### Heckling is used to silence people with offensive opinions, and it’s a horrible precedent to let the school determine who can speak.

**Heath, THEIR OWN AUTHOR:** Heath, Katelyn. [Ethics Editor for the Campbell Law Observer] “Are College Campuses Restricting Free Speech?” *Campbell Law Observer,* May 23, 2016. MZ

Lieutenant Governor Dan Forest has introduced a proposal that would require the seventeen public universities in NC to create punishments for “those who interrupt the free expression of others.” **Those who oppose this potential legislation say that it suppresses speech just as much as disruption by potential hecklers. “If a speaker has been invited by a student group, another in the university community does not have the right to interrupt that speech, shout over the speaker, or otherwise prevent others from listening to the speech,” Forest’s office said in a statement.** Protesting speakers invited by student groups and universities have also become an issue on college campuses. **Protesting speakers invited by student groups and the universities have also become an issue on college campuses. Protests have led to groups cancelling speakers, such as feminism critic Suzanne Venker, who was supposed to speak at Williams College. Protesters also prevented both Condoleezza Rice and former Attorney General Eric Holder from giving commencement speeches.** Dan Forest wants to prevent this from becoming an occurrence on North Carolina campuses. The concept here is if someone is shutting down an event, schools may have a duty to protect the integrity of the event and the speakers. The lieutenant governor’s ideas follow protests, mainly before the state’s university governing board. **The problem lies with where the line would be drawn. At what point is someone truly exercising his or her free speech rights, and at what point would it become heckling a speaker? It is important to remember that protesters have First Amendment rights just as much as the invited speakers, and these rights must be balanced.** The proposal would need to make clear at what point heckling would become a “material disruption” so that protesters know ahead of time. Lee Rowland, a free speech attorney with the American Civil Liberties Union, said, “Protecting speech sounds really good, but the text of those bills matters immensely.” **Some colleges have gone so far as to create “free speech zones” that confine expressive activity.** Free speech advocates argue the zones curtail freedoms. Approximately one in six U.S. schools have created free speech zones on campus. North Carolina schools with “free speech zones” include UNC-Pembroke, Appalachian State University, and East Carolina University. The ECU free speech zone policy states that all assemblies and public forums must take place in the “designated public forum” defined as a four-sided green patch of land. That is the only place where it is allowed, and even then there are other restrictions. These restrictions include no amplified sound, only one event or speaker at a time, and these activities cannot interfere with pedestrian traffic. **While this may protect from unwanted off-campus activities coming on campus, it also hinders students from being heard.** On a large campus, almost any event has the potential to interfere with pedestrian traffic, and without amplified sound, only a limited number of people can hear what is being said.

#### Empirically, heckling is used to shut down racist white supremacists.

**Reilly:** Reilly, Katie. [Reporter at Time Magazine] “How Violent Protests at Middlebury and Berkeley Became a Warning for Other Schools.” *Time Magazine,* March 13, 2017. MZ

**Recent student demonstrations that escalated into violence have fueled a national debate over free speech on college campuses, forcing universities to rethink how to effectively prepare for controversial speakers — and the accompanying protests. Conservative writer Charles Murray, who has faced criticism for a 1994 book that linked intelligence level with race, was shouted down and then physically confronted by protesters at Vermont's Middlebury College on March 2. A month earlier, an event featuring controversial right-wing pundit Milo Yiannopoulos at the University of California, Berkeley was canceled after peaceful protests turned violent. And at New York University, 11 people were arrested at a protest over a speech by conservative comedian Gavin McInnes.** "I think any campus administration that might have said, after it happened at Berkeley, 'That could never happen here,' I think was probably having second thoughts after seeing what happened at Middlebury," said Berkeley spokesperson Dan Mogulof. **The next school to grapple with this issue could be Vanderbilt University, where Murray is scheduled to speak on Tuesday in his first campus event since Middlebury.**

#### Heckler’s veto plays a legitimate role in voicing student interests.

**Oremland:** Oremland, Brad. [Contributor, the Washington Post] “The Legitimate Role of a Heckler’s Veto on Campuses.” *The Washington Post,* September 26, 2016. MZ

While I agree with Catherine Rampell about the need to guard against censorship on college campuses, her Sept. 20 op-ed, “Colleges’ new excuse for shutting down speech,” neglected a critical component of free speech: protest. **The line between responsive administration and intrusive censorship can be uncomfortably thin, but students who organize a protest have the right to make their views heard, and universities have a responsibility to listen to their students.** **For many students, college is also their home, and the invitation of a speaker they find offensive can feel like a violation of private, rather than public, space. The Constitution does not protect anyone’s right to be invited to speak on campus. Although it is, in some cases, disingenuous to cite “security” in responding to the wishes of students, free speech and student self-determination, not semantics and administrative cowardice, are the critical issues in this discussion. At colleges and universities, the heckler’s veto plays a rare legitimate role.**

#### Heckling that is actually disturbing is not constitutionally protected.

**Volokh, THEIR OWN AUTHOR:** Volokh, Eugene. [Teaches free speech law at UCLA School of Law] “Sixth Circuit Court Rejects ‘Heckler’s Veto’ as to Anti-Islam Speech by ‘Bible Believers’” *The Washington Post,* October 28, 2015. MZ

This question has come up with regard to recent Donald Trump-related controversies, so I thought I’d talk about it more broadly. 1**. Many states outlaw “disturbing lawful assemblies,” which would include campaign rallies, whether on public property or private. My own California, for instance, provides that:** **Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting that is not unlawful in its character . . . is guilty of a misdemeanor.** **Attempts to shut down an event, for instance by shouting down a speaker, blowing whistles so that the speaker can’t be heard, rushing onto the stage and the like would thus be illegal. This is important both because the police can then arrest the disrupters, and because security guards and ordinary rally attendees could then legally use reasonable, non-deadly force to stop the disruption (more on that later). Here’s an example, from State v. Hardin (Iowa Supreme Court, 1993): Hardin’s testimony at trial revealed that he and his friends viewed the event as an opportunity to personally convey to the President [George H.W. Bush] their opposition to the government’s Persian Gulf policy.** Once the President began speaking, they planned to stand up and shout their concerns in turn. They then intended, in Hardin’s words, to keep chanting until we were no longer able to make our point, and I didn’t know what was going to stop that. I mean, whether it was the crowd taking up a chant in response to us or kicked out or arrested. I really had no feel for what was going to happen. At the appointed time during the President’s speech, one of Hardin’s friends stood up and shouted, “Bring the troops home from Saudi Arabia.” Then Hardin stood and said, “Mr. President stop the build up.” Another friend shouted, “No blood for oil.” The trio then continued that chant. After three to five minutes, one of the event coordinators approached Hardin and asked him to sit down. Hardin said he looked at him and then “returned to what I was doing.” The organizer repeated his request to no avail. The police were summoned and the three were escorted from the auditorium without further incident. **The court upheld the chanters’ conviction.** **They add:** **3. Of course, if the event is held in a private place, and the event organizers tell the heckler to leave and the heckler doesn’t leave, the heckler may be guilty of the separate crime of trespass. See, e.g., State v. Colby (Vermont Supreme Court 2009).**

## Alcohol Ads PIC

#### Meta studies confirm that bans on alcohol ads don’t solve – education is far more effective.

**Swayne:** Swayne, Matt [Researcher, Penn State] “Alcohol and tobacco advertising bans don't work.” *Penn State University.* August 2010. RP

University Park, Pa. -- **Bans on alcohol and tobacco marketing are among the least effective tactics for combating underage drinking and smoking, according to a Penn State economist, who has studied the effects of advertising since 1985.** "My conclusion is that the emphasis on advertising bans and similar regulations in the public health literature is misplaced," said Jon Nelson, professor emeritus of economics. "**More effective policies need to be sought to deal with issues of youthful risk-taking associated with alcohol and tobacco**." Among the deficiencies, Nelson reported that there were problems with how researchers selected people to participate in their studies and how they drew conclusions from the data they collected. "The studies, in fact, are deficient in so many respects that the big question is whether there's any influence of marketing at all, especially the mass media," Nelson said. Policy makers and advocacy groups use these studies to initiate and justify bans on alcohol and tobacco product advertising in order to lower the social costs associated with using these products and to promote youth health. According to Nelson, the American Medical Association and the World Health Organization are among the organizations that uncritically cite these studies in their advocacy of tobacco and alcohol advertising bans. Nelson recommended several ways to improve studies on youth alcohol and tobacco behaviors. Researchers who explore advertising's influence on youth drinking and smoking should better identify why variables, such as peer and parental influences, are included in the study and choose variables that more effectively measure the exposure of alcohol and tobacco marketing in youth behavior. **In a recent review of 20 youth drinking studies and 26 youth smoking studies published in the International Journal of Environmental Research and Public Health, Nelson found that only 33 percent of the results were statistically significant in linking marketing with youth drinking. He considered only 49 percent of the results significant on marketing and youth smoking behavior**. "These studies should be done against a well-defined scientific standard for an empirical investigation," said Nelson. "There is really no such thing as a perfect study, but the object should be to get closer to those acceptable standards." Nelson identified longitudinal studies that measured the influence of a range of alcohol and tobacco marketing efforts including mass media, in-store displays, branded merchandise, movie portrayals and brand recognition. The participant in a longitudinal study is interviewed or surveyed over two or more years. Nelson looked at these studies in two categories, youth drinking and youth smoking. Although these studies had common features, they were treated separately because they used slightly different models to explore advertising receptivity and exposure. Nelson then offered critical assessments of the studies in each category, paying particular attention to the consistency of empirical results among the studies. The review reinforced findings in Nelson's previous work. **In 2001 and 2010 studies, he showed advertising bans in European countries did not reduce adult alcohol consumption. In 2003 and 2006 studies, he reported a similar finding for tobacco advertising bans.**

#### Perm do the counterplan – commercial speech isn’t constitutionally protected.

**Brudney:** Brudney, Victor [Victor Brudney, Robert B. and Candice J. Hass Professor in Corporate Fi- nance Law, Emeritus, Harvard Law School.] “THE FIRST AMENDMENT AND COMMERCIAL SPEECH.” *Boston College Law Review.* 2012. RP

**Commercial speech differs from the “spee**

**ch” covered by, and spe- cially protected under, the First Amendment.** Commercial speech is much less likely to be challenged by, critically responded to, or cor- rected by third parties. It is the possibility, or, indeed, the likelihood, of such “more speech” that is an essential premise for First Amendment protection of speech against government regulation. The institutional conditions that obstruct the availability of more speech to respond to commercial speech argue against special protection for the latter. Quite apart from such considerations, the context and content of commercial speech also argue against extending the First Amendment’s special protection to such speech. **First Amendment protection exists to serve the interests of the community collectively rather than of individ- ual participants in their personal affairs. Such protection is not available for commercial speech that functions only to benefit its participants in- dividually** (as speakers or as addressees)—except possibly if it contains expression that would be entitled to First Amendment protection if it were uttered other than as a component of commercial speech. **In that case, the entitlement of the commercial speech to the First Amend- ment’s special protection depends upon whether in its commercial con- text the expression would be understood by the normal addressee**— listeners, viewers, or readers—to involve more than consummation of the commercial transaction—that is, to engage consideration of the im- port of the expression for collective matters of the society.

#### Court precedent has established that alcohol advertising on campuses isn’t protected speech

**Koon:** Koon, Samantha [Contributor, The Daily Progress] “Federal judge upholds alcohol advertising ban in college newspapers.” *The Daily Progress.* September 2012. RP

If underage University of Virginia students are drinking beer, it is not because they were persuaded by advertisements in The Cavalier Daily. **A federal judge upheld a state ban on alcohol advertisements in college newspapers late last week, saying that student papers do not have a First Amendment-protected right to advertise age-restricted products to their primarily underage readerships. Judge Hannah Lauck said that the Virginia Department of Alcoholic Beverage Control asserted “a substantial interest in combating the serious problem of underage drinking and abusive drinking by college students.” This is enough, she ruled, to limit the papers’ commercial speech.** “We’re disappointed that the original ruling was upheld. I’m of the mind that the ban on alcohol advertisements is unconstitutional ...,” said Cavalier Daily Editor-in-Chief Matthew Cameron. **Virginia state code prohibits alcohol advertisements in college newspapers because they are intended to be primarily distributed to readers under 21**. According to court documents, restaurant ads are legally permitted to mention the sale of “beer,” “wine,” “mixed beverages” and “cocktails,” or use the phrase “ABC on premises.” The judge ruled that the ban on alcohol advertising restricts commercial speech, but noted that “commercial speech is regulated in a manner that might be impermissible for noncommercial speech,” the ruling reads. “While this regulation limits alcohol advertisements, it does not, nor does it tend to, restrict the length, content, or substance of noncommercial speech …,” Lauck ruled. In 2006, Virginia Tech’s Collegiate Times and the UVa’s The Cavalier Daily filed suit against the ABC, claiming that ad restrictions not only violate the newspapers’ right to free speech, but also cost the newspapers valuable ad revenue. “The Cavalier Daily estimates losses of approximately $30,000 per year, based on estimated sales of one alcohol advertisement on one-quarter page per issue,” the ruling, filed last Friday, reads. The Cavalier Daily reported that local restaurants Sakura, Coupe DeVille’s and the now-defunct Satellite Ballroom had expressed interest in placing alcohol advertisements. The Collegiate Times also estimated a $30,000 annual loss in ad sales. Both newspapers are funded almost exclusively through ad revenue, according to court documents. “Almost 80 percent of Virginia Tech students consumed alcohol in 2005 and 2006, even though students under 21 years of age comprised between 46 to 51% of the student population,” the ruling reads. Court documents say that as of Jan. 1, 2007, 36 percent of UVa’s total population and 60 percent of its undergraduate population were not of legal drinking age. Both schools have a higher rate of binge drinking than the national average, according to Lauck’s ruling. Court documents cited a study by Henry Saffer, an economics professor at Kean University, as justification for upholding the ban. “The results suggest that a 28 percent reduction in total alcohol advertising would reduce monthly alcohol participation from about 25% to 21 – 24%. Additionally, a 28% reduction in total alcohol advertising would reduce binge drinking participation from 12% to 8-10%,” the judge’s opinion reads. Saffer noted, however, that “the vast majority of studies” found that advertising had no effect on consumption rates. Moreover, he noted that increased taxation is more likely to reduce underage consumption than advertising bans. Jon P. Nelson, an expert witness provided by the Collegiate Times and The Cavalier Daily, argued that alcohol ads are designed to promote brand loyalty, and have little effect on the overall demand for alcoholic beverages, according to court documents. Cameron said he has not yet had the opportunity to speak with Rebecca Glenberg, the American Civil Liberties Union lawyer representing the newspapers in the matter. “Hopefully we can find a way to move forward,” he said. When asked if he intended to appeal the decision, Cameron said he “would not rule it out.”

## Student Fees PIC

#### Perm do both – affirming does not affect students choice of what to fund. Colleges can constitutionally require students to pay fees, which means they do not have an automatic constitutional right to choose what they fund – THEIR OWN AUTHOR

**Leef:** Leef, George C. [Contributor, Foundation for Economic Education] “Mandatory Student Fees and Freedom of Speech.” August 2000. RP

**On March 22 the U.S. Supreme Court ruled, in Southworth v. University of Wisconsin Board of Regents, that** requiring students to pay fees to support campus groups, a common practice at many colleges and universities, is not unconstitutional. The Court has spoken—but did it speak wisely? Let’s consider the case and the issues it raises. **Scott H. Southworth is a student at the University of Wisconsin in Madison. A self-described conservative Christian, he objected to the university’s use of mandatory student fees to fund campus groups that he found offensive.** Relying on Supreme Court precedents in union settings, where the Court has ruled that dissenters from the union’s political stances cannot be compelled to pay for them through mandatory dues and fees, Southworth argued that his First Amendment right to refrain from subsidizing the speech of others had been violated. Although the fee was only $330, Southworth maintained on principle that he should not be required to help finance even one cent of the budget for the many statist campus groups for which Wisconsin is famous. Persuaded by Southworth’s analogy to the union dues cases, the trial court invalidated the university’s mandatory fee scheme. **The university appealed to the Seventh Circuit Court of Appeals and there suffered a severe rebuke. The Seventh Circuit rejected Wisconsin’s proposed refund mechanism for objecting students and trounced its argument that subsidizing an array of student groups was a vital part of a university’s educational mission. The university appealed to the U.S. Supreme Court. In a 9-0 decision, the Supreme Court reversed the lower courts. Justice Anthony Kennedy’s opinion gave Wisconsin nearly all that it had hoped for.**

#### This causes SO much racism and sexism – students would just choose to not give money to programs led by minorities or women, leaving them permanently underfunded

## White Supremacist Police

#### No solvency – colleges obviously don’t have jurisdiction over police officers…

#### Perm do the counterplan – whether the First Amendment applies to firing white supremacist officers is ambiguous at best – no cases clearly establish it – THEIR AUTHOR.

**Speri:** Speri, Alice [Contributor, The Intercept] “The FBI Has Quietly Investigated White Supremacist Infiltration of Law Enforcement.” January 2017. RP

**Stamper said he had fired officers who expressed racist views, but added, “It’s not likely to happen in most police departments, because many of those departments come from a tradition of saying the officer is entitled to his or her opinions.” Whether the First Amendment protects an officer’s right to express racist, white supremacist views — or even to associate with organizations that endorse those views — is something that remains a subject of debate, Stamper said.** “You can fire someone. Whether the termination will stand up under review is the real question.”

#### The race-specific speech codes will get co-opted and turned into a useless paradox

Henry Louis **Gates 94,** [Professor and Director of the Hutchins Center for African and African American Research at Harvard University], “War of Words: Critical Race Theory and the First Amendment”, in Speaking of Race, Speaking of Sex: Hate Speech, Civil Rights, and Civil Liberties, New York University Press, 1994. RFK

At the very least, this approach would promise a quick solution to the abuse of "fighting words" ordinances. **Consider Matsuda's own approach to legal sanctions for racist speech.** By way of distinguishing "the worst, paradigm example of racist hate messages from other forms of racist and non-racist speech," she offers three identifying characteristics: (1) The message is of racial inferiority. (2) The message is directed against a historically oppressed group. (3) The message is persecutory, hateful and degrading. The third element, she says, is "related to the `fighting words' idea"; and the first "is the primary identifier of racist speech"; but it is the second element that "attempts to further define racism by recognizing the connection of racism to power and subordination." The second element is the one that most radically departs from the current requirement that law be neutral as to content and viewpoint. But it would seem to forestall some of the abuses to which earlier speech ordinances have been put, simply by requiring the victim of the penalized speech to be a member of a "historically oppressed group." Surely there is something refreshingly straightforward about the call for "an end to unknowing." **Is Matsuda on to something? Not quite. Ironically enough, what trips up the content-specific approach is that it can never be content- specific enough.** Take a second look at Matsuda's three identifying characteristics of paradigm hate speech. First, recall, that the message is of racial inferiority. Now, **Matsuda is clear that she wants her definition to encompass, inter alia, anti-Semitic and anti-Asian prejudice; but anti-Semitism (as the philosopher Laurence Thomas, who is black and Jewish, observes) traditionally imputes to its object not inferiority, but iniquity.** Moreover, anti-Asian prejudice often more closely resembles anti-Semitic prejudice than it does anti-black prejudice. Surely anti-Asian prejudice that depicts Asians as menacingly superior, and therefore as a threat to "us," is just as likely to arouse the sort of violence that notoriously claimed the life of Vincent Chin ten years ago in Detroit. More obviously, **the test of membership in a "historically oppressed" group is either too narrow (just blacks) or too broad (just about everybody). Are poor Appalachians, a group I knew well from growing up in a West Virginia mill town, "historically oppressed" or "dominant group members"? Once we adopt the "historically oppressed" proviso, I suspect, it is a matter of time before a group of black women in Chicago are arraigned for calling a policeman a "dumb Polak." Evidence that Poles are a historically oppressed group in Chicago will be in plentiful supply; the policeman's grandmother will offer poignant firsthand testimony to that.**

## Gag Orders PIC

#### Gag orders cause more sexual assault and stigmatizes survivors.

**Nunez:** Nunez, Vivian [Vivian Nunez is a recent graduate of Baruch College. She is a freelance writer and the Founder of Too Damn Young, a website for teens dealing with loss.] “Do Gag Orders Protect Or Endanger Sexual Assault Survivors?” *Generation Progress*. July 2015. RP

**No-contact orders, the equivalent of restraining orders for college students, are part of a series of provisions meant to protect students who have been sexually assaulted. Through the collection of various personal accounts, though,**[**a Huffington Post investigation**](http://www.huffingtonpost.com/entry/sexual-assault-victims-punishment_55ada33de4b0caf721b3b61c?utm_hp_ref=breakingthesilence)**found that on some campuses the no-contact order is being used as a gag order against survivors.** The Huffington Post reports: “Colleges issue no-contact orders as a tool to protect victims from their alleged assailants, and apply confidentiality rules to prevent students from airing the school’s dirty laundry. Several students told HuffPost they were threatened with possible suspension if they violated what they consider to be gag orders.” **Many sexual assault survivors, the story notes, are not consulted in the decision to impose a no-contact order. For some, the lack of ability to choose creates a stressful living environment. “I essentially wasted months of my life worrying I’d be suspended**,” [said Vanessa](http://www.huffingtonpost.com/entry/sexual-assault-victims-punishment_55ada33de4b0caf721b3b61c?utm_hp_ref=breakingthesilence), a student at Columbia University, to the Huffington Post. Vanessa, whose name has been changed by the Huffington Post for safety reasons, is a prime example of how detrimental it can be for a school to push a survivor into a situation they have not agreed to. “**In Vanessa’s case, she says the threat of punishment for breaking the no-contact order pushed her even further into her boyfriend’s arms since the rule prevented him from getting checked in to visit her at her dorm**,” the Huffington Post reported. “Instead, Vanessa spent more time off-campus with him, which she now admits was ‘dangerous’ because the university couldn’t protect her there.” Through the progression of Vanessa’s personal account to the Huffington Post it’s apparent how no-contact orders play a role in the likelihood of reporting sexual assault. Once Vanessa made the personal decision to end the relationship, she simultaneously thought about filing a complaint with Columbia. Her initial hesitancy to report stemmed from the no-contact order. [She told the Huffington Post](http://www.huffingtonpost.com/entry/sexual-assault-victims-punishment_55ada33de4b0caf721b3b61c?utm_hp_ref=breakingthesilence) that she felt “she couldn’t bring her case to the university, because that would have meant admitting that she had violated the order.” Under the no-contact order both parties were warned of punishment if the order was violated. **In this instance, Columbia’s no-contact order helped contribute to the oft-cited statistic that only five percent of those who have been sexually assaulted ever report their assaults. Gag orders essentially push survivors, in these accounts, more into the shadows because the no-contact order is not only placed on the alleged attacker, but also on the victim, who at the time of the order being issued may still be in the relationship. “These threats have prevented sexual violence victims from getting protection from their universities or from police, made it difficult to get emotional support from friends and to discuss their experiences in public, shielded the colleges from scrutiny and, in some cases, simply made victims feel like they were the ones on trial**,” [wrote the Huffington Post.](http://www.huffingtonpost.com/entry/sexual-assault-victims-punishment_55ada33de4b0caf721b3b61c?utm_hp_ref=breakingthesilence)

#### Gag orders are used to criminalize survivors

**Kingkade:** Kingkade, Tyler [Tyler Kingkade covers higher education and sexual violence, and is based in New York.] “He Admitted To Sexual Assault, But She’s The One They Tried To Silence.” Huffington Post. March 2016. RP

**Everything seemed to be done right when American University investigated Faith Ferber’s sexual assault report**. At a hearing this fall, the male student she accused admitted that he was responsible. And that’s when things fell apart, according to Ferber. AU, a private university in Washington, D.C., punished him with just a year of probation. The dean of students told Ferber that her attacker would at least be barred from Greek life, she told The Huffington Post. But last week she learned that was not true. He’s in a fraternity now**.   Moreover, Ferber shouldn’t even be talking about this, because AU made her sign a confidentiality agreement in order to participate in the hearing of her case.** The school did that even though federal law and guidance from the U.S. Department of Education states that [schools are not allowed](http://www.huffingtonpost.com/entry/sexual-assault-victims-punishment_us_55ada33de4b0caf721b3b61c) to require confidentiality once such a case has been resolved. Ferber has already filed a civil rights complaint against AU with the Education Department. **On Tuesday, she is going public with her case along with women lodging similar complaints against Monmouth University in New Jersey, the University of Alabama at Birmingham and Indiana University Bloomington.  The women, two of whom are using pseudonyms, contend that their schools pressured them not to speak out about their attacks**. One university allegedly asked a student to waive her federal privacy rights so that a third party could check out her medical records. The administrator overseeing another woman’s case [was himself accused of sexual assault](http://www.huffingtonpost.com/entry/jason-casares-resigns-sexual-assault_us_56d081d1e4b03260bf769320).  Colleges are [obligated to address reports](http://www.huffingtonpost.com/2014/06/10/title-ix-yale-catherine-mackinnon_n_5462140.html) of sexual assault under the gender equity law Title IX, regardless of whether the victim also takes her case to law enforcement authorities. These women told HuffPost they pursued their cases with the schools because they wanted their alleged assailants removed from campus.   They all said they decided to go public this week after being inspired by Lady Gaga’s performance with 50 sexual assault survivors at the Oscars last month. Included in Gaga’s show were [three co-founders of the activist group End Rape On Campus](http://www.huffingtonpost.com/entry/survivors-lady-gaga-oscars_us_56d4654be4b0871f60ec0806), which helped the women file complaints with the Education Department. All four schools declined to address the details of the accusations, citing federal privacy law and saying they have not had a chance to review the filings with the Education Department. They all vowed to cooperate fully with any federal investigation that may result from the complaints. In Ferber’s case, American University refused to hold a hearing so close to finals in April, so the hearing was delayed until Oct. 30. At that time, the accused student pleaded “responsible” to the charge of sexual assault, according to Ferber. Documents filed with her Education Department complaint show the hearing panel reached that conclusion. University administrators then asked Ferber what she thought her assailant’s punishment should be, and she said she told them suspension and in-person educational sessions about consent. A little more than a week later, the dean of students told Ferber that the punishment would be a year of probation, a ban on participation in Greek life, and review of an online education module about sexual assault, she said.  When Ferber complained that online education would not be effective, she said the dean responded, “Well, we didn’t want it to be that hard for him to finish.” Ferber found out last week that her assailant was also not banned from Greek life. Administrators confirmed that in an email to her, which was shared with HuffPost, and said they hadn’t told his fraternity about his admission of sexual assault.  Ferber is prohibited from telling the fraternity either, because at the hearing, the university required her to sign a gag order about her own case, a copy of which was obtained by HuffPost. The Education Department has been saying clearly [since the George W. Bush administration](https://www.ncherm.org/pdfs/INSIDE_TITLE_IX_INVESTIGATION.pdf) that victims [can’t be required to sign](http://www.publicintegrity.org/2009/12/01/9047/sexual-assault-campus-shrouded-secrecy) such an agreement. While AU wouldn’t comment on the specifics of Ferber’s case, the school said that “all students who participate in a disciplinary hearing, regardless of the type of alleged misconduct,” must sign such an agreement. “Obviously I’m violating my confidentiality agreement now, and I’m OK with that,” Ferber said, “because I would love to see AU try and bring charges against me that’s more harsh than disciplinary probation, because that’s what my perpetrator got for sexual assault.” A woman who asked to be called Shannon accused the University of Alabama at Birmingham of bias against her and of ignoring medical records that showed she’d been drugged the night she says she was assaulted.  Shortly after Shannon reported the matter to the university this past October, a student conduct administrator “told me it’d be best to drop out for the semester,” she told HuffPost.  **A no-contact order was put in place, but Shannon said she was the one who had to avoid encountering him: She would enter campus buildings through the back entrances, had to park in less convenient spots, and wasn’t allowed to use the undergraduate library, which was more centrally located and where her friends studied. She wasn’t even allowed to use elevators in some buildings and instead had to take the stairs, according to documents with her Education Department complaint. “I hate my school,” Shannon told HuffPost. “I hate being there when I don’t have to be. It’s uncomfortable.” After nearly three months, the university’s outside investigator — a divorce lawyer — decided the accused was not responsible. The investigation had not reviewed Shannon’s rape kit evidence, spoken with her psychiatrist or looked at photos that corroborated the bruising she reported, according to her complaint**. The accused was told he could consult with an attorney, but she was not, the complaint said.  Shannon appealed the investigator’s decision. She asked one administrator how students are normally disciplined in sexual misconduct cases and said the administrator replied, “Until you get a lawyer from ‘The Hunting Ground’ that makes us provide you with that information, I cannot tell you that.” (“The Hunting Ground” is a 2015 documentary about college sexual assault.) On March 3, according to Shannon, the university asked her to waive her rights under the Family Educational Rights and Privacy Act so they could hand over her medical records for a third-party review. The school gave her one day to decide.  “**The assault was bad,” Shannon said, “but the way my school has treated me has created more trauma than the original assault did.”** A woman who asked to go by the pseudonym Sarah said she experienced similar problems at Monmouth University, when she reported a sexual assault in February 2015. Sarah said she declined to pursue student conduct charges against the alleged assailant partly due to pressure from administrators not to talk about her case.  Sarah said that she and the accused were barred from having contact with each other directly or through third parties. But she believed that really “they were trying to keep everyone quiet about it.” At one point, an administrator grilled her about speaking to classmates about being assaulted, she said. At another, according to Sarah, Monmouth essentially put a gag order on one of her friends for making a comment on Facebook about rape culture. Sarah said she was also told that if she went forward with conduct charges, the university might not consider as evidence the text messages she had from the accused apologizing for his “actions” that night and saying he was “ashamed” of what he did.  “They couldn’t guarantee I would be able to use the strongest evidence I had,” Sarah said. Hailey Rial said she reported a sexual assault at Indiana University Bloomington in September and requested a protective order, a common step in Title IX cases. But Rial learned two months later that there was no such order because, according to her Education Department complaint, no one at the university had arranged the meeting that it requires before putting protective orders in place.  Rial felt unsafe on campus without a protective order, much less a resolution in her case, she told HuffPost. Since she couldn’t have the accused removed from her dorm, she tried to move and was charged $1,600 for it. Eventually the money was refunded after she and her family complained about a range of fees incurred throughout the case, she said. The case wasn’t resolved until February, by which time Rial had left campus. She therefore participated in the hearing via Skype, which she argues in her complaint put her at an unfair disadvantage: Everyone in the room was given copies of witness statements, but she said the school refused to send her those files through email. The accused was found not responsible. Three days after Rial learned of the school’s decision, the news broke that Jason Casares, the man in charge of her case, was under [criminal investigation for a sexual assault allegation against him](http://www.huffingtonpost.com/entry/asca-sexual-assault_us_56b38334e4b01d80b24556c3). Rial’s case is one of 18 handled by Casares[that are now being reviewed](http://www.huffingtonpost.com/entry/student-conduct-group-sexual-assault_us_56b8f824e4b04f9b57daad2d). (After this article was published, university officials said that they “dispute a number of the assertions,” but couldn’t comment on specifics.) Rial, who transferred to the South Bend campus of the IU system, said that whatever the outcome, she isn’t going back to Bloomington.  “I know that I don’t want to be at that large of an institution,” she said. “I feel like that’s a lot of the problems with this — the school is so large, they just don’t care about students the way that they should be caring about them.”

## Safe Spaces PIC

\*\*\*can read black safe space pic blocks

#### Restrictions and safe spaces depoliticize oppression, fracturing coalitions that are key to solve.

Halberstam Jack Halberstam, You Are Triggering me! The Neo-Liberal Rhetoric of Harm, Danger and Trauma, Bully Bloggers, 5/7/16.

**What does it mean when younger people who are benefitting from several generations now of queer social activism** by people in their 40s and 50s (who in their childhoods had no recourse to anti-bullying campaigns or social services or multiple representations of other queer people building lives) fee**l abused, traumatized, abandoned, misrecognized, beaten, bashed and damaged?** These **younger folks**, with their gay-straight alliances, their supportive parents and their new right to marry regularly **issue calls for “safe space**.” However, as Christina Hanhardt’s Lambda Literary award winning book, Safe Space: Neighborhood History and the Politics of Violence, shows, **the safe space agenda has worked in tandem with urban initiatives to increase the policing of poor neighborhoods and the gentrification of others.** Safe Space: Gay Neighborhood History and the Politics of Violence traces the development of LGBT politics in the US from 1965-2005 and explains how **LGBT activism was transformed from a multi-racial coalitional grassroots movement with strong ties to anti-poverty groups and anti-racism organizations to a mainstream, anti-violence movement with aspirations for state recognition. And, as LGBT communities make “safety” into a top priority** (and that during an era of militaristic investment in security regimes) **and ground their quest for safety in competitive narratives about trauma, the fight against aggressive new forms of exploitation, global capitalism and corrupt political systems falls by the way side. Is this the way the world ends? When groups that share common cause, utopian dreams and a joined mission find fault with each other instead of tearing down the banks and the bankers, the politicians and the parliaments, the university presidents and the CEOs? Instead of realizing**, as Moten and Hearny put it in The Undercommons, **that “we owe each other everything,” we** enact punishments on one another and stalk away from projects that should unite us, and **huddle in small groups feeling** erotically **bonded through our self-righteousness**. I want to call for a time of accountability and specificity: not all LGBT youth are suicidal, not all LGBT people are subject to violence and bullying, and indeed class and race remain much more vital factors in accounting for vulnerability to violence, police brutality, social baiting and reduced access to education and career opportunities. **Let’s call an end to the finger snapping moralism, let’s question contemporary desires for immediately consumable messages of progress, development and access; let’s all take a hard long look at the privileges that often prop up public performances of grie**f and outrage; let’s acknowledge that being queer no longer automatically means being brutalized and let’s argue for much more situated claims to marginalization, trauma and violence. **Let’s not fiddle while Rome** (or Paris) **burns,** trigger while the water rises, weep while trash piles up; **let’s recognize these internal wars for the distraction they have become. Once upon a time, the appellation “queer” named an opposition to identity politics, a commitment to coalition, a vision of alternative worlds. Now it has become a weak umbrella term for a confederation of identitarian concerns. It is time to move on, to confuse the enemy, to become illegible, invisible, anonymous** (see Preciado’s Bully Bloggers post on anonymity in relation to the Zapatistas). In the words of José Muñoz, “we have never been queer.” In the words of a great knight from Monty Python and the Holy Grail, “we are now no longer the Knights who say Ni, we are now the Knights who say “Ekki-ekki-ekki-ekki-PTANG. Zoom-Boing, z’nourrwringmm.”

#### This leads to forms of segregation that makes dialogue about racial issues impossible – people run away and hide instead of engaging, retreating to their own private zones

**Pullan:** Pullan, Wendy [Contributor, Saferworld] “Just cities: the role of public space and everyday life.” January 2016. RP

**Recent years have seen private citizens flocking to their city centres in order to protest against abuses and violence, to call for more or better forms of justice and democracy, to make their rights and wishes apparent.** Tahrir Square, Gezi Park, Place de Republique have become synonymous with public demonstrations in Cairo, Istanbul and Paris. **Much has been written about the importance of mobile phones and social networking in forming these events, yet along with effective means of communication, occupying urban space was equally necessary and significant. Without dwelling upon the success or failure of such movements, ‘being in the place’ was a way of establishing civic participation**. To better understand the wider background of such events, I would like to make two observations: first of all, conflicts across the world are becoming increasingly pervasive and complex. In the words of the International Crisis Group’s Jean-Marie Guéhenno, they are more ‘fragmented’. **Rarely are today’s conflicts declared wars with clear beginnings and ends; increasingly, they take the form of prolonged strife with intermittent periods of violence and of relative peace. Many are deeply embedded in ethno-national and religious hostilities as well as economic inequality and class tensions**. Secondly, such conflicts are increasingly played out in urban settings; a 2011 World Bank Report notes that ‘in many cases, the scale of urban violence can eclipse that of open warfare’. Today, cities have become the arena for conflict. The conflicts may originate in national or transnational disputes, but they are played out in cities like Belfast, Baghdad and Jerusalem. Such cities may be targeted as in the siege of Sarajevo during the Yugoslavian civil war or the state-sponsored barrel bombs attacking Syrian cities. But conflicts may also be generated from within by hostile sectors of the population. Whether generated by outside or inside forces, or both, these conflicts increasingly represent cracks in the continuity of urban society. In considering ethno-national and religious conflicts, we find a high level of longevity and uncertainty that is proving resistant to traditional peace processes and political negotiations. Solutions are elusive and we may simply have to learn how to live with certain levels of conflict. Such a realisation affects the place of justice and the role of legal solutions. The dispensing of justice only through policy and official channels may be insufficient, biased or ineffective. One reason for this is because conflicts in cities often concern everyday institutions and practices, played out in ordinary urban life. Examples of everyday life affected by conflict are varied and pervasive: no-go streets in the city; neighbourhood domination by local strong men; regular and sometimes violent demonstrations and parades; streetscapes of graffiti, slogans and other ethnic identifiers; or, more subtle practices that dictate where one chooses to live, work or shop. In the divided cities of the Middle East, urban quarters are increasingly associated with particular ethnic or religious groups; in parts of Belfast, Republicans and Nationalists can be identified by the side of the street on which they walk. Often personal choice is absent; exclusion is pre-determined by religio-political identity and security. The ancient idea of nomos, understood as law and legal order, also has a second and related meaning of convention or custom. Justice, or lack of it, can be played out through customary practice in daily activities. It has to do with how we manage our daily interactions and the urban scenarios that determine where human exchange exists and where not. This is usually a delicate balance. Philosopher Peter Sloterdijk has noted that ‘more communication means above all more conflict’. Understanding each other needs to be supplemented by tactics, actually a ‘code of discretion’, of ‘getting out of each other’s way’. If it were one defined code, legislation would be useful. However, throughout everyday life in urban situations, many codes of behaviour play a role and skills and discretion are necessary to navigate throughout such a complex territory. Protocols shift and respond to a myriad of different powerful forces. Whilst this may be fine when there is good will, it is easy to see how such a delicate series of balances and reactions break down in times of trouble or conflict. Explicit legislation will have an effect at only a very superficial level, but most transactions are rooted in fundamental yet complex forms of praxis, effectively, as architect Peter Carl puts it, ‘in what people do’. Much of this has to do with human activity and the interaction between people, or their ability to ignore each other. **But it is worth noting that the environment also plays a major role in forming a place for these events. In other words, praxis must be located, and customs develop in physical contexts. In cities, public space, as the physical space that diverse peoples share in some way, provides critical environments**. Cities have been built on the fault lines of culture – places of trade and exchange, the coming together of religious individuals and groups, sites to make proclamations, utter judgements, build major structures – and these are inherently the places of diversity and difference. A city is only a city when it encompasses diversity, yet, returning to Sloterdijk’s statement, this, on a grand scale, is a recipe for conflict. **Thus urban public space is inherently diverse, often conflictual and sometimes contested. Many of our most important urban institutions are based upon adversarial relations – parliaments, judicial courts, debating chambers. Debate and disagreement have also traditionally taken place in other less formal bodies: markets, cafes, theatres, demonstrations and protests. In all of these, no absolute agreement is normally expected**. Rather they act as a means of moving forward, with difference and even conflict, as part of the culture, becoming embedded in everyday life. These institutions are physically situated in cities and, effectively, adversarial relations become integral parts of the urban topography. **However, when heavy conflict arises, we see changes in cities, particularly in public space. People tend to shrink back into their own neighbourhoods and communities where they do not have to contend with the ‘other’**. If violence develops, mixed populations become afraid of each other, and everyday life, with all of its ordinary customs and protocols, becomes truncated. Above all, public space becomes a casualty. Public places and facilities – like markets and malls, bus stops and train stations, busy streets and squares – may become magnets for violence and thus closed down and hidden away from public use. In some ways this is not surprising: if violence emerges with threats to safety and human life, you get rid of the places where this is happening**. Yet, I should like to suggest, that whilst this might be effective in the short term, in the medium to long term, public space and the renewal of everyday activities that take place there is key to viable urban relations and the life of a diverse city. We need our urban public space. There are a number of problems with closing down public space and severe disruptions of customary life and practice. Restrictive measures in an emergency often linger on to focus on certain racial or ethnic groups**. So-called temporary measures, like building inner city walls and barricades – prominent features in Jerusalem, Nicosia, Baghdad – have the nasty habit of becoming permanent. In the long term, in very seriously divided cities like Mostar, Beirut or Jerusalem, the possibility of seeing a face that doesn’t look like yours, or hearing a language that is local to the place but you do not understand, becomes increasingly rare and, I would argue, increasingly precious. In examining the effects of conflict in public places, the Centre for Urban Conflicts Research has found two seemingly contradictory phenomena. **In periods of intense violence people from different ethnicities avoid each other but when times are more peaceful, at least some of the populations gravitate back toward mixed areas**. At the same time, entrenched conflicts result in long term or permanent urban changes, often embedded in the physical divisions. So in Nicosia, divided by an uninhabited buffer zone running through the city centre since 1974, it is difficult and may be impossible to rejuvenate this formerly public and shared part of the city. People’s customary practices have been disrupted by what I would call ‘conflict infrastructures’, most visibly in walls and imposed barriers. A tipping point is passed and what has been relatively easy to fracture is almost impossible to knit back together. **Along with such public spaces the customary practices of urban life and the civic rights associated with them also disappear**. Thus we see that cities are both robust and delicate at the same time. If we wish to address the problem of conflict in cities, we must recognise and play to the strengths of both these qualities. **Getting rid of public space, even in times of violence, is clearly not the answer.**

#### Safe spaces are never safe for black people – instead we need to engage in tough racial dialogue – enduring hate speech has to be considered worth it to escape vapid moralizing about race.

**Leonardo and Porter:** Leonardo, Zeus and Porter, Ronald K.(2010) 'Pedagogy of fear: toward a Fanonian theory of 'safety' in race dialogue', Race Ethnicity and Education, 13: 2, 139 — 157

It is apparent that both whites and people of color want to avoid violence from being enacted against them. They enter race dialogue from radically different locations – intellectual for the former, lived for the latter – and an unevenness that the critical race pedagogue must accept and becomes the constitutive condition of any progressive dialogue on race. It is the risk that comes with violence but one worth taking if educators plan to shift the standards of humanity. In an apparently common quest for mutual racial understanding, whites and people of color participate in a violence that becomes an integral part of the process and seeking a ‘safe space’ is itself a form of violence insofar as it fails to recognize the myth of such geography in interracial exchange. As it concerns people of color within the current regime, safe space in racial dialogue is a projection rather than a reality. This is the myth that majoritarian stories in education replay and retell in order to perpetuate an understanding of race that maintains white supremacy. Safe spaces are violent to people of color and only by enacting a different form of violence, of shifting the discourse, will race dialogue ultimately become a space of mutual recognition between whites and people of color. If people of color observe the current call for safety, this process defaults to white understandings and comfort zones, which have a well-documented history of violence against people of color. It is a point of entry that is characterized by denials, evasions, and falsehoods (Frankenberg 1993; Mills 1997). Its shell is non-violent for in public most whites prize self-control. Race dialogue within a white framework is rational, if by that we mean a situation that preserves, as Angela Davis (1998) mentioned, peace and order. This procedural arrangement has much to recommend it if we want to avoid uprisings and outright violence. But its kernel is already violent to people of color because a certain irrational rationality is at work. Both parties leave the interaction relatively ‘intact’, which should not be equated with the absence of violence. Whites depart the situation with their worldview and value systems unchallenged and affirmed, and people of color remain fractured in theirs. Whites would need to experience violence if they expect to change. But this is different from a hegemonic understanding that violence is always a form of dehumanization. In our appropriation of Fanon’s dialectics of violence, we find transformative possibilities in violence depending on the political project to which it is attached. Moreover, in this framework violence is not so much a description of this or that act qualifying as a form of violence, but a theoretical prescription of a different state of affairs, a response to oppression that equals its intensity. Thus, we do not describe what violence looks like, but assess its consequences.

#### A culture of safety has swallowed our campuses. It locks out hard conversations about race which dooms any efforts at effective change.

**Shulevitz:** Judith Shulevitz, In College and Hiding From Scary Ideas, The New York Times, March 21, 2015

Safe spaces are an expression of the conviction, increasingly prevalent among college students, that their schools should keep them from being “bombarded” by discomfiting or distressing viewpoints. Think of the safe space as the live-action version of the better-known trigger warning, a notice put on top of a syllabus or an assigned reading to alert students to the presence of potentially disturbing material. Some people trace safe spaces back to the feminist consciousness-raising groups of the 1960s and 1970s, others to the gay and lesbian movement of the early 1990s. In most cases, safe spaces are innocuous gatherings of like-minded people who agree to refrain from ridicule, criticism or what they term microaggressions — subtle displays of racial or sexual bias — so that everyone can relax enough to explore the nuances of, say, a fluid gender identity. As long as all parties consent to such restrictions, these little islands of self-restraint seem like a perfectly fine idea. But the notion that ticklish conversations must be scrubbed clean of controversy has a way of leaking out and spreading. Once you designate some spaces as safe, you imply that the rest are unsafe. It follows that they should be made safer. This logic clearly informed a campaign undertaken this fall by a Columbia University student group called Everyone Allied Against Homophobia that consisted of slipping a flier under the door of every dorm room on campus. The headline of the flier stated, “I want this space to be a safer space.” The text below instructed students to tape the fliers to their windows. The group’s vice president then had the flier published in the Columbia Daily Spectator, the student newspaper, along with an editorial asserting that “making spaces safer is about learning how to be kind to each other.” A junior named Adam Shapiro decided he didn’t want his room to be a safer space. He printed up his own flier calling it a dangerous space and had that, too, published in the Columbia Daily Spectator. “Kindness alone won’t allow us to gain more insight into truth,” he wrote. In an interview, Mr. Shapiro said, “If the point of a safe space is therapy for people who feel victimized by traumatization, that sounds like a great mission.” But a safe-space mentality has begun infiltrating classrooms, he said, making both professors and students loath to say anything that might hurt someone’s feelings. “I don’t see how you can have a therapeutic space that’s also an intellectual space,” he said. I’m old enough to remember a time when college students objected to providing a platform to certain speakers because they were deemed politically unacceptable. Now students worry whether acts of speech or pieces of writing may put them in emotional peril. Two weeks ago, students at Northwestern University marched to protest an article by Laura Kipnis, a professor in the university’s School of Communication. Professor Kipnis had criticized — O.K., ridiculed — what she called the sexual paranoia pervading campus life. The protesters carried mattresses and demanded that the administration condemn the essay. One student complained that Professor Kipnis was “erasing the very traumatic experience” of victims who spoke out. An organizer of the demonstration said, “we need to be setting aside spaces to talk” about “victim-blaming.” Last Wednesday, Northwestern’s president, Morton O. Schapiro, wrote an op-ed article in The Wall Street Journal affirming his commitment to academic freedom. But plenty of others at universities are willing to dignify students’ fears, citing threats to their stability as reasons to cancel debates, disinvite commencement speakers and apologize for so-called mistakes. At Oxford University’s Christ Church college in November, the college censors (a “censor” being more or less the Oxford equivalent of an undergraduate dean) canceled a debate on abortion after campus feminists threatened to disrupt it because both would-be debaters were men. “I’m relieved the censors have made this decision,” said the treasurer of Christ Church’s student union, who had pressed for the cancellation. “It clearly makes the most sense for the safety — both physical and mental — of the students who live and work in Christ Church.” A year and a half ago, a Hampshire College student group disinvited an Afrofunk band that had been attacked on social media for having too many white musicians; the vitriolic discussion had made students feel “unsafe.” Last fall, the president of Smith College, Kathleen McCartney, apologized for causing students and faculty to be “hurt” when she failed to object to a racial epithet uttered by a fellow panel member at an alumnae event in New York. The offender was the free-speech advocate Wendy Kaminer, who had been arguing against the use of the euphemism “the n-word” when teaching American history or “The Adventures of Huckleberry Finn.” In the uproar that followed, the Student Government Association wrote a letter declaring that “if Smith is unsafe for one student, it is unsafe for all students.” “It’s amazing to me that they can’t distinguish between racist speech and speech about racist speech, between racism and discussions of racism,” Ms. Kaminer said in an email. The confusion is telling, though. It shows that while keeping college-level discussions “safe” may feel good to the hypersensitive, it’s bad for them and for everyone else. People ought to go to college to sharpen their wits and broaden their field of vision. Shield them from unfamiliar ideas, and they’ll never learn the discipline of seeing the world as other people see it. They’ll be unprepared for the social and intellectual headwinds that will hit them as soon as they step off the campuses whose climates they have so carefully controlled. What will they do when they hear opinions they’ve learned to shrink from? If they want to change the world, how will they learn to persuade people to join them? Only a few of the students want stronger anti-hate-speech codes. Mostly they ask for things like mandatory training sessions and stricter enforcement of existing rules. Still, it’s disconcerting to see students clamor for a kind of intrusive supervision that would have outraged students a few generations ago. But those were hardier souls. Now students’ needs are anticipated by a small army of service professionals — mental health counselors, student-life deans and the like. This new bureaucracy may be exacerbating students’ “self-infantilization,” as Judith Shapiro, the former president of Barnard College, suggested in an essay for Inside Higher Ed. But why are students so eager to self-infantilize? Their parents should probably share the blame. Eric Posner, a professor at the University of Chicago Law School, wrote on Slate last month that although universities cosset students more than they used to, that’s what they have to do, because today’s undergraduates are more puerile than their predecessors. “Perhaps overprogrammed children engineered to the specifications of college admissions offices no longer experience the risks and challenges that breed maturity,” he wrote. But “if college students are children, then they should be protected like children.” Another reason students resort to the quasi-medicalized terminology of trauma is that it forces administrators to respond. Universities are in a double bind. They’re required by two civil-rights statutes, Title VII and Title IX, to ensure that their campuses don’t create a “hostile environment” for women and other groups subject to harassment. However, universities are not supposed to go too far in suppressing free speech, either. If a university cancels a talk or punishes a professor and a lawsuit ensues, history suggests that the university will lose. But if officials don’t censure or don’t prevent speech that may inflict psychological damage on a member of a protected class, they risk fostering a hostile environment and prompting an investigation. As a result, students who say they feel unsafe are more likely to be heard than students who demand censorship on other grounds.

#### Trigger warnings cause an increase in right wing backlash and nationalism

Tumulty and Johnson 1-4: Karen Tumulty and Jenna Johnson, “Why Trump may be winning the war on ‘political correctness’” 1-4-16 <https://www.washingtonpost.com/politics/why-trump-may-be-winning-the-war-on-political-correctness/2016/01/04/098cf832-afda-11e5-b711-1998289ffcea_story.html?utm_term=.db9bc85e5b87>

“Driving powerful sentiments underground is not the same as expunging them,” said William A. Galston, a Brookings Institution scholar who advised President Bill Clinton. “**What we’re learning from Trump is that a lot of people have been biting their lips, but not changing their minds**.” One thing is clear: **Trump is channeling a very mainstream frustration**. **In an October** poll by Fairleigh Dickinson University, **68 percent agreed** with the proposition that “**a big problem this country has is being politically correct**.” It was a sentiment felt strongly across the political spectrum, by 62 percent of Democrats, 68 percent of independents and 81 percent of Republicans. Among whites, 72 percent said they felt that way, but so did 61 percent of nonwhites. “**People feel tremendous cultural condescension directed at them**,” and that their values are being “smirked at, laughed at” by the political and media elite, said GOP strategist Steve Schmidt. “‘Political correctness’ are the two words that best respond to everything that a conservative feels put upon,” added pollster Frank Luntz, who has advised Republicans. The label is, he said, a validation that what many on the right see as legitimate policy and cultural differences are not the same as racism, sexism or heartlessness. “**Allegations of racism and sexism have turned into powerful silencing devices**,” Galston agreed. “You can be opposed to affirmative action without being a racist.” The PC backlash does not necessarily mean that people support the kinds of things that Trump is saying, or the way he says them. When the Fairleigh Dickinson pollsters added his name to the same question — prefacing it with “Donald Trump said recently . . . ” — the numbers dropped sharply. Only 53 percent said they agree that political correctness is a major problem. This is not a new debate. It has raged since at least the early 1990s, when college campuses began adopting speech codes. Some went well beyond obvious slurs — with animal rights activists contending, for instance, that the word “pet”was disrespectful and should be changed to “companion animal.” **More recently, the PC wars have flared again in academia, where there is an ongoing argument over whether campuses should be a “safe space” where students are protected from upsetting ideas, and receive “trigger warnings” when course material contains distressing information**. Few would argue that it is wrong to confront and eliminate prejudice. But even some liberals have called political correctness a form of McCarthyism aimed at stifling free expression. **Trump has brought the question from the university quad to the political arena** in a way that no leading candidate has in the past. For many, “it’s satisfying to have a loud tribune like Trump,” said David Axelrod, who was President Obama’s top campaign adviser. “But I don’t think the hunger for authentic plain speech is Trump-specific. One of the appeals of [Democratic presidential candidate] Bernie Sanders is that people think he says exactly what he thinks and is not passing it through a filter. **There is a fundamental yearning for authenticity** that is probably felt more broadly.” The edgy liberal comedian Bill Maher, who for nearly a decade hosted a talk show called “Politically Incorrect,” has said that Trump’s ideas sound “a little ­Hitler-adjacent.” But he has also noted a yearning for “somebody to say, ‘You know what, I just don’t bend to your bull----.’ And Donald Trump, I’ve got to say, I don’t agree with him on a lot, but I kind of get him. We’ve been doing the same thing.” Trump sounded the anti-PC clarion call at the first Republican debate in August, when moderator ­Megyn Kelly of Fox News challenged him on comments that he had made disparaging women. “I think the big problem this country has is being politically correct,” he said. “I’ve been challenged by so many people, and I don’t frankly have time for total political correctness. And to be honest with you, this country doesn’t have time either. This country is in big trouble. We don’t win anymore. We lose to China. We lose to Mexico both in trade and at the border. We lose to everybody.” **It is hard to follow the logic of an argument that insulting women could somehow make the country stronger overseas. But the sentiment behind it came through clearly**. **And it has been picked up by other GOP contenders**. “Political correctness is killing people,” said Sen. Ted Cruz (R-Tex.), because it prevents the Obama administration from focusing on the communications and activities of potential terrorists who are Muslims. “Political correctness is ruining our country,” said former neurosurgeon Ben Carson, after he was criticized for saying a Muslim should not be president. It is corrosive, Carson said in an interview, because “many people will not say what they believe because someone will look askance at them, call them a name. Somebody will mess with their job, their family. This was not supposed to be the way it was in America.” Last month’s terrorist attack in San Bernardino, Calif., carried out by a Muslim couple who appear to have been inspired by the Islamic State, also known as ISIS, has become a case in point for many conservatives. They say political correctness has made the Obama administration too timid in calling it what it is — which is why Cruz and other Republicans taunt the president for not uttering the phrase “radical Islamic terrorism.” “What animates ISIS is an ­apocalyptic religious philosophy. People look at that and don’t understand the unwillingness to say red is red and blue is blue,” Schmidt said. “We live in a post-fact America, where the facts are subordinate to the advancement of an ideology.” Political strategists and others say a number of other forces are behind the backlash. It has both a cultural and an economic component, and it also reflects the continuing polarization that has grown deeper during Obama’s presidency. “For many of these people, they played the game by the rules, and essentially, they got shafted,” Democratic pollster Peter Hart said. **Trump is “the voice of an aggrieved cohort in our society — lower-middle-income working whites who have taken the hit from the big changes in the economy, and are angry about it,” Axelrod said. “He creates a permission structure for others.”**

#### A consensus of psychologists agree exposure is good and trigger warnings are bad. Trigger warnings cause more trauma than they’re meant to prevent.

Waters 14 Florence Waters “Trigger warnings: more harm than good?” The Telegraph October 4th 2014 http://www.telegraph.co.uk/culture/books/11106670/Trigger-warnings-more-harm-than-good.html

**Prof Metin Basoglu, a psychologist internationally recognised for his trauma research, agreed to talk to me over the telephone about the issue**. He told me it was now generally acknowledged that anxiety-inducing trauma reminders were frequent in trauma survivors. “We come across the phenomenon a lot,” he said. “Our patients come across these cues, these reminders of trauma, and they can provoke distress in varying intensities. They respond with anxiety and distress; all of the memories come up; occasionally they have flashback episodes, which can be quite dramatic and intense.” Basoglu is the founder of trauma studies at the Institute of Psychiatry, King’s College London, but he returned in September to Turkey, where he advises at the Istanbul Centre for Behaviour Therapy and Research (which he also founded). Over the years he has worked with patients with PTSD as well as survivors of mass trauma events, and has been publishing his findings since the early Nineties. Basoglu gave me an example of how wide-ranging and idiosyncratic such triggers could be: “I worked with a torture survivor who had been forced into signing a blank sheet of paper. The authorities used it to say she had signed a confession. She was conditioned to the colour white. She was not able to come close to white socks, for example.” **According to Basoglu, “an infinite number of situations can act as triggers”, from characteristic smells, conversations, objects and social situations to watching television,** reading a newspaper and listening to the news. In a world increasingly mediated by images and content that we have no control over, does he think it’s advisable for the media to issue trigger warnings? “**There would be no point,” he said. “You cannot get a person to avoid triggers in their day-to-day lives. It would be impossible.” But, given a chance to think it over, Basoglu went much further than that. “The media should actually – quite the contrary… Instead of encouraging a culture of avoidance, they should be encouraging exposure. “Most trauma survivors avoid situations that remind them of the experience. Avoidance means helplessness and helplessness means depression. That’s not good.** “Exposure to trauma reminders provides an opportunity to gain control over them. This is the essence of the treatment that we are using to help trauma survivors. It involves encouraging the patient not to avoid reminders of trauma, but in fact to make a point of exposing themselves to reminders of trauma so that they can develop a tolerance. “I liken it to a vaccination. You get a small dose of the virus so that the body can develop immunity towards it. Psychologically it’s the same phenomenon.” When asked why he thinks the subject is rousing such strong emotions, Basoglu laughed down the telephone from his office in Istanbul. “Any form of anxiety and distress is impermissible in Western culture,” he said. Then, very soberly, he added: “Anxiety is not an undesirable emotion. It’s a human emotion.” Based on his research, Basoglu believes trauma should not be treated with methods that seek to prevent anxiety, but rather the regaining and reconstruction of a sense of control. He **referred to a study carried out after a 1999 earthquake in Turkey, for which thousands of survivors were interviewed, their recovery monitored over a period of time. It showed unexpected results at the time. “To our amazement, those that came across greater opportunities for exposure to trauma reminders recovered faster.”** The study showed that the single most important factor that contributed to decline in PTSD and depression among survivors was the return to living at home or in concrete buildings (as opposed to camps where survivors were living in tents). The report stated that living in concrete housing after an earthquake “leads to self-instigated exposure to feared situations, such as staying alone in the house… **Exposure helps survivors overcome their earthquake-related fears and to recover from PTSD and depression.” This stands for many victims of rape and abuse too**. One of his patients, a woman from Congo who had been gang-raped, was unable to go to the hairdresser because the men who raped her had dragged her on the floor by her hair. “Of course she was in total avoidance of male hairdressers,” Basoglu told me. “Her treatment – her homework – was to go to a male hairdresser and have her hair done. She recovered. Completely.” Basoglu’s team uses various memory triggers for their rehabilitation model. They make a list of avoidance behaviours, based on activities that patients are not able to engage in. The treatment involves going through the list one by one and giving exercises that involve exposure. “Reminders are really the essence of the basic conditions for recovery from trauma,” he said. He claims to have seen a 90 per cent success rate in recovery after six weekly sessions. “We advocate a media campaign whereby the public are encouraged not to avoid trauma-related thoughts or reminders,” he said, talking specifically of mass trauma events. What happens, though, when you take a trauma survivor who is confronted with anxiety and flashbacks out of a mediated or safe environment? Is the outcome the same as it is when it is in therapy? “Many people discover the benefits of exposure for themselves. I’ve seen people who have said, ‘If I hadn’t started driving soon after the accident I’d have never driven again.’ ” There is still the problem of the not insignificant 10 per cent who don’t recover. Also, is it not unreasonable, in a country that is lucky enough to offer myriad paths to trauma recovery, that people might opt for a gentler way to come to terms with their own memories? Still, if there’s a lesson to be learnt from the fury expressed on both sides of the argument, it’s that a culture that panders to the delicate of this world will only feed the more bullying side of the less-than-delicate.

#### Perm do both – trigger warnings are part of a manner restriction, which means that they aren’t infringing on constitutional rights.

**The Legal Dictionary:** The Legal Dictionary “Time Place and Manner Restrictions.” RP

**The** [**First Amendment**](http://legal-dictionary.thefreedictionary.com/first+amendment) **to the U.S. Constitution guarantees** [**Freedom of Speech**](http://legal-dictionary.thefreedictionary.com/Freedom+of+Speech). This guarantee generally safeguards the right of individuals to express themselves without governmental restraint. **Nevertheless, the Free Speech Clause of the First Amendment is not absolute**. It has never been interpreted to guarantee all forms of speech without any restraint whatsoever. **Instead, the U.S. Supreme Court has repeatedly ruled that state and federal governments may place reasonable restrictions on the time, place, and manner of individual expression. Time, place, and manner (TPM) restrictions accommodate public convenience and promote order by regulating traffic flow, preserving property interests, conserving the environment, and protecting the administration of justice.**

#### Trigger warnings on campus are infinitely expandable – anything can hypothetically trigger anyone, so requiring one before a lesson means teachers can’t teach.

**Lipson:** Lipson, Charles [Contributor, Real Clear Politics] “Social Justice Warriors Against Free Speech.” *Real Clear Politics.* August 2016. RP

**First, let's consider trigger warnings. There is absolutely nothing wrong with a professor or teaching assistant saying, "We are going to discuss Greek myths and some of you might find them troubling." But it’s also perfectly fine if, all of a sudden in a class on Greek myths, the professor discusses one. The students at Columbia University actually wanted warnings before all myth**s. Their demand was not about helping one or two students in a large class. It was simply bullying under the cloak of "sensitivity." Anyway, universities are all about discussing sensitive subjects and raising troubling questions. If a university is really vigorous, then the whole place should be wrapped in a gigantic trigger warning. Finally, as a teacher, how can I possibly anticipate all the things that might trigger students in my class on "Big Wars From Ancient Greece to Early Modern Europe" (a lecture course I am teaching next year)? **When I mention the Roman war with German tribes on the Rhine, how can I know that your grandfather died fighting on the Rhine in World War II? Of course, if your grandfather did die fighting on the Rhine, or if your mother was named Jocasta and you accidentally slept with her, you might be triggered by the class discussions.** What then? Well, that is why universities have mental-health professionals to help you deal with your anxieties, fears, and depression. **Again, it is fine if professors want to give students a heads-up, but it is a mistake to demand it of everyone**. It is a much bigger mistake to stifle class discussion for fear of offending. That's not hypothetical. That is exactly what happens in classrooms now. (So does ideologically rigid teaching that demands students repeat the professor's views. But that's another topic for another day.) Safe spaces are another ruse. Are they really the only places where marginalized groups will feel completely free to voice their opinions, as these fashionable liberal-arts students say? We need to distinguish among three kinds of places on campus: classrooms, public spaces, and private (or semi-private) places like sororities or campus houses for co-religionists. If classrooms do not invite free expression, then something is badly wrong with the university. Actually, some classrooms do not. They are almost always the classrooms run by the ideological comrades of the students demanding safe spaces. If you think diverse viewpoints are welcome in classes for race and gender studies, you are living in a dream world. In public spaces, like dining halls, people do sometimes group themselves voluntarily by race, sports, or dormitories. Nothing wrong with that, although persistent segregation by race, ethnicity, or religion would be a setback for the students' college experience. Finally, it is perfectly fine for people to find their cozy spaces privately, at Hillel House (for Jewish students) or Calvert House (for Catholics) or a fraternity, sorority, or club. Who invades those private spaces? Normally it’s Social Justice Warriors from the Dean's Office who object to students wearing sombreros to a party featuring Mexican food. Of course universities should provide mental-health support for individuals who are genuinely troubled. They should. **What about the argument that "safe spaces aren't about banning dissenting viewpoints but about banning hateful, bigoted speech that is truly harmful"? The obvious problem is this: Who decides? You think your march is to support women's reproductive rights. Your roommate thinks it is about killing unborn babies. Which position is hateful or bigoted? Again, who decides? Which of these is so hateful that it has no place in an academic community?**

## Black Safe Spaces PIC

#### Perm do both – safe spaces are *content neutral* so they’re included in reasonable time place manner restrictions.

#### Safe spaces for minorities make coalitions on campus worse, and are a tool of neosegregation.

**Airaksinen:** Airaksinen, Toni [Contributor, The College Fix] “Black Harvard professor: Giving minorities safe spaces does more harm than good.” *The College Fix.* October 2016. RP

Increased sense of ethnic victimization and a decreased sense of common identity …’ **Accommodating students of color by giving them a safe space doesn’t work — it actually has a harmful effect on their relationships with other ethnic groups on campus**. So says James Sidanius, a Harvard University professor of psychology and African American Studies and the [author](http://scholar.harvard.edu/sidanius/home) of more than 330 scientific papers on race, oppression, diversity and other topics. In 2004, long before the mainstream media started extensively covering the safe space and self-segregation trends in higher education, Professor Sidanius co-authored a [paper](https://dash.harvard.edu/bitstream/handle/1/3205411/Sidanius_EthnicEnclaves.pdf?sequence=1) titled “Ethnic Enclaves and the Dynamics of Social Identity on the College Campus: The Good, the Bad, and the Ugly.” Reached for comment this month by The College Fix, Sidanius said his research can be applied to today’s trends, but it’s nothing really new. “I don’t see any signs that [ethnic enclaves have] gotten worse, it’s probably remained relatively constant, we’re just paying more attention to it now,” he said. Sidanius investigated the effects of membership in “ethnic organizations,” otherwise known as “ethnic enclaves,” in his research. Examples of such ethnic organizations could include, for example, a Black Student Organization or a Chinese Cultural Association. **For students who are members of these types of ethnic-themed organizations, Sidanius discovered during his research that “effects included an increased sense of ethnic victimization and a decreased sense of common identity and social inclusiveness**.” These ethnic organizations are often very in line with today’s “safe space” ideology — the notion that being segregated from what oppresses you or makes you feel uncomfortable is beneficial. Students of color today frequently demand — [and receive](http://www.thecollegefix.com/post/28168/) — ethnic enclaves of various sorts, seen in everything from housing and social gatherings to protests and grief sessions. While they are not exactly the same as “ethnic organizations” Sidanius’ research looked at, the impact of segregation can still apply. Sidanius’ research points out that “among minority students the evidence suggested that membership in ethnically oriented student organizations actually increased the perception that ethnic groups are locked into zero-sum competition with one another and the feeling of victimization by virtue of one’s ethnicity.” He reiterated those findings in his interview with The Fix. “**Once having joined these [ethnic] organizations, the more likely [students] were to feel that they were in this zero-sum relationship with other ethnic groups on campus, and the greater level of hostility they had towards other members on campus, the greater the degree to which they felt ethnically victimized by other ethnic groups on campus**,” he said. But while his research discovered ethnic segregation actually has a negative effect on its stated goals of multiculturalism, diversity and inclusion, administrations at thousands of colleges continue to justify these groups as having an overall positive effect on the campus community. Sidanius, in his interview, elaborated on what he believes is a better fix for racial tensions: **Cross-ethnic exposure and communication help soothe tensions—not safe spaces and self-segregation**—he explained. In another [study](https://www.washingtonpost.com/opinions/want-greater-diversity-on-college-campuses-increase-the-number-of-interracial-roommates/2016/07/01/d5bcdad6-3d5a-11e6-80bc-d06711fd2125_story.html?utm_term=.09e7feb46f68) he said he found that students who were randomly assigned to roommates who were a different racial category than themselves “had lower levels of hostility towards other ethnic groups” and that increased contact between students of different backgrounds “increased the level of positive interchange.” When asked whether his research had any effect on college diversity programming, Sidanius said it’s complicated. “They were in a bind about what to do with the ethnic student organizations, because they didn’t want to forbid or outlaw fraternities, sororities, or ethnic organizations, so they didn’t do much of anything,” he said. **Sidanius told The College Fix that if administrators wanted to help improve race-relations on campus, that they could try to offer programming that brings students of different racial backgrounds together, not pulls them apart.**

#### Restrictions and safe spaces depoliticize oppression, fracturing coalitions that are key to solve.

Halberstam Jack Halberstam, You Are Triggering me! The Neo-Liberal Rhetoric of Harm, Danger and Trauma, Bully Bloggers, 5/7/16.

**What does it mean when younger people who are benefitting from several generations now of queer social activism** by people in their 40s and 50s (who in their childhoods had no recourse to anti-bullying campaigns or social services or multiple representations of other queer people building lives) **feel abused, traumatized, abandoned, misrecognized, beaten, bashed and damaged?** These **younger folks**, with their gay-straight alliances, their supportive parents and their new right to marry regularly **issue calls for “safe space**.” However, as Christina Hanhardt’s Lambda Literary award winning book, Safe Space: Neighborhood History and the Politics of Violence, shows, **the safe space agenda has worked in tandem with urban initiatives to increase the policing of poor neighborhoods and the gentrification of others.** Safe Space: Gay Neighborhood History and the Politics of Violence traces the development of LGBT politics in the US from 1965-2005 and explains how **LGBT activism was transformed from a multi-racial coalitional grassroots movement with strong ties to anti-poverty groups and anti-racism organizations to a mainstream, anti-violence movement with aspirations for state recognition. And, as LGBT communities make “safety” into a top priority** (and that during an era of militaristic investment in security regimes) **and ground their quest for safety in competitive narratives about trauma, the fight against aggressive new forms of exploitation, global capitalism and corrupt political systems falls by the way side. Is this the way the world ends? When groups that share common cause, utopian dreams and a joined mission find fault with each other instead of tearing down the banks and the bankers, the politicians and the parliaments, the university presidents and the CEOs? Instead of realizing**, as Moten and Hearny put it in The Undercommons, **that “we owe each other everything,” we** enact punishments on one another and stalk away from projects that should unite us, and **huddle in small groups feeling** erotically **bonded through our self-righteousness**. I want to call for a time of accountability and specificity: not all LGBT youth are suicidal, not all LGBT people are subject to violence and bullying, and indeed class and race remain much more vital factors in accounting for vulnerability to violence, police brutality, social baiting and reduced access to education and career opportunities. **Let’s call an end to the finger snapping moralism, let’s question contemporary desires for immediately consumable messages of progress, development and access; let’s all take a hard long look at the privileges that often prop up public performances of grie**f and outrage; let’s acknowledge that being queer no longer automatically means being brutalized and let’s argue for much more situated claims to marginalization, trauma and violence. **Let’s not fiddle while Rome** (or Paris) **burns,** trigger while the water rises, weep while trash piles up; **let’s recognize these internal wars for the distraction they have become. Once upon a time, the appellation “queer” named an opposition to identity politics, a commitment to coalition, a vision of alternative worlds. Now it has become a weak umbrella term for a confederation of identitarian concerns. It is time to move on, to confuse the enemy, to become illegible, invisible, anonymous** (see Preciado’s Bully Bloggers post on anonymity in relation to the Zapatistas). In the words of José Muñoz, “we have never been queer.” In the words of a great knight from Monty Python and the Holy Grail, “we are now no longer the Knights who say Ni, we are now the Knights who say “Ekki-ekki-ekki-ekki-PTANG. Zoom-Boing, z’nourrwringmm.”

#### Authenticity tests for blackness get misapplied to oppress students in other ways.

**Johnson 03**: Johnson, E. Patrick. Appropriating blackness: Performance and the politics of authenticity. Duke University Press, 2003.

**The title of this book suggests that ‘‘blackness’’ does not belong to any one individual or group. Rather, individuals or groups appropriate this complex and nuanced racial signifier in order to circumscribe its boundaries or to exclude other individuals or groups.** When blackness is appropriated to the exclusion of others, identity becomes politi- cal. Inevitably, when one attempts to lay claim to an intangible trope that manifests in various discursive terrains, identity claims become embattled, or as noted in the quotation above by Baldwin, ‘‘color’’ or ‘‘blackness’’ becomes a ‘‘dangerous phenomenon.’’ Because the con- cept of blackness has no essence, ‘‘black authenticity’’ is overdeter- mined—contingent on the historical, social, and political terms of its production. Moreover, in the words of Regina Bendix: ‘‘the notion of [black] authenticity implies the existence of its opposite, the fake, and this dichotomous construct is at the heart of what makes authenticity problematic.’’4 **Authenticity, then, is yet another trope manipulated for cultural capital.¶ That said, I do not wish to place a value judgment on the notion of authenticity, for there are ways in which authenticating discourse enables marginalized people to counter oppressive representations of themselves. The key here is to be cognizant of the arbitrariness of authenticity, the ways in which it carries with it the dangers of fore- closing the possibilities of cultural exchange and understanding.** As Henry Louis Gates Jr. reminds us: ‘‘No human culture is inaccessible to someone who makes the effort to understand, to learn, to inhabit another world.’’5¶ **When black Americans have employed the rhetoric of black au- thenticity, the outcome has often been a political agenda that has ex- cluded more voices than it has included.**6 The multiple ways in which we construct blackness within and outside black American culture is contingent on the historical moment in which we live and our ever- shifting subject positions. For example, black Americans, whose vo- cality, leadership, and rhetoric flourished at the historical moment in which they lived, contested popular constructions of blackness in order to further their own political agendas and occasionally to stake out a space from which to argue for the inclusion of other signs of ‘‘blackness.’’¶ Indeed, if one were to look at blackness in the context of black American history, one would find that, even in relation to national- ism, the notion of an ‘‘authentic’’ blackness has always been contested: the discourse of ‘‘house niggers’’ vs. ‘‘field niggers’’; Sojourner Truth’s insistence on a black female subjectivity in relation to the black polity; Booker T. Washington’s call for vocational skill over W. E. B. Du Bois’s ‘‘talented tenth’’; Richard Wright’s critique of Zora Neale Hurston’s focus on the ‘‘folk’’ over the plight of the black man; Eldridge Cleaver’s caustic attack on James Baldwin’s homosexuality as ‘‘anti-black’’ and ‘‘anti-male’’; urban northerners’ condescending attitudes toward rural southerners and vice versa; Malcolm X’s militant call for black Ameri- cans to fight against the white establishment ‘‘by any means nec- essary’’ over Martin Luther King Jr.’s reconciliatory ‘‘turn the other cheek’’; and Jesse Jackson’s ‘‘Rainbow Coalition’’ over Louis Farra- khan’s ‘‘Nation of Islam.’’ All of these examples belong to the long- standing tradition in black American history of certain black Ameri- cans critically viewing a definition of blackness that does not validate their social, political, and cultural worldview. As Wahneema Lubiano suggests, ‘‘**the resonances of [black] authenticity depend on who is doing the evaluating.’’7¶ White Americans also construct blackness.8 Of course, the power relations maintained by white hegemony have different material ef- fects for blacks than for whites. When white Americans essentialize blackness, for example, they often do so in ways that maintain ‘‘white- ness’’ as the master trope of purity, supremacy, and entitlement, as a ubiquitous, fixed, unifying signifier that seems invisible.9 Alter- nately, the tropes of blackness that whites circulated in the past— Mammy, Sapphire, Jezebel, Jim Crow, Sambo, Zip Coon, pickaninny, and Stepin Fetchit, and now enlarged to include welfare queen, pros- titute, rapist, drug addict, prison inmate, etc.—have historically in- sured physical violence, poverty, institutional racism, and second- class citizenry for blacks.¶ An even more complicated dynamic occurs when whites appro- priate blackness. History demonstrates that cultural usurpation has been a common practice of white Americans and their relation to art forms not their own. In many instances, whites exoticize and/or fetishize blackness,** what bell hooks calls ‘‘eating the other.’’10 Thus, when white-identified subjects perform ‘‘black’’ signifiers—norma- tive or otherwise—the effect is always already entangled in the dis- course of otherness; the historical weight of white skin privilege nec- essarily engenders a tense relationship with its Others.

#### Safe spaces are never safe for black people – tough racial dialogue is key – even if hate speech occurs, the discussion is important.

**Leonardo and Porter:** Leonardo, Zeus and Porter, Ronald K.(2010) 'Pedagogy of fear: toward a Fanonian theory of 'safety' in race dialogue', Race Ethnicity and Education, 13: 2, 139 — 157

It **is apparent that both whites and people of color want to avoid violence from being enacted against them. They enter race dialogue from radically different locations – intellectual for the former, lived for the latter – and an unevenness that the critical race pedagogue must accept and becomes the constitutive condition of any progressive dialogue on race. It is the risk that comes with violence but one worth taking if educators plan to shift the standards of humanity. In an apparently common quest for mutual racial understanding, whites and people of color participate in a violence that becomes an integral part of the process and seeking a ‘safe space’ is itself a form of violence insofar as it fails to recognize the myth of such geography in interracial exchange. As it concerns people of color within the current regime, safe space in racial dialogue is a projection rather than a reality. This is the myth that majoritarian stories in education replay and retell in order to perpetuate an understanding of race that maintains white supremacy. Safe spaces are violent to people of color and only by enacting a different form of violence, of shifting the discourse, will race dialogue ultimately become a space of mutual recognition between whites and people of color**. If people of color observe the current call for safety, this process defaults to white understandings and comfort zones, which have a well-documented history of violence against people of color. It is a point of entry that is characterized by denials, evasions, and falsehoods (Frankenberg 1993; Mills 1997). Its shell is non-violent for in public most whites prize self-control. Race dialogue within a white framework is rational, if by that we mean a situation that preserves, as Angela Davis (1998) mentioned, peace and order. This procedural arrangement has much to recommend it if we want to avoid uprisings and outright violence. But its kernel is already violent to people of color because a certain irrational rationality is at work. Both parties leave the interaction relatively ‘intact’, which should not be equated with the absence of violence. Whites depart the situation with their worldview and value systems unchallenged and affirmed, and people of color remain fractured in theirs. Whites would need to experience violence if they expect to change. But this is different from a hegemonic understanding that violence is always a form of dehumanization. In our appropriation of Fanon’s dialectics of violence, we find transformative possibilities in violence depending on the political project to which it is attached. Moreover, in this framework violence is not so much a description of this or that act qualifying as a form of violence, but a theoretical prescription of a different state of affairs, a response to oppression that equals its intensity. Thus, we do not describe what violence looks like, but assess its consequences.

#### A culture of safety has swallowed our campuses. It locks out hard conversations about race which dooms any efforts at effective change.

**Shulevitz:** Judith Shulevitz, In College and Hiding From Scary Ideas, The New York Times, March 21, 2015

**Safe spaces are an expression of the conviction, increasingly prevalent among college students, that their schools should keep them from being “bombarded” by discomfiting or distressing viewpoints**. Think of the safe space as the live-action version of the better-known trigger warning, a notice put on top of a syllabus or an assigned reading to alert students to the presence of potentially disturbing material. Some people trace safe spaces back to the feminist consciousness-raising groups of the 1960s and 1970s, others to the gay and lesbian movement of the early 1990s. In most cases, safe spaces are innocuous gatherings of like-minded people who agree to refrain from ridicule, criticism or what they term microaggressions — subtle displays of racial or sexual bias — so that everyone can relax enough to explore the nuances of, say, a fluid gender identity. As long as all parties consent to such restrictions, these little islands of self-restraint seem like a perfectly fine idea. **But the notion that ticklish conversations must be scrubbed clean of controversy has a way of leaking out and spreading. Once you designate some spaces as safe, you imply that the rest are unsafe. It follows that they should be made safer.** This logic clearly informed a campaign undertaken this fall by a Columbia University student group called Everyone Allied Against Homophobia that consisted of slipping a flier under the door of every dorm room on campus. The headline of the flier stated, “I want this space to be a safer space.” The text below instructed students to tape the fliers to their windows. The group’s vice president then had the flier published in the Columbia Daily Spectator, the student newspaper, along with an editorial asserting that “making spaces safer is about learning how to be kind to each other.” A junior named Adam Shapiro decided he didn’t want his room to be a safer space. He printed up his own flier calling it a dangerous space and had that, too, published in the Columbia Daily Spectator. “Kindness alone won’t allow us to gain more insight into truth,” he wrote. In an interview, Mr. Shapiro said, “If the point of a safe space is therapy for people who feel victimized by traumatization, that sounds like a great mission.” **But a safe-space mentality has begun infiltrating classrooms, he said, making both professors and students loath to say anything that might hurt someone’s feelings. “I don’t see how you can have a therapeutic space that’s also an intellectual space**,” he said. I’m old enough to remember a time when college students objected to providing a platform to certain speakers because they were deemed politically unacceptable. Now students worry whether acts of speech or pieces of writing may put them in emotional peril. Two weeks ago, students at Northwestern University marched to protest an article by Laura Kipnis, a professor in the university’s School of Communication. Professor Kipnis had criticized — O.K., ridiculed — what she called the sexual paranoia pervading campus life. The protesters carried mattresses and demanded that the administration condemn the essay. One student complained that Professor Kipnis was “erasing the very traumatic experience” of victims who spoke out. An organizer of the demonstration said, “we need to be setting aside spaces to talk” about “victim-blaming.” Last Wednesday, Northwestern’s president, Morton O. Schapiro, wrote an op-ed article in The Wall Street Journal affirming his commitment to academic freedom. But plenty of others at universities are willing to dignify students’ fears, citing threats to their stability as reasons to cancel debates, disinvite commencement speakers and apologize for so-called mistakes. At Oxford University’s Christ Church college in November, the college censors (a “censor” being more or less the Oxford equivalent of an undergraduate dean) canceled a debate on abortion after campus feminists threatened to disrupt it because both would-be debaters were men. “I’m relieved the censors have made this decision,” said the treasurer of Christ Church’s student union, who had pressed for the cancellation. “It clearly makes the most sense for the safety — both physical and mental — of the students who live and work in Christ Church.” A year and a half ago, a Hampshire College student group disinvited an Afrofunk band that had been attacked on social media for having too many white musicians; the vitriolic discussion had made students feel “unsafe.” **Last fall, the president of Smith College, Kathleen McCartney, apologized for causing students and faculty to be “hurt” when she failed to object to a racial epithet uttered by a fellow panel member at an alumnae event in New York. The offender was the free-speech advocate Wendy Kaminer, who had been arguing against the use of the euphemism “the n-word” when teaching American history or “The Adventures of Huckleberry Finn**.” In the uproar that followed, the Student Government Association wrote a letter declaring that “if Smith is unsafe for one student, it is unsafe for all students.” “**It’s amazing to me that they can’t distinguish between racist speech and speech about racist speech, between racism and discussions of racism,”** Ms. Kaminer said in an email. T**he confusion is telling, though. It shows that while keeping college-level discussions “safe” may feel good to the hypersensitive, it’s bad for them and for everyone else.** People ought to go to college to sharpen their wits and broaden their field of vision. **Shield them from unfamiliar ideas, and they’ll never learn the discipline of seeing the world as other people see it. They’ll be unprepared for the social and intellectual headwinds that will hit them as soon as they step off the campuses** whose climates they have so carefully controlled. What will they do when they hear opinions they’ve learned to shrink from? **If they want to change the world, how will they learn to persuade people to join them?** Only a few of the students want stronger anti-hate-speech codes. Mostly they ask for things like mandatory training sessions and stricter enforcement of existing rules. Still, it’s disconcerting to see students clamor for a kind of intrusive supervision that would have outraged students a few generations ago. But those were hardier souls. Now students’ needs are anticipated by a small army of service professionals — mental health counselors, student-life deans and the like. This new bureaucracy may be exacerbating students’ “self-infantilization,” as Judith Shapiro, the former president of Barnard College, suggested in an essay for Inside Higher Ed. But why are students so eager to self-infantilize? Their parents should probably share the blame. Eric Posner, a professor at the University of Chicago Law School, wrote on Slate last month that although universities cosset students more than they used to, that’s what they have to do, because today’s undergraduates are more puerile than their predecessors. “Perhaps overprogrammed children engineered to the specifications of college admissions offices no longer experience the risks and challenges that breed maturity,” he wrote. But “if college students are children, then they should be protected like children.” Another reason students resort to the quasi-medicalized terminology of trauma is that it forces administrators to respond. Universities are in a double bind. They’re required by two civil-rights statutes, Title VII and Title IX, to ensure that their campuses don’t create a “hostile environment” for women and other groups subject to harassment. However, universities are not supposed to go too far in suppressing free speech, either. If a university cancels a talk or punishes a professor and a lawsuit ensues, history suggests that the university will lose. But if officials don’t censure or don’t prevent speech that may inflict psychological damage on a member of a protected class, they risk fostering a hostile environment and prompting an investigation. As a result, students who say they feel unsafe are more likely to be heard than students who demand censorship on other grounds.

#### Backlash disad – whites being excluded from speaking in Black safe spaces causes increases in white nationalism – Trump proves.

Tumulty and Johnson: Karen Tumulty and Jenna Johnson, “Why Trump may be winning the war on ‘political correctness’” 1-4-16 <https://www.washingtonpost.com/politics/why-trump-may-be-winning-the-war-on-political-correctness/2016/01/04/098cf832-afda-11e5-b711-1998289ffcea_story.html?utm_term=.db9bc85e5b87>

“Driving powerful sentiments underground is not the same as expunging them,” said William A. Galston, a Brookings Institution scholar who advised President Bill Clinton. “**What we’re learning from Trump is that a lot of people have been biting their lips, but not changing their minds**.” One thing is clear: **Trump is channeling a very mainstream frustration**. **In an October** poll by Fairleigh Dickinson University, **68 percent agreed** with the proposition that “**a big problem this country has is being politically correct**.” It was a sentiment felt strongly across the political spectrum, by 62 percent of Democrats, 68 percent of independents and 81 percent of Republicans. Among whites, 72 percent said they felt that way, but so did 61 percent of nonwhites. “**People feel tremendous cultural condescension directed at them**,” and that their values are being “smirked at, laughed at” by the political and media elite, said GOP strategist Steve Schmidt. “‘Political correctness’ are the two words that best respond to everything that a conservative feels put upon,” added pollster Frank Luntz, who has advised Republicans. The label is, he said, a validation that what many on the right see as legitimate policy and cultural differences are not the same as racism, sexism or heartlessness. “**Allegations of racism and sexism have turned into powerful silencing devices**,” Galston agreed. “You can be opposed to affirmative action without being a racist.” The PC backlash does not necessarily mean that people support the kinds of things that Trump is saying, or the way he says them. When the Fairleigh Dickinson pollsters added his name to the same question — prefacing it with “Donald Trump said recently . . . ” — the numbers dropped sharply. Only 53 percent said they agree that political correctness is a major problem. This is not a new debate. It has raged since at least the early 1990s, when college campuses began adopting speech codes. Some went well beyond obvious slurs — with animal rights activists contending, for instance, that the word “pet”was disrespectful and should be changed to “companion animal.” **More recently, the PC wars have flared again in academia, where there is an ongoing argument over whether campuses should be a “safe space” where students are protected from upsetting ideas, and receive “trigger warnings” when course material contains distressing information**. Few would argue that it is wrong to confront and eliminate prejudice. But even some liberals have called political correctness a form of McCarthyism aimed at stifling free expression. **Trump has brought the question from the university quad to the political arena** in a way that no leading candidate has in the past. For many, “it’s satisfying to have a loud tribune like Trump,” said David Axelrod, who was President Obama’s top campaign adviser. “But I don’t think the hunger for authentic plain speech is Trump-specific. One of the appeals of [Democratic presidential candidate] Bernie Sanders is that people think he says exactly what he thinks and is not passing it through a filter. **There is a fundamental yearning for authenticity** that is probably felt more broadly.” The edgy liberal comedian Bill Maher, who for nearly a decade hosted a talk show called “Politically Incorrect,” has said that Trump’s ideas sound “a little ­Hitler-adjacent.” But he has also noted a yearning for “somebody to say, ‘You know what, I just don’t bend to your bull----.’ And Donald Trump, I’ve got to say, I don’t agree with him on a lot, but I kind of get him. We’ve been doing the same thing.” Trump sounded the anti-PC clarion call at the first Republican debate in August, when moderator ­Megyn Kelly of Fox News challenged him on comments that he had made disparaging women. “I think the big problem this country has is being politically correct,” he said. “I’ve been challenged by so many people, and I don’t frankly have time for total political correctness. And to be honest with you, this country doesn’t have time either. This country is in big trouble. We don’t win anymore. We lose to China. We lose to Mexico both in trade and at the border. We lose to everybody.” **It is hard to follow the logic of an argument that insulting women could somehow make the country stronger overseas. But the sentiment behind it came through clearly**. **And it has been picked up by other GOP contenders**. “Political correctness is killing people,” said Sen. Ted Cruz (R-Tex.), because it prevents the Obama administration from focusing on the communications and activities of potential terrorists who are Muslims. “Political correctness is ruining our country,” said former neurosurgeon Ben Carson, after he was criticized for saying a Muslim should not be president. It is corrosive, Carson said in an interview, because “many people will not say what they believe because someone will look askance at them, call them a name. Somebody will mess with their job, their family. This was not supposed to be the way it was in America.” Last month’s terrorist attack in San Bernardino, Calif., carried out by a Muslim couple who appear to have been inspired by the Islamic State, also known as ISIS, has become a case in point for many conservatives. They say political correctness has made the Obama administration too timid in calling it what it is — which is why Cruz and other Republicans taunt the president for not uttering the phrase “radical Islamic terrorism.” “What animates ISIS is an ­apocalyptic religious philosophy. People look at that and don’t understand the unwillingness to say red is red and blue is blue,” Schmidt said. “We live in a post-fact America, where the facts are subordinate to the advancement of an ideology.” Political strategists and others say a number of other forces are behind the backlash. It has both a cultural and an economic component, and it also reflects the continuing polarization that has grown deeper during Obama’s presidency. “For many of these people, they played the game by the rules, and essentially, they got shafted,” Democratic pollster Peter Hart said. **Trump is “the voice of an aggrieved cohort in our society — lower-middle-income working whites who have taken the hit from the big changes in the economy, and are angry about it,” Axelrod said. “He creates a permission structure for others.”**

#### This leads to forms of segregation that makes dialogue about racial issues impossible – people run away and hide instead of engaging, retreating to their own private zones

**Pullan:** Pullan, Wendy [Contributor, Saferworld] “Just cities: the role of public space and everyday life.” January 2016. RP

**Recent years have seen private citizens flocking to their city centres in order to protest against abuses and violence, to call for more or better forms of justice and democracy, to make their rights and wishes apparent.** Tahrir Square, Gezi Park, Place de Republique have become synonymous with public demonstrations in Cairo, Istanbul and Paris. **Much has been written about the importance of mobile phones and social networking in forming these events, yet along with effective means of communication, occupying urban space was equally necessary and significant. Without dwelling upon the success or failure of such movements, ‘being in the place’ was a way of establishing civic participation**. To better understand the wider background of such events, I would like to make two observations: first of all, conflicts across the world are becoming increasingly pervasive and complex. In the words of the International Crisis Group’s Jean-Marie Guéhenno, they are more ‘fragmented’. **Rarely are today’s conflicts declared wars with clear beginnings and ends; increasingly, they take the form of prolonged strife with intermittent periods of violence and of relative peace. Many are deeply embedded in ethno-national and religious hostilities as well as economic inequality and class tensions**. Secondly, such conflicts are increasingly played out in urban settings; a 2011 World Bank Report notes that ‘in many cases, the scale of urban violence can eclipse that of open warfare’. Today, cities have become the arena for conflict. The conflicts may originate in national or transnational disputes, but they are played out in cities like Belfast, Baghdad and Jerusalem. Such cities may be targeted as in the siege of Sarajevo during the Yugoslavian civil war or the state-sponsored barrel bombs attacking Syrian cities. But conflicts may also be generated from within by hostile sectors of the population. Whether generated by outside or inside forces, or both, these conflicts increasingly represent cracks in the continuity of urban society. In considering ethno-national and religious conflicts, we find a high level of longevity and uncertainty that is proving resistant to traditional peace processes and political negotiations. Solutions are elusive and we may simply have to learn how to live with certain levels of conflict. Such a realisation affects the place of justice and the role of legal solutions. The dispensing of justice only through policy and official channels may be insufficient, biased or ineffective. One reason for this is because conflicts in cities often concern everyday institutions and practices, played out in ordinary urban life. Examples of everyday life affected by conflict are varied and pervasive: no-go streets in the city; neighbourhood domination by local strong men; regular and sometimes violent demonstrations and parades; streetscapes of graffiti, slogans and other ethnic identifiers; or, more subtle practices that dictate where one chooses to live, work or shop. In the divided cities of the Middle East, urban quarters are increasingly associated with particular ethnic or religious groups; in parts of Belfast, Republicans and Nationalists can be identified by the side of the street on which they walk. Often personal choice is absent; exclusion is pre-determined by religio-political identity and security. The ancient idea of nomos, understood as law and legal order, also has a second and related meaning of convention or custom. Justice, or lack of it, can be played out through customary practice in daily activities. It has to do with how we manage our daily interactions and the urban scenarios that determine where human exchange exists and where not. This is usually a delicate balance. Philosopher Peter Sloterdijk has noted that ‘more communication means above all more conflict’. Understanding each other needs to be supplemented by tactics, actually a ‘code of discretion’, of ‘getting out of each other’s way’. If it were one defined code, legislation would be useful. However, throughout everyday life in urban situations, many codes of behaviour play a role and skills and discretion are necessary to navigate throughout such a complex territory. Protocols shift and respond to a myriad of different powerful forces. Whilst this may be fine when there is good will, it is easy to see how such a delicate series of balances and reactions break down in times of trouble or conflict. Explicit legislation will have an effect at only a very superficial level, but most transactions are rooted in fundamental yet complex forms of praxis, effectively, as architect Peter Carl puts it, ‘in what people do’. Much of this has to do with human activity and the interaction between people, or their ability to ignore each other. **But it is worth noting that the environment also plays a major role in forming a place for these events. In other words, praxis must be located, and customs develop in physical contexts. In cities, public space, as the physical space that diverse peoples share in some way, provides critical environments**. Cities have been built on the fault lines of culture – places of trade and exchange, the coming together of religious individuals and groups, sites to make proclamations, utter judgements, build major structures – and these are inherently the places of diversity and difference. A city is only a city when it encompasses diversity, yet, returning to Sloterdijk’s statement, this, on a grand scale, is a recipe for conflict. **Thus urban public space is inherently diverse, often conflictual and sometimes contested. Many of our most important urban institutions are based upon adversarial relations – parliaments, judicial courts, debating chambers. Debate and disagreement have also traditionally taken place in other less formal bodies: markets, cafes, theatres, demonstrations and protests. In all of these, no absolute agreement is normally expected**. Rather they act as a means of moving forward, with difference and even conflict, as part of the culture, becoming embedded in everyday life. These institutions are physically situated in cities and, effectively, adversarial relations become integral parts of the urban topography. **However, when heavy conflict arises, we see changes in cities, particularly in public space. People tend to shrink back into their own neighbourhoods and communities where they do not have to contend with the ‘other’**. If violence develops, mixed populations become afraid of each other, and everyday life, with all of its ordinary customs and protocols, becomes truncated. Above all, public space becomes a casualty. Public places and facilities – like markets and malls, bus stops and train stations, busy streets and squares – may become magnets for violence and thus closed down and hidden away from public use. In some ways this is not surprising: if violence emerges with threats to safety and human life, you get rid of the places where this is happening**. Yet, I should like to suggest, that whilst this might be effective in the short term, in the medium to long term, public space and the renewal of everyday activities that take place there is key to viable urban relations and the life of a diverse city. We need our urban public space. There are a number of problems with closing down public space and severe disruptions of customary life and practice. Restrictive measures in an emergency often linger on to focus on certain racial or ethnic groups**. So-called temporary measures, like building inner city walls and barricades – prominent features in Jerusalem, Nicosia, Baghdad – have the nasty habit of becoming permanent. In the long term, in very seriously divided cities like Mostar, Beirut or Jerusalem, the possibility of seeing a face that doesn’t look like yours, or hearing a language that is local to the place but you do not understand, becomes increasingly rare and, I would argue, increasingly precious. In examining the effects of conflict in public places, the Centre for Urban Conflicts Research has found two seemingly contradictory phenomena. **In periods of intense violence people from different ethnicities avoid each other but when times are more peaceful, at least some of the populations gravitate back toward mixed areas**. At the same time, entrenched conflicts result in long term or permanent urban changes, often embedded in the physical divisions. So in Nicosia, divided by an uninhabited buffer zone running through the city centre since 1974, it is difficult and may be impossible to rejuvenate this formerly public and shared part of the city. People’s customary practices have been disrupted by what I would call ‘conflict infrastructures’, most visibly in walls and imposed barriers. A tipping point is passed and what has been relatively easy to fracture is almost impossible to knit back together. **Along with such public spaces the customary practices of urban life and the civic rights associated with them also disappear**. Thus we see that cities are both robust and delicate at the same time. If we wish to address the problem of conflict in cities, we must recognise and play to the strengths of both these qualities. **Getting rid of public space, even in times of violence, is clearly not the answer.**

#### Their legal separation of people based on race based categories kills coalitions

Mike **Cole 9**, “Critical Race Theory and Education: A Marxist Response” 2009. p. 33

**Antiracists have made some progress, in the United Kingdom at least, after years of ‘establishment’ opposition, in making antiracism a mainstream rallying point, and this is reflected, in part, in legislation (e.g., the (2000) Race Relations Amendment Act).11 Even if it were a good idea, the chances of making ‘the abolition of whiteness’ a successful political unifier and rallying point against racism are virtually non-existent.** For John Preston (2007, p. 13), ‘[t]he abolition of whiteness is . . . not just an optional extra in terms of defeating capitalism (nor something which will be necessarily abolished post-capitalism) but fundamental to the Marxist educational project as praxis’. Indeed, for Preston (2007, p. 196) ‘[t]he abolition of capitalism and whiteness seem to be fundamentally connected in the current historical circumstances of Western capitalist development’. **From a Marxist perspective, coupling the ‘abolition of whiteness’ to the ‘abolition of capitalism’ is a worrying development which, if it gained ground in Marxist theory in any substantial way would most certainly undermine the Marxist project, even more than it has been undermined already (for an analysis of the success of the Ruling Class in forging consensus to capitalism in the United Kingdom, see Cole, 2008g, 2008h).** Implications of bringing the ‘abolition of whiteness’ into schools are discussed in chapter 7 of this volume. As is argued in this volume, racism, xeno-racism, racialization, and xeno-racialization, when informed by Marxism, are far more conducive to understanding racism in contemporary societies than is the CRT concept of ‘white supremacy’. ‘White supremacy’, I believe, should be restricted to its conventional usage.

## Sexual Harassment PIC

#### Censorship doesn’t solve the root cause, increases the power of dominant elites, and suppresses valuable information that’s key to activism

**York:** York, Jillian C. [Writer and contributor for several news sources] “Harassment Hurts Us All. So Does Censorship.” *Medium.* September 2013. RP

**The crux of the interview, and the issue at hand, is whether or not censorship is a good solution to the problem of online harassment and bul- lying. It has become a fairly commonplace response to certain “undesirable” speech—be it misogynistic, racist, homophobic, etc—to call for bans on it, either from government or from online platforms themselves**. I sympathize with the sentiment behind those calls—who amongst us hasn’t wished a certain racist or sexist commentator would just disappear?—but in the end, I just can’t abide. **You see, I don’t see censorship as a solution to anything.** I see it as a band-aid slapped carelessly over a gaping, septic wound. **That is not to deny the effects of harassment, or even “hate speech” (click the link to understand why I use quotes around that term), but to say that the problem is institutional, systemic, and in need of a better solution. It makes me very frustrated when arguments are made to ban a certain type of speech, but seem to go no further, as if ridding our spaces of that speech is the be-all end-all to solving the problem.** Hint: it’s not. Most of all, I don’t believe that censorship offers lasting benefits. **If this were a perfect world, in which we could draw a very solid red line be- tween speech that should be banned and speech that should not, and we were all able to have a voice in making those determinations, and that blocking was done with the utmost oversight, transparency, and accountability, you might be able to convince me. The truth, however, is that efforts to censor hate speech, or obscenity, or pornography, are far too often overreaching, creating a chilling ef- fect on other, more innocuous speech. Microsoft Bing, which I men- tioned in my article, is not the first nor the last platform to block “breast” and with it, “breast cancer” and “chicken breast.” In my years of research, I’ve spoken to doctors whose workplace network blocked important health terms, to women in Saudi Arabia whose ISPs did the same, to queer youth whose schools or public libraries used pornogra- phy filters that took down non-obscene LGBTQ content with it, and so on.** And as such, I’m convinced that the imperfect technologies we put so much stock in to make our world a little better and brighter actually make it darker. I**’ve also talked to activists and others around the world whose content has been taken down from Facebook and YouTube because it doesn’t meet the yes, patriarchal terms of service set forth by the mostly-male teams that design them.** Breastfeeding=bad, violence against women=good, they tell us. They take down important pages (like ‘We Are All Khaled Said’) because their moderator, likely an at-risk activist in an unsafe space, dares use a pseudonym. **And yet you want to trust them to regulate speech even more?** No, thanks. I am not deaf to the argument that in some contexts, removing certain types of speech creates a safer and more inclusive space. To be clear, I want those spaces to exist. That’s the same reason I moderate comments on my blog and block trolls on Twitter. But I view that as very different from a major online platform with more than one billion users making those decisions for me. But I also realize that something I said in that interview was, while rep- resentative of my personal experience, pretty callous. I have dedicated a substantial amount of my time to finding and culti- vating platforms for women’s voices, based on my belief that a solution to the widespread harassment and bullying of women online is to keep pushing women’s voices into the mainstream, louder and stronger. I recognize that this solution doesn’t work for everyone, and therefore acknowledge that it’s a mere piece of the puzzle, rather than a solution on its own. So when I say, “I get really tired of [the argument that women are bullied out of public discussions] because I’m a woman and I don’t feel that way,” the point I’m trying to make is that, while I feel bullied, I’m not going anywhere. No way, no how. I want to be clear: I am not denying that women are frequently “bullied off the Internet,” and I can see why it appears from the interview that I feel that way. Rather, I believe that that refrain ignores the experiences of those of us who would prefer to respond to hate speech with more speech, prefer to shout louder over the din. I’ve been accused many times of upholding the patriarchy for my ideal that sunlight and resolve are even a solution, and I’m tired of it. And so I stand by my position, reflected in the words of the great Jus- tice Louis Brandeis, that the best remedy to “bad” speech is more speech, not enforced silence. I believe this, but I also believe we need to fight to ensure that women—as well as other marginalized groups and individuals—have the opportunity to engage in counter speech. If we are to fight for free expression, we must also fight for greater op- portunity, and we must have each other’s backs. We must call out misogyny where we see it, and we must have zero tolerance for it in the workplace. We must commit to inclusivity, and we must raise up those around us who might not have the same privilege that we do. It is possible to be dedicated to freedom of speech and to the advance- ment of women. I’ve worked at the EFF for a little over two years and have found it to be the most inclusive space in which I’ve had the plea- sure of working. Not to mention, eight out of eleven staffers here with the word “director” in their title are women, and on the whole, we’re very balanced in terms of gender. In the often privi- leged field that is digital rights, this is notable. Interviews are less than ideal in getting one’s point across; quotes are shortened, context is left out, and terrible titles are added for link bait. But while I intend to make no excuses for what I’ve said, I feel compelled to elaborate on my beliefs and how I came to them. I expect disagreement, but I’d prefer it be with my ideas, rather than a context- less shell of them. **I believe that free expression is compatible with a better society**, and I will continue to fight for both.

#### Sexual harassment laws can be made constitutional simply by revising vague wording – these changes are coming.

**Schuster**: Schuster, Saundra K. [Esq., Partner, NCHERM] “Sexual Harassment and the First Amendment: Will Your Policies Hold Up In Court?” The National Center for Higher Education Risk Management, Winter 2011. CH

Discussion of the Conflict **The conflict of harassment policies with First Amendment freedoms generally stems from two factors. First, institutions frequently apply workplace language related to sexual harassment to their student sexual harassment policies. Restrictions on expression in the workplace are far more expansive and legal than the restrictions on student expression. Second, many institutions do not create clear distinctions about expression versus conduct, thus overreaching through their sexual harassment policies to limit verbal or written interaction among and toward students. Title VII of the Civil Rights Act of 1964 set forth the standard prohibiting gender discrimination in the workplace. In** a 1986 U.S. Supreme Court case, Meritor Savings Bank, FSB v. Vinson, 477 U.S. 5, the Court stated that sexual harassment was a form of gender discrimination, subject to Title VII regulations. Subsequent cases established the framework for holding an employer liable for sexual harassment in the workplace. 2 The standard for sexual harassment in the workplace includes a prohibition of “quid pro quo” behavior that involves a power differential, and of a “hostile environment”. The standard for liability for hostile environment-based sexual harassment includes behavior that “alters the conditions of one’s employment and creates an abusive work environment”. The Equal Employment Opportunity Commission (EEOC) is the governmental agency charged with overseeing workplace discrimination issues, including sexual harassment. The EEOC publishes language adopted by institutions to describe sexual harassment. Many public institutions have adopted the sexual harassment language prescribed by the EEOC as the standard for prohibited conduct by students. **Sexual harassment behavior related to students is governed by Title IX.** Title IX of the Educational Amendments of 1972 is a Federal law that prohibits gender discrimination in the education context. Like Title VII, Title IX was interpreted by the U. S. Supreme Court to apply gender discrimination to sexual harassment (Franklin v. Gwinnet Cty. Public Schools, 503 U.S.60 (1992). The Court further established the contextual parameters of hostile environment sexual harassment under Title IX in Davis v. Monroe County Board of Education, 526 U.S. 629 (1999). The Court stated that the conduct or expression must be so “severe, pervasive and objectionably offensive such that it undermines the victim’s educational experience and denies equal access to an institution’s resources and opportunities”. Although Title VII and Title IX are similar, in that they both prohibit discrimination based on gender, they are not identical laws, and the scope and context to which they are applied are distinctly different. **Unfortunately, many public institutions begin with publication of their student sexual harassment policy using the broader language of sexual harassment from the employment context, and then they embellish the context to incorporate prohibition of expression that reinforces the institutional mission related to civility and respect**. Freedom of Expression Issues Certainly civility, respect and support for diversity are important institutional values, and most institutions strive to reinforce these aspirations. However, using institutional policies that incorporate campus conduct and discipline to enforce these values make the institution vulnerable to challenge by prohibiting forms of expression that are protected under the First Amendment. The U.S. Supreme Court, in Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969) stated, “a school may not prohibit speech unless the speech will materially and substantially interfere with the requirements of appropriate discipline on the operation of the school, and further, the Court stated Healy v. James, 408 U.S. 169 (1972) that, “the 3 vigilant protection of constitutional freedom is nowhere more vital than in the community of American schools”. These cases underscore the Court’s adherence to the principles of free expression in the educational context. **In order to avoid First Amendment challenges, institutions should also ensure that their student sexual harassment policies contain language that clearly articulates what behavior or expression is prohibited and the context within which this prohibited behavior will rise to the level of sexual harassment. Incorporating words such as “offends”, “denigrates”, “belittles an individual” in a sexual harassment policy makes the institution vulnerable to challenges of having a policy that is vague (the student must guess at how this would translate to their actions), and overbroad (the language encompasses a substantial amount of protected speech along with prohibited speech).** A successful challenge to the language of a sexual harassment policy could result in a court issuing an injunction against application of the policy or even an outright declaration that the language of the policy is unconstitutional. In extreme cases, it might lead to personal liability under §1983 for administrators who implement unconstitutional policies. Recent Cases Saxe v. State College Area School District, 240 F. 3d 200 206 (3rd Cir. 2001). The 3rd Circuit Court of Appeals struck down the school’s sexual harassment policy because it was overbroad and encompassed expression the court stated was constitutionally protected. The court stated that the free speech clause of the First Amendment protects a wide variety of speech that listeners may consider deeply offensive”. DeJohn v. Temple University, 537 F. 3d 301 (3d Cir. 2008). The 3rd Circuit Court of Appeals held that Temple’s use of broad terms such as “hostile” and “offensive” without qualifying language rendered its sexual harassment policy sufficiently overbroad and subjective that it could conceivably be applied to cover any speech of a gender motivated nature. The court issued a permanent injunction against Temple, from applying its sexual harassment policy as originally written and from re-implementing its originally challenged policy. Lopez, et al. v. Candaele, et al., U.S. Dist. Ct. Central Dist. of Calif, (2009). In July, a federal district court issued an injunction against the school, prohibiting it from applying parts of its sexual harassment policy. The court, finding the school’s policy was too broad and vague and prohibited a substantial amount of protected speech, held that a school may not prohibit speech unless the speech will “materially and substantially” interfere with the requirements of appropriate discipline in the operation of the school”. 4 Summary **Colleges and universities must carefully review sexual harassment policies to ensure that language specifying prohibited expression is clearly articulated, consistent with the standard established in Davis. In addition, institutions must analyze the language of sexual harassment policies to ensure the prohibited language is not unconstitutionally vague, ambiguous or overbroad. As the court in Saxe emphasized, school administrators must avoid careless expansion of institutional harassment policies to include protected expression.**

#### Harassment isn’t even considered speech, so the Aff doesn’t affect it.

**The ACLU:** The American Civil Liberties Union [Organization that sues for justice and writes about the law] “Hate Speech on Campus.” *ACLU.* 2016. RP

A: Yes. **The ACLU believes that hate speech stops being just speech and becomes conduct when it targets a particular individua**l, and when it forms a pattern of behavior that interferes with a student's ability to exercise his or her right to participate fully in the life of the university. **The ACLU isn't opposed to regulations that penalize acts of violence, harassment or intimidation, and invasions of privacy**. On the contrary, we believe that kind of conduct should be punished. **Furthermore, the ACLU recognizes that the mere presence of speech as one element in an act of violence, harassment, intimidation or privacy invasion doesn't immunize that act from punishment**. For example, threatening, bias-inspired phone calls to a student's dorm room, or white students shouting racist epithets at a woman of color as they follow her across campus -- these are clearly punishable acts. Several universities have initiated policies that both support free speech and counter discriminatory conduct. Arizona State, for example, formed a "Campus Environment Team" that acts as an education, information and referral service. **The team of specially trained faculty, students and administrators works to foster an environment in which discriminatory harassment is less likely to occur, while also safeguarding academic freedom and freedom of speech.**

#### Sexual harassment codes are overbroad and violate freedom

**Brown:** Brown, Elizabeth Nolan [Elizabeth Nolan Brown is an associate editor for Reason.com. She currently lives in Washington, D.C.] “How Sexual Harrassment Codes Threaten Academic Freedom.” *Hit and Run.* October 2015. RP

**In its zeal to spread "gender justice," the Department of Education's Office of Civil Rights (OCR) threatens to stifle academic freedom and infantilize women**, says feminist legal expert and New York Law School Professor Nadine Strossen. **At a recent talk at Harvard's Shorenstein Center on Media, Politics and Public Policy, the former American Civil Liberties Union head warned that current campus policies to curb sexual harassment are overbroad and dangerous.** And while "safety"-mongering students deserve some of the blame, bureaucrats are the biggest progenitors of this paranoid style in American academia. "By threatening to pull federal funds, the OCR has forced schools, even well-endowed schools like Harvard, to adopt sexual misconduct policies that violate many civil liberties," Strossen said. Sexual misconduct is an umbrella term under which fall school rules against sexual assault, sexual harassment, intimate-partner violence, voyeurism, and stalking. While much of the recent focus in this realm has been on sexual violence, school sexual harassment policies also deserve some scrutiny. "Over the years, there have been many types of overly broad sexual harassment policies," explains Samantha Harris, director of policy research for the Foundation for Individual Rights in Education (FIRE). "FIRE has actually had some success in getting schools to roll these back over the years." But in 2013, an OCR and Justice Department investigation into sexual misconduct at the University of Montana yielded "a findings letter which they made public and which they described as a blueprint for colleges and universities," says Harris. "And that blueprint contained a very broad definition of sexual harassment." **As defined by the OCR, sexual harassment is "any unwelcome conduct of a sexual nature." This leaves out two major elements of standard sexual harassment definitions: that the conduct be offensive to a "reasonable person," and that the conduct be severe and pervasive. Under the OCR definition, therefore, any mention of something sexual could be deemed sexual harassment if anyone at all takes offense. In practice, this has resulted in colleges cracking down on professors and lecturers for offering even the mildest sexual content in their classrooms— even in courses specifically about sex.** "Anecdotally, I see this current moral panic over sexual harassment ... playing out more on the faculty side," says Harris. "**We see a lot of faculty whose speech has been chilled**." In her Harvard speech, Strossen laid out several recent examples of the "sexual harassment" that's been targeted by colleges: **The Naval War College placed a professor on administrative leave and demanded that he apologize because during a lecture that critically described Machiavelli's views about leadership he paraphrased Machiavelli's comments about raping the goddess Fortuna**. In another example, the University of Denver suspended a tenured professor and found him guilty of sexual harassment for teaching about sexual topics in a graduate-level course in a course unit entitled Drugs and Sin in American Life From Masturbation and Prostitution to Alcohol and Drugs. A sociology professor at Appalachian State University was suspended because she showed a documentary film that critically examined the adult film industry. A sociology professor at the University of Colorado was forced to retire early because of a class in her course on deviance in which volunteer student assistants played roles in a scripted skit about prostitution. A professor of English and Film Studies at San Bernardino Valley College was punished for requiring his class to write essays defining pornography. And yes, that was defining it, not defending it. This summer, Louisiana State University fired a tenured professor of early childhood education who has received multiple teaching awards because she occasionally used vulgar language and humor about sex when she was teaching about sexuality and also to capture her student's attention. And I could go on. As you can see, this overzealous enforcement of anti-harassment policies comes with serious academic freedom concerns. "Teachers at Harvard, alarmed by the policy’s expansive scope, are jettisoning teaching tools that make any reference to human sexuality," writes Harvard Law Professor Janet Halley.

#### Speech codes on sexual harassment are paternalizing and offensive to women – they portray women as too weak to stand up for themselves

**Brown:** Brown, Elizabeth Nolan [Elizabeth Nolan Brown is an associate editor for Reason.com. She currently lives in Washington, D.C.] “How Sexual Harrassment Codes Threaten Academic Freedom.” *Hit and Run.* October 2015. RP

**Halley and Strossen also worry that these problems are a step in the wrong direction for feminism, with Halley warning that "women’s quest for sexual autonomy is undercut by protectionist images of our sexuality, mandatory reporter requirements, and the newly robust obligation of schools to pursue sexual harassment claims even when the alleged victims don’t want them to." Strossen said "OCR's flawed sexual harassment concept reflects sexist stereotypes that are equally insulting to women and men. For women, it embodies the archaic, infantilizing notion that we're inherently demeaned by any expression with sexual content**." She thinks the goal should be "that classical liberal concept of gender justice," with a focus of "liberation" and "liberty"—not that battle cry of today's campus feminists: safety. Alas, freedom from government offiicals and censorious administrators used to be the goal of progressive students; now they clamor for the state and the staff to step in. Freddie de Boer lamented this turn in a recent New York Times magazine piece, though he, too, places more blame on bureaucratic culture than some sort of uniquely sensitive student populace: If students have adopted a litigious approach to regulating campus life, they are only working within the culture that colleges have built for them. When your environment so deeply resembles a Fortune 500 company, it makes sense to take every complaint straight to H.R. I don’t excuse students who so zealously pursue their vision of campus life that they file Title IX complaints against people whose opinions they don’t like. But I recognize their behavior as a rational response within a bureaucracy. It’s hard to blame people within a system — particularly people so young — who take advantage of structures they’ve been told exist to help them. The problem is that these structures exist for the institutions themselves, and thus the erosion of political freedom is ultimately a consequence of the institutions. When we identify students as the real threat to intellectual freedom on campus, we’re almost always looking in the wrong place. De Boer said he wishes that today's committed campus activists would "remember that the best legacy of student activism lies in shaking up administrators, not in making appeals to them." But college students today have no experience with and seemingly no knowledge about pre-liberalized campuses, official school policies that limited women and minorities, campus administrators colluding with law enforcement to suppress student activism.... And unlike boomers and Gen X, millennials tend to get along well with their parents and have little generalized anti-authority feels. From a certain millennial viewpoint, appealing to campus administrators and federal agents to solve social problems is a no brainer. The good news is that these officials are certain to start cracking down on things that students do support, too—that's the nature of giving bureaucrats broad authority. As more campus SlutWalk organizers get cited for sexual harassment (certainly someone must be offended by a parade of half naked people, no?) and pro-gay t-shirt slogans are deemed too offensive and anti-police speakers are kept off campus... well, at least we can hope that students activists will start to reconsider their tacks. I have much more optimism that the kids will come around than I do for fixing this mess with the Office of Civil Rights, which has only been increasing its micromanagement of campus sexual-misconduct policies in recent years. But perhaps the push-back from elite professors like Strossen and Halley signals the beginning of the demise of this OCR overreach?

#### No Link – harassment is not protected.

**McClellan:** McClellan, Cara [J.D., Yale Law. Judicial Law Clerk at United States District Court] “Discrimination as Disruption: Addressing Hostile Environments Without Violating the Constitution.” November 2015. RP

\*title VI: PROHIBITS DISCRIMINATION BASED ON RACE, COLOR OR NATIONAL ORIGIN IN PROGRAMS OR ACTIVITIES WHICH RECEIVE FEDERAL FINANCIAL ASSISTANCE.

Universities that act to address a hostile environment can defend their actions against First Amendment challenges based upon the interest of students in attending a safe and orderly school where “the work and discipline of the school” is not “materially and substantially disrupted.”[37] **The Supreme Court has long recognized that “First Amendment rights must be analyzed ‘in light of the special characteristics of the school environment.’**”[38] “A university’s mission is education” and the Supreme Court [SCOTUS] has never “denied a university’s authority to impose reasonable regulations compatible with that mission,” even when the restricted speech would be protected in other settings.[39] **Supreme Court cases addressing academic freedom permit schools to restrict speech that would offend “reasonable campus rules, interrupt classes, or substantially interfere with the opportunity of other[s] students to obtain an education.”[40 Healy] While the Court recognized the right of students to express their political beliefs through protest in Tinker v. Des Moines Independent Community School District, the Court simultaneously affirmed that schools can prohibit speech “which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities.”[41] [and] In Healy v. James,[42] the Court affirmed that universities may require reasonable regulations for the “interest of the entire academic[s] community.**”[43] Free expression and debate in the university are protected to the extent “consonant with the maintenance of order.”[44] While the justification for pedagogical oversight is less compelling in the university setting than in elementary and high schools, university officials still have deference to “prescribe and control conduct in the schools.”[45] Of course, an “‘undifferentiated fear or apprehension of disturbance’”[46] without any particularized reason as to why the school anticipates substantial disruption would not be sufficient to restrict speech under Title VI. The Tenth Circuit’s decision in West v. Derby Unified School District No. 260[47] illustrates this point. In this case a middle school student was suspended for drawing a Confederate flag in math class. The Court upheld the suspension under Tinker’s substantial disruption standard, finding that the school had demonstrated a concrete threat of substantial disruption: “The district experienced a series of racial incidents [including ‘hostile confrontations’ and at least one fight] in 1995, some of which were related to the Confederate flag.”[48] The Tenth Circuit held that the “history of racial tension in the district made administrators’ concerns . . . reasonable.”[49] But even when facts do not suggest a disruption in the sense of an uproar, evidence of a hostile environment is proof of the disruption of a university’s mission in the most fundamental sense of Tinker. **When harassment based on race rises to a level of severity and pervasiveness that qualifies for Title VI protection, minority students have, by definition, been prevented from accessing educational programing. In such cases, schools are justified in intervening under the First Amendment’s recognition of pedagogical interests.** Simply because hostile environment disruptions happen quietly when a student is too distracted to learn, or in ways that most intensely affect minority students who are few in number, or in ways that become invisible because the students who are affected withdraw from the hostile environment, this does not mean that the interference does not occur. In fact, this kind of disruption is precisely what hostile environment discrimination law is concerned with: a disruption in the education of minority students that leads these students to feel unwelcome and quietly disappear. Hostile environment conduct “intrudes upon . . . the rights of other students”[50] to learn—a legitimate justification for regulation of speech under Tinker.

#### Normal means entails universities self-regulating harassment, and they circumvent.

**Thomas:** Thomas, Katie [Contributor, The New York Times] “Review Shows Title IX Is Not Significantly Enforced.” *The New York Times.* July 2011. RP

“**Unfortunately what we see is that many schools are getting away with providing fewer opportunities to girls because they don’t do what they’re supposed to unless made to**,” said Neena Chaudhry, senior counsel at the National Women’s Law Center. Current and former enforcement officials insist they have worked hard to mount meaningful investigations, and they defended the policy of allowing schools to investigate themselves. Most schools, they said, want to correct their problems once they learn they are violating the law. For every Ball State or U.S.C., there are also examples of cases in which investigations by the office yielded significant results. Earlier this year, Lincoln Land Community College in Illinois added a practice field for the women’s softball team, installed two new bullpens, and agreed to give softball and baseball players equal access to batting cages. And Southeastern Community College in Iowa agreed to expand the size of its women’s basketball court, and to give the baseball and softball team equal access to lighted fields. Complaints involving Title IX — and athletics in particular — make up a tiny minority of cases for the Office for Civil Rights, but because of the political weight they often carry, they are among the most time-consuming and closely scrutinized that the office handles, according to interviews with several former civil rights office employees. “**The arena is remarkably politicized**,” said Arthur Coleman, who served as senior policy adviser at the Office for Civil Rights during the Clinton administration. The U.S.C. inquiry illustrates how a complex case and a reluctance to cooperate translated into the longest-running Title IX athletics investigation in the office’s caseload. Linda Joplin, a member of the California chapter of the National Organization for Women, made national headlines when she filed a complaint in 1998 against U.S.C., an athletic powerhouse whose football team is a perennial contender for the national title. The university is private but is subject to Title IX because it receives federal assistance in the form of grants and student aid. Joplin alleged that female athletes at U.S.C. lagged significantly behind men, and women were being denied their fair share of scholarship dollars and other sports spending. After the Office for Civil Rights began its investigation, U.S.C. dug in its heels, recalled Patricia Shelton, the longtime lead investigator on the case, who has since retired. U.S.C. insisted it was doing right by its female students, offering them, for example, the maximum number of athletic scholarships permitted under the rules. But Shelton, the agency’s investigator, said the university also declined to turn over key financial data that would have shown whether it was spending equal amounts of money on men’s and  women’s teams. Kelly Bendell, a lawyer for U.S.C. who has worked on the case since 2000, said the university had complied with all requests for information after initially resisting because of concerns about turning over proprietary financial data. Disputes over basic information explain only parts of the nearly endless case. Bendell, the lawyer for the university, said the agency conducting the investigation “seemed to drop the matter” for five years, with no contact between it and U.S.C. from 2003 to 2008. Shelton, the lead investigator, said responsibility for delays rested with her superiors in Washington. She said she repeatedly wrote up her findings, only to be told they were out of date and needed to be resubmitted. She said she suspected that Washington officials were reluctant to criticize a major athletic program like U.S.C.’s. “There would have been a lot of political fallout,” she said. “Why would they want that?” Over the years, U.S.C has improved its offerings to women, increasing its scholarship aid to female athletes and announcing plans to add [women’s lacrosse](http://www.usctrojans.com/sports/w-lacros/usc-w-lacros-body.html) and [sand volleyball](http://www.usctrojans.com/sports/w-volley/spec-rel/101509aaa.html) teams. The university says its actions have resolved any dispute with the Office for Civil Rights. Ali, the head of O.C.R., acknowledged the case could be closed as soon as this fall. But she did not defend how long it had taken. “This administration has a responsibility to both students and institutions not to let the cloud of these open cases hang over their head,” she said. Joplin, the woman who first brought the case, said the office’s slow response has hurt uncounted female students. **And she questioned whether the knowledge that an institution has never lost its funds for violating Title IX played a role in U.S.C.’s past failure to comply**. “They’re willing to take the funding from the federal government,” she said, “but they’re not willing to abide by federal law.” The Ball State case did not last 13 years. But it has upset many for other reasons. In 2008, federal investigators looking into a complaint about sex discrimination in the athletic department at Ball State discovered that a large number of coaches of women’s teams had recently resigned or been fired. The detail caught the investigators’ attention, but rather than look into the issue, the office asked Ball State to run its own inquiry into whether the departures were part of a discriminatory pattern. **Schools that find themselves the subject of a complaint can cut an investigation short by signing an agreement with the Office for Civil Rights. In many cases, the agreements do not include specific changes to the programs. Instead, the office asks the schools to investigate themselves and report their findings months, and sometimes years, later**. In the case of Ball State, the office asked the university to investigate itself even though it was being sued by a former tennis coach, Kathy Bull, who was making similar allegations. According to Bull’s lawyers, 12 head coaches of Ball State’s 11 women’s teams have left since 2005, compared with five head coaches of men’s teams in the same period. Less than two weeks after the Office for Civil Rights asked the university to investigate the issue, it reported back that it had found “no evidence” of discrimination. Ball State used the same law firm that was representing the university in Bull’s lawsuit to prepare its report to the Office for Civil Rights. **The university did not conduct any new research into the firings, and none of the former coaches were interviewed, according to a deposition of** [**Jo Ann Gora**](http://cms.bsu.edu/About/AdministrativeOffices/President/Bio.aspx)**, the university president, by Bull’s lawyers.** “I did not think that was necessary,” she said. A spokeswoman for Ball State said that the university does not comment on active litigation and that it is cooperating with the Office for Civil Rights. She said the law firm that prepared the university’s report, did not violate any rules of professional conduct by representing the university in both the Bull lawsuit and the O.C.R. inquiry. Ali said her office had not approved Ball State’s report and added that federal investigators returned to the campus earlier this year to look into the matter. They plan to make another trip during the fall semester. She said the office prodded the university to provide locker rooms to several women’s teams after it was discovered that female athletes were changing in their cars and a storage shed. Still, she defended the practice of allowing universities to conduct their own investigations. “The university is in the best position to know — assuming good will — to know what its needs are for hiring and terminating,” she said. “And it’s their obligation to ensure that that doesn’t happen in a discriminatory manner.” But Marissa Pollick, Bull’s lawyer, questioned whether the office should always assume such good will. “**You’re relying on the universities to comply when they have very strong interests not to,” she said.**

#### *It’s not constitutionally protected speech --sexual harassment isn’t protected under Title XI*

***The ACLU:*** *The American Civil Liberties Union [Organization that sues for jusitce and writes about the law] “Title XI And Sexual Violence in Schools.” The ACLU. No date. RP*

***Sexual violence in schools and on campus is a pressing civil rights issue: when students suffer sexual assault and harassment, they are deprived of equal and free access to an education. Title IX of the Education Amendments of 1972 is a federal civil rights law that prohibits discrimination on the basis of sex in any education program or activity that receives federal funding. Title IX is a powerful tool for students who want to combat sexual violence at school and on college campuses. Under Title IX, discrimination on the basis of sex can*** *include sexual harassment****, rape, and sexual assault****. TITLE IX STATES: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." The Women’s Rights Project, in collaboration with* [*Students Active For Ending Rape (SAFER)*](http://www.safercampus.org/) *— a national nonprofit that empowers students to hold colleges accountable for sexual assault in their communities — has put together the* [*fact sheet*](https://www.aclu.org/womensrights/edu/37025res20081002.html)*,* [*podcast series*](https://www.aclu.org/multimedia/audio/39180res20090326.html)*, and other resources on this page to get the word out to student activists about how they can use Title IX as an effective tool for change.* ***Under the requirements of Title IX schools receiving federal funds have a legal obligation to protect students from gender-based violence and harassment*** *– including sexual assault. Use this to find out more about schools’ obligations under Title IX and students’ rights. The Women’s Rights Project has participated in a number of court cases in which courts have taken important steps to hold schools accountable for ignoring sexual harassment or sexual assault that they knew about in school or on campus. A federal court rejected Arizona State University’s (ASU) argument that it was not responsible under Title IX when a campus athlete raped a student, even though it had previously expelled the athelte for severe sexual harassment of multiple other women on campus. The case settled and ASU agreed to appoint a statewide Student Safety Coordinator who will review and reform policies for reporting and investigating incidents of sexual harassment and assault, and award the plaintiff $850,000 in damages and fees. A federal court found that there was sufficient evidence to suggest that the University of Colorado (CU) acted with “deliberate indifference” with regard to students Lisa Simpson and Anne Gilmore, who were sexually assaulted by CU football players and recruits. The University settled the case and agreed to hire a new counselor for the Office of Victim’s Assistance, appoint an independent Title IX advisor, and pay $2.5 million in damages. The United States Supreme Court held that public school students may challenge sex discrimination under both Title IX and the Constitution’s Equal Protection Clause. Schools and colleges around the country are waking up to the power of Title IX to combat sexual violence on campus.* ***School administrators can't afford to ignore Title IX.*** *April is Sexual Assault Awareness Month and students across the country are protesting sexual assault on campus by holding Take Back the Night rallies. "There have been reforms and efforts to improve the climate for study for women in colleges and graduate programs through mechanisms like Title IX enforcement around sexual harassment issues.  However, there is a lot of blockage in the system when it comes to women fulfilling their dreams.  There are very high rates of sexual harassment reported by female students in colleges and universities and graduate programs as well as in elementary and secondary education."*

## Pseudoscience PIC

#### Empirics confirm that openly debating pseudoscience is better

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American Univiersity.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**Perhaps the archetypal example of offensive speech was the theories of the late Professor William Shockley of Stanford University**. Shockley was a brilliant physicist who was awarded a Nobel prize for his work in transistorization in 1956. Later in his career, however, he tired of electrical engineering and began to focus on the link between genetics and cognitive ability. 7 **His theory, in essence, was that intelligence is hereditary, that blacks were less intelligent than whites and that heredity, therefore, made futile any attempt to correct such differences**.5 8 It was not Shockley's theories alone which caused him to be vilified. Shockley was poised for action: he proposed that potential parents with IQ's under a certain threshold be paid, on a voluntary basis, not to reproduce. Many took this as a lace curtain plan for genocide given that blacks tended to score lower on IQ tests than whites5. **Shockley was often invited to speak or engage in debates on university campuses; and, he was often kept from doing so by disruptive audiences or hostile university administrations. On one occasion, organized disruption prevented his participation in a scheduled debate at the Yale Political Union even though the debate had been organized at the suggestion of Roy Innis, the chairman of the Congress of Racial Equality.** 60 Innis apparently felt that a nationally televised clash of views would be beneficial. 61 The invitation to Shockley was eventually rescinded after pressure and threats by several student organizations. **In contrast, Professor Stephen Carter has recounted his experience as a black Stanford undergraduate of watching a debate between Shockley and two others that he described as a "a rabble rousing psychologist who happened to be black and a world-renowned geneticist who happened to be white**.' 6a Carter explained that he approached the debate with much trepidation, and must have felt more as he watched Shockley make "mincemeat"' ' of the psychologist. **However, Carter then watched-the geneticist make Shockley look like an amateur. Carter concluded: [I] began to wonder what all the talk of dangerousness was about .... It was then that I began to perceive the possibility that justice, even in the sense of winning the battle against racism, would come only from confronting the truth .... The point [was] not that Shockley's arguments were correct-they were nonsense- but rather that the decision to dismiss them, . . . should have been made on the ground of scientific error, not on the ground of racist effect.** Put otherwise, the mere fact that his theories were unattractive should have had no bearing on whether they were accepted as true. **We cannot know how many students at Yale and other universities were deprived of a similar opportunity to see the clash of controversial ideas and walk away with a better understanding of their beliefs. John Stuart Mill, the 19th century philosopher, wrote in On Liberty that even wrong ideas have the beneficial effect of forcing us to re- examine and better understand our challenged beliefs."** Mill's argu- ment, it appears, has aged well.

## Misgendering PIC

#### Perm do the counterplan – laws ban misgendering.

**Lawrence:** Lawrence, Lianne [Contributor, Lifesitenews] “Using ‘misgendered’ pronouns is ‘discrimination,’ could get you fined: Ontario Human Rights Commission.” November 2016. RP

TORONTO, November 15, 2016 [(LifeSiteNews)](https://www.lifesitenews.com/) — **Refusing to use a transgendered person’s chosen name, preferred pronoun such as “ze” or “xer,” or “purposely misgendering” them is discrimination and could be liable to fines**, says Ontario Human Rights Commission chief commissioner Renu Mandhane. But that’s “utter, complete nonsense,” REAL Women’s Gwen Landolt told LifeSiteNews. Mandhane is “trying to intimate to get people to conform to her politically correct mindset,” Landolt added. “Nobody should be intimidated by them.” Indeed, the apparent intended subject of Mandhane’s remarks, University of Toronto psychology professor Jordan Peterson, does not appear to be at all intimidated, Landolt noted. Mandhane “weighed in” on Peterson’s ongoing campaign against political correctness at the request of the Toronto Sun. The psychology professor has stated he won’t use the neologistic pronouns referring to various genders and that the university, provincial and federal directives that would force him to do so are unprecedented attacks on free speech. The university has sent Peterson a disciplinary letter suggesting he stop speaking on the subject and stating that his refusal to use the pronouns was contrary to the rights of transgendered students. And now Mandhane, whose remarks were published in the Sun on [Sunday](http://www.torontosun.com/2016/11/13/human-rights-commissioner-weighs-in-on-ze-and-hir), asserted the same: **Refusing to address a trans person by their chosen name and a personal pronoun that matches their gender identity, or purposely misgendering, is discrimination when it takes place in a social area covered by the Code** (employment, housing, and services like education). She also stated: **The OHRC recognizes the right to freedom of expression under the Charter. However, lawmakers and courts have found that no right is absolute. Expression may be limited where it is hate speech under criminal law; or amounts to harassment, discrimination, or creates a poisoned environment under the Code. Mandhane told the Sun that the OHRC “does not require any particular gender-neutral pronoun. If in doubt, ask the person how they wish to be addressed. Use ‘they’ if you don’t know. Or simply use their chosen name**.” Asked about possible penalties, Mandhane told the Sun: “Organizations have a legal duty to take positive steps to prevent and respond to discrimination. A tribunal or court may order financial or other remedies.” LifeSiteNews was not able to reach Peterson by deadline, but REAL Women’s Landolt stated that the Human Rights Commission is “getting crazier and crazier.” She noted Mandhane’s grounds of “creating a poisoned environment” is open to wide interpretation. “Who determines that except the politically correct people in the Human Rights Commission?” Peterson launched three videos objecting to the climate of repression caused by federal and provincial anti-discrimination laws, including the Trudeau Liberals’ Bill C-16, which was approved in committee without public hearings and now needs only third reading to pass. Ontario’s Bill 379 amended the Human Rights Code to add transgenderism as prohibited grounds for discrimination in 2012, and followed in June 2015 with Bill 77, Affirming Sexual Orientation and Gender Identity Act, which bans psychotherapy to minors for homosexuality or gender dysphoria, and bans government funding for such therapy for adults under the Ontario Health Insurance Plan. Landolt pointed out in an earlier [REAL Women statement](http://www.realwomenofcanada.ca/trudeau-blindsides-democracy-transgender-bill/) that federal justice minister Jody Wilson-Raybould “admitted at the Committee Hearing [on Bill C-16] that she had no actual evidence or data on whether transsexuals were actually experiencing discrimination or hate, but was only relying on information provided to her from partisan transgender and LGBT activists.” Also, it was clear “that no one understood the meaning of the expressions ‘gender identity’ and ‘gender expression’ that were supposed to be protected by these amendments, Landolt noted. Similarly, Mandhane cited no data to support her statement that “transgender people routinely experience discrimination, harassment and violence, which significantly affects their health and well-being.” **She wrote the “Code and case law” requires that “organizations must respect a trans person’s right to be treated in accordance with their lived gender identity**.” After Peterson’s videos went viral, transgender groups vilified him, and he was targeted at a protest. Protesters disrupted an October 11 free speech rally in his defense, drowning Peterson out with heckling and a “[white noise](https://www.lifesitenews.com/news/breaking-u-of-t-tells-prof-to-stop-fighting-transgender-pronouns-but-he-won)”machine. However, Peterson is scheduled to take part in a [University of Toronto](https://www.utoronto.ca/news/forum-bill-c-16-and-gender-provisions-ontario-human-rights-code) debate on “Bill C-16 and gender provisions of the Ontario Human Rights Code” on [November 19](https://www.utoronto.ca/news/forum-bill-c-16-and-gender-provisions-ontario-human-rights-code), from 9:30 a.m. to 11 a.m., at the Sandford Fleming Building, 10 King’s College Road. Tickets will be available through [UofTtix](http://www.uofttix.ca/) as of Tuesday, Nov. 15, at 11 a.m. The [Queer Caucus of CUPE](http://thevarsity.ca/2016/11/14/jordan-peterson-announces-details-of-debate/) 3902, which represents “7,000 sessional lecturers, TAs, and other contract instructional staff at U of T,” has called for a boycott of the debate. Peterson has stated he is willing to go to jail, be fined, and lose his job rather than use [politically-correct gender pronouns](https://www.lifesitenews.com/news/watch-fire-me-fine-me-jail-me.-i-wont-back-down-to-speech-police-says-u-of).

## Confederate Flag PIC

#### Perm do the counterplan – the Confederate flag disrupts schoolwork – it isn’t constitutionally protected – multiple court cases prove.

**Volokh:** Volokh, Eugene [Contributor, The Washington Post] “The Confederate flag, the First Amendment and public schools.” *The Washington Post.* September 2015. RP

[A Friday Post article (by T. Rees Shapiro and Moriah Balingit)](https://www.washingtonpost.com/news/education/wp/2015/09/17/virginia-high-school-students-suspended-for-wearing-confederate-flag-apparel/) reported on the latest Confederate flag controversy: A peaceful student demonstration at a Virginia high school ended with school administrators suspending 23 teens for wearing clothing emblazoned with the Confederate battle flag, which violates the school’s dress code, according to school officials, students and parents. The students, who attend Christiansburg High School in southwestern Virginia, said they wore the controversial Confederate symbols to protest a school policy that prohibits them, which they view as a violation of their free speech. **Students are barred from wearing any clothing that could “reflect adversely on persons due to race” and specifies that “clothing with Confederate flag symbols” falls in that category. A few thoughts on how courts have handled such matters in recent decades: 1. Nearly all cases have upheld such restrictions, under Tinker v. Des Moines Indep. School. Dist. (1969), because they concluded that there was enough evidence — based on the schools’ or neighboring schools’ concrete recent experiences — that the display of the flag was likely to materially disrupt schoolwork**, by exacerbating racial hostilities and thus leading to fights and similar disruptions. 2. One case, Castorina ex rel. Rewt v. Madison County School Bd. (6th Cir. 2000), sent the case back down to trial court to determine whether there was real evidence of likely material disruption, and whether the school had selectively targeted Confederate flag shirts but not other racially linked and potentially disruptive shirts (the example there was Malcolm X shirts). 3. A **few of the cases have taken the view that Confederate flag shirts can be punished on the grounds that they are “plainly offensive”** and thus similar to the vulgar speech that schools can punish under Bethel School Dist. No. 403 v. Fraser (1986). 4. [One case](http://volokh.com/2011/03/14/first-amendment-exception-for-%E2%80%9Cracially-hostile-or-contemptuous-speech%E2%80%9D-including-display-of-the-confederate-flag-in-k-12-public-schools-denial-of-en-banc-rehearing-by-sixth-circu/) takes the view that there is essentially a First Amendment exception — quite apart from the general disruptive-speech rule in Tinker — for “racially hostile or contemptuous speech” in schools. My view is that Confederate flag displays, which convey a political message (though the meaning of which, of course, is contested), can’t be judged under Fraser. The court in Fraser specifically distinguished Tinker on the grounds that the speech Tinker — the display of black armbands protesting the Vietnam War — was “political.” The court in Morse v. Frederick (2007) noted that “[Fraser] should not be read to encompass any speech that could fit under some definition of ‘offensive.’ After all, much political and religious speech might be perceived as offensive to some.” And the concurrence in Morse by Justices Alito and Kennedy (both of whose votes were necessary to form the five-Justice majority) described Fraser as involving “speech that is delivered in a lewd or vulgar manner,” and stressed the general protection for “speech that can plausibly be interpreted as commenting on any political or social issue.” Likewise, I think, as I’ve [argued elsewhere](http://volokh.com/2011/03/14/first-amendment-exception-for-%E2%80%9Cracially-hostile-or-contemptuous-speech%E2%80%9D-including-display-of-the-confederate-flag-in-k-12-public-schools-denial-of-en-banc-rehearing-by-sixth-circu/), that there can be no “racially hostile or contemptuous speech” First Amendment exception, even limited to schools. First Amendment precedents preclude there being such an overtly viewpoint-based First Amendment doctrine. **But the Tinker argument is much stronger, if there really is evidence that the Confederate clothing will lead to material disruption (as I expect it often would).** At that point, the question is whether one thinks the “[heckler’s veto](http://www.volokh.com/posts/1215039969.shtml)” doctrine should apply to K-12 schools. Under that doctrine, government officials generally can’t stop speech in public places based just on a fear (even a reasonable fear) that the speech will lead to violent attacks on the speaker, at least unless an outright riot is looming. If one thinks this doctrine carries over to K-12 schools, then such fear of people trying to fight the speaker shouldn’t count for Tinker purposes**. But if one thinks that the doctrine doesn’t carry over to K-12 schools, and that school administrators should be free to prevent substantial risks of material disruption whatever the disruptive mechanism might be, then Confederate clothing would indeed generally be restrictable.**

## Anti Queer PIC

#### Even anti-queer bigotry shouldn’t be suppressed – open dialogue about gay rights empirically does change minds.

**Rauch:** Rauch, Jonathan [Contributors, The Atlantic] “The Case for Hate Speech.” *The Atlantic.* November 2013. RP

ENDER’S GAME COMES OUT November 1. If you live in a cave, you may not be aware that this likely blockbuster is based on a classic 1985 sci-fi novel by Orson Scott Card. The movie version features Harrison Ford, copious digital effects, and a boycott. Recently, a group of gay activists launched a Web site urging anyone who cares about same-sex marriage or gay equality to stay out of theaters. “By pledging to Skip Ender’s Game,” the group said, “we can send a clear and serious message to Card and those that do business with his brand of anti-gay activism—whatever he’s selling, we’re not buying.” **I have been advocating gay marriage and gay equality for more than 20 years, fighting many of the same stereotypes and slurs that have figured in Orson Scott Card’s nonfiction writing. So I understand why some equality advocates want to make a statement against Card. What I would like them to understand is why I hope they fail. In a roundabout but important way, bigoted ideas and hateful speech play an essential part in advancing minority rights. Even if we have every right to boycott Ender’s Game, gays are better served by answering people like Card than by trying to squelch or punish them**. Lately, people have been asking me why so much has happened in America, seemingly so suddenly, to advance gay equality generally and gay marriage specifically. It’s a good question, with some obvious answers. Demographics are one: younger people who are more relaxed about homosexuality are replacing older people who harbor long-standing prejudices. Also, as more gay people come out of the closet and live and love openly, we are no longer an alien presence, a sinister underground, a threat to children; we are the family down the block. Those are important factors. But they don’t tell the whole story. **Generational replacement doesn’t explain why people in all age groups, even the elderly, have grown more gay-friendly.** Gay people have been coming out for years, but that has been a gradual process, while recent changes in public attitude have been dizzyingly fast. **Something else, I believe, was decisive: we won in the realm of ideas**. And our antagonists—people who spouted speech we believed was deeply offensive, from Anita Bryant to Jerry Falwell to, yes, Orson Scott Card—helped us win. In 2004, when I was making the talk-show rounds for my new book on gay marriage, **I found myself on a Seattle radio station, debating a prominent gay- marriage opponent. After she made her case and I made mine, a caller rang in to complain to the host. “Your guest,” he said, meaning me, “is the most dangerous man in America.” Why? “Because,” said the caller, “he sounds so reasonable.”** In hindsight, this may be the greatest compliment I have ever been paid. It is certainly among the most sincere. **Despite the caller’s best efforts to shut out what I was saying, the debate he was hearing—and the contrast between me and my adversary—was working on him. I doubt he changed his mind that day, but I could tell he was thinking, almost against his will**. Hannah Arendt once wrote, “**Truth carries within itself an element of coercion.” The caller felt that he was in some sense being forced to see merit in what I was saying.**

#### Progress for gay rights occurs through arguments – people will be convinced.

**Rauch:** Rauch, Jonathan [Contributors, The Atlantic] “The Case for Hate Speech.” *The Atlantic.* November 2013. RP

**A generation ago, the main obstacle to gay equality was not hatred, though of course there was a good deal of that. Most people who supported the repressive status quo meant well. The bigger problem, rather, was that people had wrong ideas about homosexuality**: factual misapprehensions and moral misjudgments born of ignorance, superstition, taboo, disgust. If people think you are a threat to their children or their family, they are going to fear and hate you. Gays’ most urgent need was epistemological, not political**. We had to replace bad ideas with good ones.** Our great blessing was to live in a society that understands where knowledge comes from: not from political authority or personal revelation, but from a public process of open-ended debate and discussion, in which every day millions of people venture and test billions of hypotheses. All but a few of those theories are found wanting, but some survive and flourish over time, and those comprise our knowledge. The restless process of trial and error does not allow human knowledge to be complete or perfect, but it does allow for steady improvement. If a society is open to robust critical debate, you can look at a tape of its moral and intellectual development over time and know which way it is running: usually toward less social violence, more social participation, and a wider circle of dignity and toleration. And if you see a society that is stuck and not making that kind of progress, you can guess that its intellectual system is not very liberal. **The critical factor in the elimination of error is not individuals’ commitment to the truth as they see it (if anything, most people are too confident they’re right); it is society’s commitment to the protection of criticism, however misguided, upsetting, or ungodly. America’s transformation on gay rights over the past few years is a triumph of the open society. Not long ago, gays were pariahs. We had no real political power, only the force of our arguments. But in a society where free exchange is the rule, that was enough. We had the coercive power of truth. History shows that the more open the intellectual environment, the better minorities will do. We learn empirically that women are as intelligent** and capable as men; this knowledge strengthens the moral claims of gender equality. We learn from social experience that laws permitting religious pluralism make societies more governable; this knowledge strengthens the moral claims of religious liberty. We learn from critical argument that the notion that some races are fit to be enslaved by others is impossible to defend without recourse to hypocrisy and mendacity; this knowledge strengthens the moral claims of inherent human dignity. To make social learning possible, we need to criticize our adversaries, of course. But no less do we need them to criticize us. All of which brings me back to Orson Scott Card. Some of the things he has said are execrable. He wrote in 2004 that when gay marriage is allowed, “society will bend all its efforts to seize upon any hint of homosexuality in our young people and encourage it.” That was not quite a flat reiteration of the ancient lie that homosexuals seduce and recruit children—the homophobic equivalent of the anti-Semitic blood libel—but it is about as close as anyone dares to come today. Fortunately, Card’s claim is false. Better still, it is preposterous. Most fair- minded people who read his screeds will see that they are not proper arguments at all, but merely ill-tempered reflexes. When Card puts his stuff out there, he makes us look good by comparison. The more he talks, and the more we talk, the better we sound.

#### Censorship backfires by painting *minorities* as the intolerant ones.

**Rauch:** Rauch, Jonathan [Contributors, The Atlantic] “The Case for Hate Speech.” *The Atlantic.* November 2013. RP

**I can think of quite a few reasons why boycotting Ender’s Game is a bad idea. It looks like intimidation, which plays into the right’s “gay bullies” narrative, in which intolerant homosexuals are purportedly driving conservatives from the public square**. It would have little or no effect on Card while punishing the many other people who worked on the movie, most of whom, Hollywood being Hollywood, probably are not anti-gay (and many of whom almost certainly are gay). **It would undercut the real raison d’être of the gay-rights movement: not to win equality just for gay Americans but to advance the freedom of all Americans to live as who they really are and say what they really think.** Even if they are Orson Scott Card. Above all, the boycott should fizzle, and I expect it will fizzle, because gay people know we owe our progress to freedom of speech and freedom of thought. **The best society for minorities is not the society that protects minorities from speech but the one that protects speech from minorities (and from majorities, too).** Gay Americans can do the cause of equality more good by rejecting this boycott than by supporting it. I’ll see the movie—if the reviews are good.

## Guns PIC

#### Perm do the counterplan – gun carrying on campus is intimidation in the same way burning a cross is – it’s not constitutionally protected.

**Lithwick and Turner:** Dalia Lithwick and Christian Turner [Contributors, Slate] “It’s Not My Gun. It’s ‘Free Speech.’.” *Slate.* November 2013. RP

**This is why even** [**supporters of the armed protestors and their First and Second Amendment rights concede**](http://www.nationalreview.com/corner/363670/moms-demand-action-open-carry-texas-and-mysterious-photographer-charles-c-w-cooke) **that this means of counter-protest is a mistake**: “I don’t know at what point the open carrying of rifles at a counter-protest becomes ‘intimidation,’” writes Charles C. W. Cooke at the National Review Online, “but I do know that getting close to that line is not a sensible or civil thing to do and that it is unlikely to win one any friends.” **Burning crosses are undeniably intimidating symbols of abhorrent ideas. Guns are not even always symbolic. Whatever else may be said with them, guns always say, “I can kill.” And the audience always hears, “That gun can kill me with the slightest of its carrier’s effort.** My life hangs entirely upon the carrier’s forbearance.” **We can find that message frightening and repulsive without considering it political speech. It’s scary to place your life, and the lives of your children, in the hands of a multitude of strangers each with the power effortlessly to take it. The protestors tell us they want to talk about freedom, but we will inevitably hear the undeniable threat built into the barrel of the gun itself. Our law should say we don’t have to**.

#### Perm do the counterplan – guns aren’t a form of speech and aren’t protected by First Amendment

**Bailey:** Bailey, Cierra [Contributor, Carbonated TV] “Sorry Gun Nuts, Gun Control Is Not The Same As Censoring Free Speech.” 2017. RP

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| **Why do gun advocates always take the second amendment to the U.S. Constitution and compare it to the first amendment as a way to refute gun control?** Recently, presidential candidate Rand Paul was featured on an episode of the daytime talk show, The View and he — as many other **gun nuts have before — said that regulating the use and sale of firearms is the same as censoring free speech**. One would have to assume that people use the first amendment in these far-fetched comparisons because it’s a right that the general public is most familiar with and exercise regularly. **That reasoning, however, still doesn’t excuse the fact that there is no real comparison between the two, unless you try to argue that all of the mass shootings that occurred in 2015 were carried out using word of mouth, pens and keyboards**. **All jokes aside, a key differentiating factor gun advocates tend to ignore is that free speech is actually REGULATED. You can’t legally use free speech to incite panic**, you can’t make false statements without consequences, you can’t legally go around slandering and/or threatening people and there are strict prohibitions related to obscenity. **Free speech restrictions are fairly strict and clear, but gun laws are not.** Due to this leniency, guns are getting into the hands of the wrong people resulting in countless untimely and devastating deaths. For argument's sake, let's take a look at driving laws which are more realistic to compare with gun restrictions. Although driving a car is a privilege and not a right, the law acknowledges that a person could damage personal property, kill or injure someone while behind the wheel of a car. Therefore, you're required to learn the rules of the road, take a test, have valid insurance and keep your vehicle registered in order to legally operate a car. Bearing arms may be a constitutional right, but guns have the same risks associated with them as cars do and yet there are loopholes galore among the current gun laws. Also important to note, while driving a car and shooting a gun clearly have similar risks associated with each of them, exercising free speech does not. **Speech can cause harm, of course, but not nearly to the same degree as firearms.** President Barack Obama recently had enough of all the back and forth about gun control and took executive action with improved safety laws and comprehensive background checks which has right- wingers up in arms claiming Obama wants to infringe upon citizens' rights and take their guns away. This pro-gun logic is what Paul was defending on The View when he made the terrible comparison that bamboozles Americans into thinking that guns and free speech are comparable. |

#### Empirics confirm campus carry and stops rape

**Hawkins:** Hawkins, Awr. [Contributor, Breitbart]. “Colorado Campus Carry: 12 Years, No Mass Shootings, No Crimes by Permit Holders” *Breitbart.* April 2015. RP

On April 20, *The Washington Post* ran a column showing that **campus carry has been the law of the land in Colorado since 2003**, and the results have not been anything like those currently fighting against campus carry claim it should be. **There have been no mass shootings** and, apart from one incident in which a gun was accidentally discharged by a Colorado University employee, **there have been no crimes** by permit holders. No one was injured in the accidental discharge, and the employee was fired. **The success of campus carry in Colorado is especially good news for women, who are able to level the playing field by being armed** and better able to defend their dignity when under sexual attack. [*WaPo* explains](http://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/04/20/guns-on-university-campuses-the-colorado-experience/): The U.S. Census Bureau conducts in-person interviews with several thousand persons annually, for the National Crime Victimization Survey (NCVS). In 1992-2002, over 2,000 of the persons interviewed disclosed they had been raped or sexually assaulted. Of them, only 26 volunteered that they used a weapon to resist. In none of those 26 cases was the rape completed; in none of the cases did the victim suffer additional injury after she deployed her weapon. So, **in the 26 assaults in which a woman had access to a weapon, she was able to stop the rape** and was not further assaulted. Moreover, *WaPo*expounded on the NCVS results by including an in-depth study by Florida State University criminologist Gary Kleck. Kleck “conducted a much broader examination of NCVS data. **Analyzing a data set of 27,595 attempted violent crimes** and 16 types of protective actions, **Kleck found that resisting with a gun greatly lowered the risk of the victim being injured**, or of the crime being completed.” This is one hundred and eighty degrees from what campus carry opponents want us to believe.

#### Policing disad – gun control means stop and frisk tactics that ensnare blacks.

Gourevitch 15 (Alex, assistant professor of political science at Brown University, “Gun control’s racist reality: The liberal argument against giving police more power,” JUN 24, 2015, http://www.salon.com/2015/06/24/gun\_controls\_racist\_reality\_the\_liberal\_argument\_against\_giving\_police\_more\_power/)//ghs-VA

The dead are buried, the murderer apprehended, and the shock has started to wear off. Now comes the public reaction to the massacre in Charleston. Soon after the shootings at the Emanuel African Methodist Episcopal Church in Charleston, South Catolina, the first black president of the United States offered some thoughts on Dylan Roof’s racist attack. First and foremost, President Obama said, recent events were about how “innocent people were killed in part because someone who wanted to inflict harm had no trouble getting their hand on a gun.” The killings were also about a “dark chapter in our history,” namely racial slavery and Jim Crow. Obama only suggested practical action regarding the first issue, namely gun control. He did not consider that such measures will make the persistence of the second problem even worse. It is perhaps counterintuitive to say so but gun control responses to mass killings – whether racially motivated or otherwise – are a deep mistake. The standard form of gun control means writing more criminal laws, creating new crimes, and therefore creating more criminals or more reasons for police to suspect people of crimes. More than that, it means creating yet more pretexts for a militarized police, full of racial and class prejudice, to overpolice. As multiple police killings of unarmed black men have reminded us, the police already operate with barely constrained force in poor, minority neighborhoods. From SWAT to stop-and-frisk to mass incarceration to parole monitoring, the police manage a panoply of programs that subject these populations to multiple layers of coercion and control. As a consequence, more than 7 million Americans are subject to some form of correctional control, an extremely disproportionate number of whom are poor and minority. While it is commonly assumed that the drug war is to blame for all this, work by scholars like Benjamin Levin and Jeff Fagan demonstrates that already existing gun control efforts also play an important role. One of the most notorious areas of policing, the NYPD’s stop-and-frisk program, was justified as a gun control rather than a drug war measure. In the name of preventing violence, hundreds of thousands of poor minorities are subject to searches without probable cause each year. Further, a range of Supreme Court-authorized exceptions to standard Fourth Amendment protections against illegal search and seizure derive from a concern with gun violence. This invasiveness is a necessary feature of criminalized gun possession. After all, policing guns is just like policing drugs. Like drugs, there are a vast number of guns. Possession is far more widespread than can possibly be policed so decisions have to be made about where to devote resources. Furthermore, since possession itself is the crime, the only way to police that crime is to shift from actual harm to identifying and preventing risks. As legal scholar Benjamin Levin argues in a forthcoming piece “Searching for guns – like searching for drugs – can easily become pretextual, a proxy for some general prediction of risk, danger, or lawlessness.” In other words, there must be selective enforcement, where enforcement includes invasive searches based on existing prejudices about who is and isn’t dangerous. For example, as research by Jeff Fagan and Garth Davies shows, in the late 1990s, the NYPD used suspected weapons violations to justify numerous stops, even though these stops resulted in fewer arrests than stops for other crimes. And when it comes to individualized assessments of who is dangerous and worthy of punishment, every study shows steep, and unfounded, bias. Michelle Alexander, quotes a former U.S. attorney in her recent sensation, “The New Jim Crow,” saying the following: “I had an [assistant U.S. attorney who] wanted to drop the gun charge against the defendant [in a case which] there were no extenuating circumstances. I asked, ‘Why do you want to drop the gun offense?’ And he said, ‘He’s a rural guy and grew up on a farm. The gun he had with him was a rifle. He’s a good ol’ boy, and all good ol’ boys have rifles, and it’s not like he was a gun-toting drug dealer.’ But he was a gun-toting drug dealer, exactly.” This isn’t just a point about conscious and unconscious biases towards poor minorities – biases that some imagine can be removed with proper training. No matter how neutral the laws are, their enforcement must remain unequal and unfair. That is because the policing involved would never be tolerated if they affected politically influential groups to the same degree. These policing practices persist because they are disproportionately directed against marginal populations. Once individuals find themselves arrested gun control reappears as a reason for increasing punishment. Gun possession can be used to enhance sentences for other crimes and even functions as a kind of double punishment when that possession becomes the reason for also tacking on an extra criminal charge. Gun charges are also a part of the excessive and racially unequal over-charging practices that not only contribute to rising incarceration rates but also ends force numerous individuals away from trial and into plea bargains. Poor Blacks and Latinos are easily intimidated by charge-happy prosecutors into accepting plea deals, meaning they never see their day in court. Some even end up admitting to crimes they did not commit just to avoid the possibility of more severe punishments. More criminal gun laws would only feed this deeply unjust system. There is an unrecognized gap between the justification for gun control and its most likely effect. There is no reason to expect fair enforcement of gun control laws, or even that they will mainly be used to someone prevent these massacres. That is because how our society polices depends not on the laws themselves but on how the police – and prosecutors and courts – decide to enforce the law. Especially given how many guns there are in the U.S., gun law enforcement will be selective. That is to say, they will be unfairly enforced, only deepening the injustices daily committed against poor minorities in the name of law and order.

#### No studies can prove conclusively that gun control reduces rate of violent crime.

Kates 13 (Don B, retired professor of constitutional and criminal law, research fellow with the Independent Institute, "Debate: Gun Control in the United States", 2013)//ghs-VA

In the early 2000s, the CDC and the National Academy of Sciences evaluated the value of gun laws. After reviewing 253 journal articles, 99 books, 43 government publications and some empirical research of its own about gun crime [11, 16], the National Academy of Science could not identify any gun restriction that reduced violent crime, suicide, or gun accidents [16]. In 2004, the CDC (which vehemently endorses gun bans), released its exhaustive review of the extant literature [5]. The CDC could not identify any evidence that gun control (including Washington D.C.’s complete handgun ban) — had reduced murder, violent crime, suicide, or gun accidents [5].

#### The most rigorous and comprehensive study in gun control literature finds that gun laws increase crime rates.

Huemer 3 (Huemer, Professor of Philosophy at the University of Colorado, Boulder, "Is There a Right to Own a Gun?" Social Theory and Practice, Vol. 29, No. 2, 2003)//ghs-VA

John Lott and David Mustard conducted a study, probably the most rigorous and comprehensive study in the gun control literature, on the effects of nondiscretionary laws on crime rates. Footnote Lott’s study uses time-series and cross-sectional data for all 3,054 counties in the United States from 1977 to 1992. Overall, states with shall-issue laws have a violent crime rate just over half (55%) of the rate in other states. Footnote This alone does not establish that the more restrictive gun laws are a cause of the dramatically higher violent crime rates in the states that have them, since the correlation could be explained by the hypothesis that states that already have higher crime rates are more likely to pass restrictive gun laws. The latter hypothesis, however, would not explain why violent crime rates fell after states adopted shall-issue concealed carry laws. Footnote After performing a multiple-regression analysis to control for numerous other variables—such as arrest and conviction rates, prison sentence lengths, population density, income levels, and racial and gender makeup of counties—Lott found that upon the adoption of shall-issue laws, murder rates declined immediately by about 8 percent, rapes by 5 percent, and aggravated assaults by 7 percent, with declines continuing in subsequent years (Lott explains the latter fact by the gradually increasing numbers of individuals obtaining permits).

## Wisconsin Model PIC

#### The Wisconsin code criminalized students and chilled open discussion

**Hunt and Downs:** Donald Downs and Lester H. Hunt [Donald Downs is Professor of Political Science at U. W. - Madison and has written extensively on legal issues, especially those relating to the First Amendment. Lester H. Hunt is Professor of Philosophy at U. W. - Madison and has written extensively on ethics and political philosophy.] “Our Speech Code: The Right End, The Wrong Means.” RP

We did not want to let (Lack of) Diversity Week go by without commenting on an entrenched U. W. institution that discourages two of the most valuable kinds of diversity: diversity of thought and diversity of expression. **Many people do not realize this, but the University of Wisconsin - Madison does have a speech code. Our code prohibits, and subjects to unspecified punishments, "demeaning verbal and other expressive behavior," including "epithets, comments or gestures that explicitly demean gender, race, cultural background, ethnicity, sexual orientation, or disability condition**." It enables any student who feels that a professor's lectures make "the instructional setting hostile or intimidating" to lodge a complaint that will drag the professor, even if completely innocent, through an embarrassing procedure, during which many of her or his colleagues will only know that they are being investigated on some very serious charges. The code applies only to faculty behavior, but we think that it is time for everybody, not only the faculty, to do something about it. We are not arguing at present that our code merits any particular remedial response - whether it should be amended and restricted, or whether it should be taken out behind the barn and killed with an ax - but we do say that it should not be allowed to stand in its present form. We do not question the basic motive behind the code which, presumably, is to promote decent treatment of students by faculty. Courtesy is essential to good teaching and, in fact, to all civilized life. Society must use all sorts of means to promote it, if we are to live together in peace. What we have here, though, is a very bad means to this noble end. **The main problem is that, in effect, the code criminalizes problems that can be better dealt with in other ways.** We know of applications of the code that have been very heavy-handed and destructive of academic freedom and the morale of individual faculty members. **Students who are seriously offended by things a professor says should bring the problem to the attention of the professor. If they are not happy with the results, they can go to the professor's chair and, if need be, the departmental grievance committee. The vast majority of Madison professors do not mean to offend anyone and, even if they do, they are human beings who can be reasoned with and do not need to be threatened with administrative investigations and punishments for their in-class speech.** We have never heard one shred of evidence that this is not true. Before November, 1989, when the code went into effect, was our racist, sexist, homophobic faculty running uncontrollably amok in the lecture room? We don't think so. **Second, while the code is aimed at the tiny minority of real offenders, it creates a chilling effect on the free flow of ideas in all classrooms. This effect is most acute in those classes that deal with the hot-button issues of race, gender, ethnicity, freedom of expression, and social justice that the code addresses**. There is a paradox here: those issues that are most likely to cause offense, and thus most likely to provoke a punitive response under this code, are the most likely to be subject of controversy. The code attacks controversy precisely where it is most likely to occur, and to be needed. Third, the code rests on a deep and damaging confusion. It attempts to advance the value of social justice at the expense of the value of free speech. This assumes a dichotomy between these two values which is utterly false. I**n the long run, real justice has always been achieved by use of free discussion.** For example: The first nation on earth to make slavery completely illegal was England, in the early nineteenth century. England was also at that time a world leader in preserving freedom of speech. This is no coincidence. The antislavery forces took full advantage of this freedom, igniting a fierce national debate that burned and scorched for decades, until they won. Now ask yourself: What would have happened if the English of those days had had the power to legally punish one another for linguistic insensitivity, for saying things that offended them and made them feel bad? There would have been relatively little discussion, and no action. **Censorship is always good for the status quo. Silence is stagnation.** The best way to empower students in the long run is educate them well, to enable them to think critically and rigorously, rather than come to preordained conclusions on issues of social justice. For this they need teachers who are free. That is perhaps the worst thing about the code: it diminishes the quality of the education students are getting, and thus damages our best hope of achieving justice in the end. **For these reasons, we are asking everyone, not only faculty but students as well, to think seriously about revising or eliminating our broad, vague, and oppressive code**. At the very least, we should consider adopting a "reasonable student" test for determining whether a professor has done wrong, or limiting punishable offenses to the use of epithets, or comments intended to give offense.

#### Enforcement fails – Wisconsin neglected to define “hate speech”

**Anderson:** Anderson, Mary [Contributor, Wisconsin State Journal] “University of Wisconsin directive devalues free speech on campus.” *Wisconsin State Journal.* November 2015. RP

Second, the statement is hopelessly vague. **What does it mean to “diminish” or to “devalue” someone? Strongly challenging someone’s ideas, beliefs or conduct could make an individual feel uncomfortable or diminished in some sense.** Third, the statement makes no attempt to articulate which particular “ideas” and “opinions” merit First Amendment protection. Are only “nice words” to be protected? **The protection of all ideas lies at the heart of UW’s famous “sifting and winnowing of ideas” motto**. Indeed, the clash of ideas constitutes the heart and soul of what a university is. Basic Socratic principles of inquiry assume all positions must be questioned and interrogated, no matter how virtuous they appear. No ideas may claim to be above challenge. As the well-known University of Chicago’s Committee on Free Expression has recently avowed, freedom of ideas must be given the trump card in every encounter unless one of the well-established and narrowly defined exceptions to free speech is present. Fourth, the U.S. Supreme Court has ruled that the First Amendment protects offensive speech, which is an unavoidable byproduct of vibrant discussion, especially when emotional causes run high**. But the problematic clause in the administrator’s statement resembles the wording of the UW student and faculty speech codes that reigned in the 1990s. Those codes, which prohibited “demeaning” speech, were ultimately discredited for good reasons and no longer exist. Finally, the administrators’ statement provides a link to a website that encourages members of the campus to report “an incident of hate or bias.” Nowhere is “hate” or “bias” defined**. Coupling the vagueness and breadth of the terms discussed above with the current tensions and emotions that prevail across the land, this call encourages reporting by both the well-intentioned and the mischievous. Missouri has even called on offended individuals to report “hurtful” speech to the police! Genuine threats and acts of illegal discrimination should be reported, but the website does not so limit its reach. This provision suggests a campus-wide call for us to inform anonymously against one another for simply being inappropriately insensitive or uncaring. How such Orwellian reporting can be reconciled with the values of a free society awaits its apologist. **Throughout history, free speech has been utilized by disfavored and oppressed voices to make their claims heard and to compel social change. It also helped to make UW-Madison a great university**. Indeed, the new racial justice movements have ridden the back of free speech to gain ascendancy on campuses. But to be viable, principled and secure, social justice in a liberal constitutional order must also be based on persuasion and consent, not coercion and intolerance of dissenting views.

## Revenge Porn PIC

#### Censorship doesn’t solve the root cause, increases the power of dominant elites, and suppresses valuable information that’s key to activism

**York:** York, Jillian C. [Writer and contributor for several news sources] “Harassment Hurts Us All. So Does Censorship.” *Medium.* September 2013. RP

**The crux of the interview, and the issue at hand, is whether or not censorship is a good solution to the problem of online harassment and bul- lying. It has become a fairly commonplace response to certain “undesirable” speech—be it misogynistic, racist, homophobic, etc—to call for bans on it, either from government or from online platforms themselves**. I sympathize with the sentiment behind those calls—who amongst us hasn’t wished a certain racist or sexist commentator would just disappear?—but in the end, I just can’t abide. **You see, I don’t see censorship as a solution to anything.** I see it as a band-aid slapped carelessly over a gaping, septic wound. **That is not to deny the effects of harassment, or even “hate speech” (click the link to understand why I use quotes around that term), but to say that the problem is institutional, systemic, and in need of a better solution. It makes me very frustrated when arguments are made to ban a certain type of speech, but seem to go no further, as if ridding our spaces of that speech is the be-all end-all to solving the problem.** Hint: it’s not. Most of all, I don’t believe that censorship offers lasting benefits. **If this were a perfect world, in which we could draw a very solid red line be- tween speech that should be banned and speech that should not, and we were all able to have a voice in making those determinations, and that blocking was done with the utmost oversight, transparency, and accountability, you might be able to convince me. The truth, however, is that efforts to censor hate speech, or obscenity, or pornography, are far too often overreaching, creating a chilling ef- fect on other, more innocuous speech. Microsoft Bing, which I men- tioned in my article, is not the first nor the last platform to block “breast” and with it, “breast cancer” and “chicken breast.” In my years of research, I’ve spoken to doctors whose workplace network blocked important health terms, to women in Saudi Arabia whose ISPs did the same, to queer youth whose schools or public libraries used pornogra- phy filters that took down non-obscene LGBTQ content with it, and so on.** And as such, I’m convinced that the imperfect technologies we put so much stock in to make our world a little better and brighter actually make it darker. I**’ve also talked to activists and others around the world whose content has been taken down from Facebook and YouTube because it doesn’t meet the yes, patriarchal terms of service set forth by the mostly-male teams that design them.** Breastfeeding=bad, violence against women=good, they tell us. They take down important pages (like ‘We Are All Khaled Said’) because their moderator, likely an at-risk activist in an unsafe space, dares use a pseudonym. **And yet you want to trust them to regulate speech even more?** No, thanks. I am not deaf to the argument that in some contexts, removing certain types of speech creates a safer and more inclusive space. To be clear, I want those spaces to exist. That’s the same reason I moderate comments on my blog and block trolls on Twitter. But I view that as very different from a major online platform with more than one billion users making those decisions for me. But I also realize that something I said in that interview was, while rep- resentative of my personal experience, pretty callous. I have dedicated a substantial amount of my time to finding and culti- vating platforms for women’s voices, based on my belief that a solution to the widespread harassment and bullying of women online is to keep pushing women’s voices into the mainstream, louder and stronger. I recognize that this solution doesn’t work for everyone, and therefore acknowledge that it’s a mere piece of the puzzle, rather than a solution on its own. So when I say, “I get really tired of [the argument that women are bullied out of public discussions] because I’m a woman and I don’t feel that way,” the point I’m trying to make is that, while I feel bullied, I’m not going anywhere. No way, no how. I want to be clear: I am not denying that women are frequently “bullied off the Internet,” and I can see why it appears from the interview that I feel that way. Rather, I believe that that refrain ignores the experiences of those of us who would prefer to respond to hate speech with more speech, prefer to shout louder over the din. I’ve been accused many times of upholding the patriarchy for my ideal that sunlight and resolve are even a solution, and I’m tired of it. And so I stand by my position, reflected in the words of the great Jus- tice Louis Brandeis, that the best remedy to “bad” speech is more speech, not enforced silence. I believe this, but I also believe we need to fight to ensure that women—as well as other marginalized groups and individuals—have the opportunity to engage in counter speech. If we are to fight for free expression, we must also fight for greater op- portunity, and we must have each other’s backs. We must call out misogyny where we see it, and we must have zero tolerance for it in the workplace. We must commit to inclusivity, and we must raise up those around us who might not have the same privilege that we do. It is possible to be dedicated to freedom of speech and to the advance- ment of women. I’ve worked at the EFF for a little over two years and have found it to be the most inclusive space in which I’ve had the plea- sure of working. Not to mention, eight out of eleven staffers here with the word “director” in their title are women, and on the whole, we’re very balanced in terms of gender. In the often privi- leged field that is digital rights, this is notable. Interviews are less than ideal in getting one’s point across; quotes are shortened, context is left out, and terrible titles are added for link bait. But while I intend to make no excuses for what I’ve said, I feel compelled to elaborate on my beliefs and how I came to them. I expect disagreement, but I’d prefer it be with my ideas, rather than a context- less shell of them. **I believe that free expression is compatible with a better society**, and I will continue to fight for both.

#### Revenge porn isn’t constitutionally protected speech.

**Citron:** Citron, Danielle [Contributor, Forbes] “Debunking the First Amendment Myths Surrounding Revenge Porn Laws.” *Forbes.* April 2014. RP

**Disclosing someone’s nude image in violation of trust and confidence  (often known as nonconsensual pornography or revenge porn) is a**[**destructive invasion of privacy**](http://www.theguardian.com/commentisfree/2014/apr/17/revenge-porn-must-be-criminalized-laws)**that can cause irreversible harm to a person’s physical and emotional well-being, professional reputation, and financial security**. Lawmakers are rightfully paying attention. Seven states have criminalized the practice; 18 states have pending bills; Representative Jackie Speier has expressed interest in making it a federal crime. Some object to criminalizing invasions of sexual privacy because free speech will be chilled. That’s why it is [crucial](http://www.slate.com/articles/news_and_politics/jurisprudence/2013/11/making_revenge_porn_a_crime_without_trampling_free_speech.html) to craft narrow statutes that only punish individuals who knowingly and maliciously invade another’s privacy and trust. Other features of anti-revenge porn laws can ensure that defendants have clear notice about what constitutes criminal activity and exclude innocent behavior and images related to matters of public interest. Even so, some argue that revenge porn laws are doomed to fail because nonconsensual pornography does not fall within a category of unprotected speech. To criminalize revenge porn, they say, the Court would have to recognize it as new category of unprotected speech, which it would not do. Another argument is that even if law could secure civil remedies for revenge porn, it could not impose criminal penalties because the First Amendment treats criminal and civil laws differently. These objections are unfounded and deserve serious attention lest they be taken seriously. Let’s first address the argument that revenge porn laws are unconstitutional because they do not involve categorically unprotected speech like true threats. Advocates rely [United States v. Stevens](http://www.supremecourt.gov/opinions/09pdf/08-769.pdf), which struck down a statute punishing depictions of animal cruelty distributed for commercial gain. In Stevens, the Court rejected the government’s argument that depictions of animal cruelty amounted to a new category of unprotected speech. As the Court explained, the First Amendment does not permit the government to prohibit speech just because it lacks value or because the “ad hoc calculus of costs and benefits tilts in a statute’s favor.” The Court explained that it lacks “freewheeling authority to declare new categories of speech outside the scope of the First Amendment.” The Court did not say that only speech falling within explicitly recognized categories (such as defamation, true threats, obscenity, imminent incitement of violence, and crime-facilitating speech) are proscribable. To the contrary, the Court specifically recognized that other forms of speech have “enjoyed less rigorous protection as a historical matter, even though they have not been recognized as such explicitly.” **Disclosing private communications about purely private matters is just the sort of speech referred to in Stevens that has enjoyed less rigorous protection as a historical matter**. We do not need a new category of unprotected speech to square anti-revenge porn criminal laws with the First Amendment. Now for the cases establishing that precedent. [Smith v. Daily Mail](http://scholar.google.com/scholar_case?case=740614020734478800&hl=en&as_sdt=6&as_vis=1&oi=scholarr), decided in 1979, addressed the constitutionality of a newspaper’s criminal conviction for publishing the name of a juvenile accused of murder. The Court laid down the now well-established rule that “if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish the publication of the information, absent a need to further a state interest of the highest order.” Ever since the Court has refused to adopt a bright-line rule precluding civil or criminal liability for truthful publications “invading ‘an area of privacy’ defined by the State.” Rather the Court has issued [narrow decisions](http://scholar.google.com/scholar_case?case=11083261902857685106&hl=en&as_sdt=6&as_vis=1&oi=scholarr) that specifically acknowledge that press freedom and privacy rights are both “plainly rooted in the traditions and significant concerns of the society.’” Consider [Bartnicki v. Vopper](http://scholar.google.com/scholar_case?case=2171346211086974391&hl=en&as_sdt=6&as_vis=1&oi=scholarr). There, an unidentified person intercepted and recorded a cell phone call between the president of a local teacher’s union and the union’s chief negotiator. During the call, one of the parties talked about “go[ing] to the homes” of school board members to “blow off their front porches.” A radio commentator, who received a copy of the intercepted call in his mailbox, broadcast the tape. The radio personality incurred civil penalties for publishing the cell phone conversation in violation of the Wiretap Act. The Court characterized the wiretapping penalty as presenting a “conflict between interests of the highest order—on the one hand, the interest in the full and free dissemination of information concerning public issues, and, on the other hand, the interest in individual privacy and, more specifically, in fostering private speech.” For the Court, free speech interests appeared on both sides of the calculus. **The Court recognized that “the disclosure of the contents of a private conversation can be an even greater intrusion on privacy than the interception itsel**f.” The penalties were struck down because the private cell phone conversation about the union negotiations “unquestionably” involved a “matter of public concern.” Because the private call did not involve “trade secrets or domestic gossip or other information of purely private concern,” the privacy concerns vindicated by the Wiretap Act had to “give way” to “the interest in publishing matters of public importance.” The state interest in protecting the privacy of communications is strong enough to justify regulation if the communications involve “purely private” matters, like nude images. Neil Richards has persuasively [argued](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1862264), and lower courts have ruled, a lower level of First Amendment scrutiny applies to the nonconsensual publication of “domestic gossip or other information of purely private concern.” Appellate courts have affirmed the constitutionality of civil penalties under the wiretapping statute for the unwanted disclosures of private communications involving “purely private matters.” Along similar lines, lower courts have upheld claims for public disclosure of private fact in cases involving the nonconsensual publication of sex videos. **In Michaels v. Internet Entertainment Group, Inc., an adult entertainment company obtained a copy of a sex video made by a celebrity couple, Bret Michaels and Pamela Anderson Lee. The court enjoined the publication of the sex tape because the public had no legitimate interest in graphic depictions of the “most intimate aspects of” a celebrity couple’s relationship. As the court explained, a video recording of two individuals engaged in sexual relations “represents the deepest possible intrusion into private affairs.”** These decisions support the constitutionality of efforts to criminalize revenge porn**. Nude photos and sex tapes are among the most private and intimate facts; the public has no legitimate interest in seeing someone’s nude images without that person’s consent**. A prurient interest in viewing someone’s private sexual activity does not change the nature of the public’s interest. On the other hand, the nonconsensual disclosure of a person’s nude images would assuredly chill private expression. Without any expectation of privacy, victims would not share their naked images. With an expectation of privacy, victims would be more inclined to engage in communications of a sexual nature. Such sharing may enhance intimacy among couples and the willingness to be forthright in other aspects of relationships. The fear of public disclosure of private intimate communications would have a “chilling effect on private speech.” When would victims’ privacy concerns have to cede to society’s interest in learning about matters of public importance? Recall that women revealed to the press that former Congressman Anthony Weiner had sent them sexually explicit photographs of himself via Twitter messages. His decision to send such messages sheds light on the soundness of his judgment. Unlike the typical revenge porn scenario involving private individuals whose affairs are not of broad public interest, the photos of Weiner are a matter of public import, and so their publication would be constitutionally protected. Another way to understand the constitutionality of revenge porn statutes is through the lens of confidentiality law. Woodrow Hartzog persuasively [contends](http://www.theatlantic.com/technology/archive/2013/05/how-to-fight-revenge-porn/275759/) that revenge porn is a “legally actionable breach of confidence.” As Neil Richards and Daniel Solove have [argued](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=969495), confidentiality regulations are [less troubling](http://www.oyez.org/cases/1990-1999/1990/1990_90_634) from a First Amendment perspective because they penalize the breach of an assumed or implied duty rather than the injury caused by the publication of words. Instead of prohibiting a certain kind of speech, confidentiality law enforces express or implied promises and shared expectations. Now for the view that civil revenge porn remedies might stand but that criminal penalties cannot because the First Amendment has different rules for them. Generally speaking, the First Amendment rules for tort remedies and criminal prosecutions are the same. On the point, Eugene Volokh has said that the Court has “refused invitations to treat civil liability differently from criminal liability for First Amendment purposes.” In an e-mail exchange, he pointed to "New York Times Co. v. Sullivan, Garrison v. Louisiana, and the Court’s rejection of Justice Stevens’ proposal in the late 1970s to bar criminal prosecutions for obscenity.” In New York Times v. Sullivan, the Court explained, “What a State may not constitutionally bring about by means of a criminal statute is likewise beyond the reach of its civil law.” As the Court recognized, the treatment is the same though the threat of civil damage awards can be more inhibiting than the fear of criminal prosecution and civil defendants do not enjoy special protections that are available to criminal defendants, such as the requirement of proof beyond a reasonable doubt. It’s worth noting Volokh’s view that “the vagueness doctrine may be more in play in criminal cases than in civil cases (compare FCC v. Pacifica Foundation and its stress on absence of criminal liability); a mens rea of recklessness or worse may be required for criminal liability in public concern libel cases (by analogy to Gertz v. Robert Welch’s holding about punitive damages).” In his view (and in mine): “I don’t think that the revenge porn statutes that I’ve seen suffer from vagueness problems.”So these two myths should be seen and understood for what they are: misleading and uninformed. If we are going to oppose revenge porn efforts, let's be honest about why. Opponents may reject them on policy grounds. They can worry that it is a bad idea to criminalize revenge porn. They can insist it is no big deal, though I'd disagree as would the countless victims, advocacy groups like the [Cyber Civil Rights Initiative](http://www.cybercivilrights.org/) and [Without My Consent](http://www.withoutmyconsent.org/), and my colleague [Mary Anne Franks](http://www.law.miami.edu/faculty-administration/mary-anne-franks.php). Let the discussions on the merits begin.

#### Laws don’t exist now to combat revenge porn, and legal scholars agree it won’t violate the constitution

**Abdul-Alim:** Abdul-Alim, Jamaal [Contributor, Diverse] “Colleges May Get Help Fighting ‘Revenge Porn’.” *Diverse.* October 3, 2016. RP

WASHINGTON — **A proposed law that would punish people who publish “revenge porn”** online will likely be put forth in the next Congress, but it remains to be seen how effective the measure — if passed — would be in combating the practice on America’s college campuses.“We are totally aware of the huge problem on campus of sexual assault and this sort of conduct on campuses as well,” said Josh Connolly, chief of staff for U.S. Rep. Jackie Speier (D-Calif.), who introduced the bill — known as the “Intimate Privacy Protection Act,” or IPPA — earlier this year and plans to do so again next session. While sexual assaults on campus are often handled by Title IX coordinators, Connolly said he didn’t foresee that happening if the revenge porn bill becomes law. He said the “default” should be to have attorneys general or district attorneys handle the cases. “Regarding any sort of jurisdictional ambiguity, we don’t really foresee that,” Connolly said. “I think it is solidly within a DA or an AG’s jurisdiction of whether or not to take a case or not, and we would encourage them to do so.” Connolly made his remarks Friday during a panel [discussion](https://www.c-span.org/video/?416135-1/discussion-focuses-combating-revenge-porn) on Capitol Hill titled “Outlawing Revenge Porn: How Congress Can Protect Privacy and Reduce Online Harassment.” The discussion comes at a time when sex video scandals — sometimes with costly and tragic results — are making more and more headlines. People of all ages have become ensnared in the practice in which perpetrators post images or videos of their victims nude or engaged in sex The victims range from celebrities such as Hulk Hogan, who earlier this year won a $140 million lawsuit against Gawker for publishing a portion of a sex tape of the pro wrestler, to otherwise anonymous young people such as Tovonna Holton, 15, who committed suicide this year after friends video recorded her in the shower and posted it on social media app Snapchat. Similar things have happened at colleges and universities in recent years. For example, Tyler Clementi, an 18-year-old Rutgers University freshman, leapt to his death after a roommate used a webcam to live broadcast Clementi on social media having sex in his dorm with another man. The roommate, Dharun Ravi, served 20 days in jail on various charges and was ordered to pay $10,000 to a program to help victims of hate crimes. However, his conviction was overturned last month due to a change in state law. Last year, Penn State banned Kappa Delta Rho fraternity for three years after it surfaced that members of the fraternity had been using an invitation-only Facebook page to post photos of nude women who were passed out. Congresswoman Speier said the Internet has become a “new age sewage pipeline carrying the worst material imaginable in endless quantities.”“As social media proliferates, so do the opportunities to destroy people’s lives,” Speier said at Friday’s discussion on The Hill. “Young people are committing suicide because of their images being distributed without their consent.”While the majority of states have passed various types of anti-revenge porn laws, Speier said the “patchwork” of state laws — some of which only target those who are motivated by a desire to harass the victim — creates great uncertainty for victims. “If passed**, this bill will punish individuals and websites that knowingly post private, intimate materials while also providing a safe harbor for websites that don’t advertise or solicit such content,” Speier said**. Speier said her proposed revenge porn law has been reviewed by 12 constitutional scholars who have all refuted concerns that the law would violate free speech. Among the scholars who back the bill are University of Miami law professor Mary Anne Franks. “A federal criminal law is necessary not only to provide a single, clear articulation of the relevant elements of the crime, but also to signal society’s acknowledgement and condemnation of this serious wrongdoing,” Franks, who helped draft the bill, has [written](http://www.huffingtonpost.com/mary-anne-franks/how-to-defeat-revenge-porn_b_7624900.html). Under the bill, perpetrators who post images of a person who is naked or engaged in sex could be fined or imprisoned for up to five years if they did so without the person’s consent. Carrie Goldberg, a Brooklyn-based attorney who represents victims of revenge porn, said 90 percent of the victims are women and range in age from 13 to 65. She said having one’s naked images published online can do irreparable harm. “At this point in time no one can get a job, date or even a roommate without being Googled,” Goldberg said. “How would you feel if the first five pages of your results were images of you fully exposed and images you never wanted anyone to see?” Goldberg said revenge porn on campus is becoming more common and said her firm is handling one such case but that she could not disclose the particulars. She criticized authorities who handled the Penn State case because although Pennsylvania has a revenge porn law, it was not applied against the Kappa Delta Rho fraternity because of apparent lack of intent

#### Counterspeech is better than bans on harrassmement online – empirics go Aff.

**Collier:** Collier, Anne [Contributor, Net Family News] “Counterspeech: New online safety tool with huge potential.” December 2015. RP

Susan Benesch, founder of The Dangerous Speech project, tells the story of how worried people in Kenya were in the run-up to their national election in 2013. **Dangerous, inflammatory speech around the previous election in 2007 had led to widespread violence involving more than 1,000 deaths and hundreds of thousands of people being displaced, she said in a** [**talk at Harvard’s Berkman Center**](https://cyber.law.harvard.edu/events/luncheon/2014/03/benesch)**, where she is a faculty associate. But in 2013, Kenyan activists were able to counter the violent speech, especially on Twitter, which is extremely popular there. “When inflammatory speech was posted on Twitter, prominent Kenyan Twitter users (often members of the #KOT, Kenyans on Twitter, community) responded,” Benesch said, “often invoking the need to keep discourse in the country civil and productive.”** It turned out to be a far more peaceful election than the 2007 one. What the #KOT peacemakers were tapping into in that very volatile situation was the power of social norms. “**People’s behavior shifts dramatically in response to community norms,”** Benesch said in her talk, explaining that 80% of people are likely to conform their speech or behavior to the norms of their community – “even trolls,” she said. [For more on social norms, see [this](http://www.netfamilynews.org/?s=%22social+norms%22).] **In one example she gives, a Kenyan Twitter user “posted that he would be okay with the disappearance of another ethnic group and was immediately called out by other Twitter users. Within a few minutes, he had tweeted, ‘Sorry, guys, what I said wasn’t right and I take it back’.” Think about that in the context of young people’s online speech. Acts of kindness like that of** [**this US high school student**](http://abcnews.go.com/Lifestyle/washington-valedictorians-secret-instagram-reveals-tear-jerking-thoughts/story?id=31689197) **and** [**these Canadian students**](http://www.netfamilynews.org/pink-shirts-in-canada-ultimate-social-norms-model)**) are demonstrations of counterspeech that not only increases students’ safety, online and offline, but also inspires and challenges their peers’ own creative civic engagement.** So you might think of this as the “new kid on the block” of Internet safety – though it’s a safety tool for people of all ages. **Counterspeech is not new in terms of social change, but we’re at the start of its being used, consciously, as a tool for addressing and turning around destructive online behavior.** In other words, it’s a tool with enormous potential for bottom-up or peer-driven (P2P) safety and social change in both digital and physical environments – including school environments. And I hypothesize that it will be lasting because it isn’t limited to either online or offline spaces or any particular interest group, culture or nationality**. I can think of two other examples of powerful counterspeech, one in the US, the other in Myanmar. In the latter country, there’s a counterspeech movement called Panzagar, which translates to “Flower Speech,” and Facebook is its main platform** because, as Benesch put it in a [blog post](https://medium.com/internet-monitor-2014-public-discourse/flower-speech-new-responses-to-hatred-online-d98bf67735b7#.a8vtba8j1), “Facebook so dominates online life in Myanmar that some of its users believe Facebook is the Internet, and have not heard of Google.”

#### Status quo solves – even if the First Amendment allows revenge porn, the Fourth Amendment doesn’t

**Hartzog:** Hartzog, Woodrow [Woodrow Hartzog is an Assistant Professor at the Cumberland School of Law at Samford University. His research focuses on privacy, human-computer interaction, online communication, and electronic agreements. He holds a Ph.D. in mass communication from the University of North Carolina at Chapel Hill, an LL.M. in intellectual property from the George Washington University Law School, and a J.D. from Samford University. He previously worked as an attorney in private practice and as a trademark attorney for the United States Patent and Trademark Office. He also served as a clerk for the Electronic Privacy Information Center.] “HOW TO FIGHT REVENGE PORN.” T*he Center for Internet and Society*. May 2013. RP

**But one legal argument has somehow failed to make a major appearance in revenge-porn cases: confidentiality**. Broadly speaking, to confide is "to give to the care or protection of another," and it is often the defining trait of explicit media shared between romantic partners. Simply put, explicit images and videos are unlikely to be created or shared with an intimate without some expectation or implication of confidence. This reality has been acknowledged but underutilized in the dominant narrative on non-consensual pornography. **In contrast to new rights that would be created by proposed "anti-revenge porn" laws, confidentiality is already a well-established legal concept. It is older than all of the privacy torts and statutes in America**. Nevertheless, the concept has languished in law and our conversations about social relationships. Arguably, there are several reasons for this. Confidentiality agreements are socially awkward and provide for limited damages. Traditionally confidential relationships are rare, usually being limited to professional relationships like those between doctors and patients and attorneys and clients. Perhaps most significantly, confidentiality law doesn't directly restrict the most injurious actor in the debate -- websites. While romantic partners who receive explicit materials might be prohibited from further disclosure, websites and other third-party recipients are not bound by the same rules because they presumably have no relationship with the person depicted in the media. But one of the most likely reasons confidentiality law has not played a larger role in the modern privacy debate is that most of our social communications are not conditioned upon an express or even implied promise of confidentiality. **It is difficult to imagine, though, a more illustrative context of implied confidences than explicit material shared between intimates.** Indeed, this argument has been made for some time now. Yet confidentiality law has remained a relatively limited and insignificant remedy in the larger patchwork of privacy jurisprudence. We should have a better national dialogue about a romantic partner's obligations of confidentiality**. Salient norms of confidentiality would strengthen our relationships as well as the legal remedies for those whose trust has been betrayed. Notably, confidentiality law is not as problematic under the First Amendment as legislation or other tort remedies**. Instead of prohibiting a certain kind of speech, confidentially law enforces express or implied promises and shared expectations. **The tort of breach of confidentiality is currently very limited in scope, but could be made much more robust to sit alongside the more commonly asserted privacy torts. Under an "inducement to breach confidentiality" theory, it is even possible that certain websites would not be able to take full advantage of the immunity typically provided by Section 230 of the Communications Decency Act.** So how are individuals in a romantic relationship supposed to determine whether information is confidential? The best practice has always been to secure an explicit promise of confidentiality. But that's not always feasible. Confidentiality can also be implied, though determining when it is is a little more complicated. Fortunately, courts have left clues in previous court cases that will help people determine when information should be considered confidential. These clues are consistent with Helen Nissenbaum's theory of privacy as contextual integrity, which has seemingly been embraced by the FTC, among others. Based on case law, it seems that there are a few important aspects in any given context to consider. Developed relationships are more likely to be confidential than brief or shallow ones. Confidentiality is more likely to be found when it is supported by contextual norms and when the information disclosed is sensitive. Courts consider whether the victim requested confidentiality and, even more importantly, whether the recipient promised not to disclose the information. These promises can be vague or even implied. The important question is whether a confidence was apparent before the sensitive information was shared. With the exception of an explicit promise of confidentiality, none of these considerations are dispositive, but rather something to be considered as part of a whole.

#### Banning revenge porn is constitutional, even when enacted by the state

**Volokh 13** [Eugene Volokh (Gary T. Schwartz Professor of Law, UCLA School of Law), “Florida “Revenge Porn” Bill,”, The Volokh Conspiracy, April 2013]

A [Florida bill](http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=_h0787c1.docx&DocumentType=Bill&BillNumber=0787&Session=2013) would ban “knowingly transmit[ting] or post[ing]” to any web site, a “photograph or video that depicts nudity of another person” coupled with “personal identification information” of that other person, “for the purpose of harassing the depicted person or causing others to harass the depicted person.” “Harass” is defined as “to engage in conduct directed at a specific person that is intended to cause substantial emotional distress to such person and serves no legitimate purpose.” Readers of this blog know that I’m not a fan of laws imposing liability for [disclosure of private facts about a person](http://www.law.ucla.edu/volokh/privacy.pdf) and laws that criminalize [saying offensive things about a person](http://www.law.ucla.edu/volokh/crimharass.pdf). In particular, I think (for reasons discussed in [this article](http://www.law.ucla.edu/volokh/crimharass.pdf)) that speech restrictions that exempt speech with a “legitimate purpose” are likely unconstitutionally vague. But I do think that **a** suitably **clear and narrow statute banning nonconsensual posting of nude pictures** of another, in a context where there’s good reason to think that the subject did not consent to publication of such pictures, **would** likely **be upheld by the courts**. While I don’t think judges and juries should be able to decide, on a case-by-case basis, which statements about a person aren’t of “legitimate public concern” and can therefore be banned, I think courts can rightly conclude that **as a categorical matter such** nude **pictures** indeed **lack First Amendment value**. Of course, I can imagine a few situations in which such depictions might contribute to public debates. But those situations are likely to be so rare that the law’s coverage of them wouldn’t make it “substantially” overbroad (even if the “no legitimate purpose” proviso is seen as too vague to exclude those valuable nonconsensual depictions of nudity). Any challenges to the law based on such unusual cases would therefore have to be to the law as applied in a particular case. A facial challenge asking that the law be invalidated in its entirety, based on just these few unconstitutional applications, would not succeed. I recognize that United States v. Stevens (2010) held that “The First Amendment’s guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits,” and that First Amendment exceptions be limited to “historic and traditional categories long familiar to the bar,” such as obscenity, defamation, fraud, incitement, and the like, which are “well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem.” Chaplinsky v. New Hampshire (1942). But even under this sort of historical approach, I think nonconsensual depictions of nudity could be prohibited. **Historically** and traditionally, **such depictions would** likely **have been seen as unprotected obscenity** (likely alongside many consensual depictions of nudity). **And** while the Court has narrowed the obscenity exception — in cases that have not had occasion to deal with nonconsensual depictions — in a way that generally excludes mere nudity (as opposed to sexual conduct or “lewd exhibition of the genitals”), the fact remains that historically such depictions would **not** have been seen as **constitutionally protected**.

#### Empirics confirm revenge porn statutes are overly vague, and circumvention drives the problem underground.

**Robertson:** Robertson, Hope [Guest Contributor, Campbell Law Observer] “The Criminalization of Revenge Porn.” *Campbell Law Review.* July 2015. RP

**As of July 16, 2015, twenty four states have laws addressing criminal charges against Revenge Porn posters and website hosts. Some are broader than others, and most leave gaping holes for technicalities.** The current statutes vary on what categories legislators decided to categorize them under—everything from harassment and stalking to voyeurism and invasion of privacy. **Also, the anonymity allowed to those who post on these websites makes it almost impossible to prosecute, and website hosts are often hard to find**. Additionally, hosting a simple website that is mostly user-run makes it almost impossible to find any civil liability to impose on the website hosts. Website URL hosts have been cleared of any civil liability under protection of § 230 of the Communications Decency Act. Currently, all civil or criminal charges brought against defendants for Revenge Porn practices have been because they are engaged in other illegal activity, like soliciting photos and money under false pretenses. With the advancement of the Internet and continued heightened sexualization of younger generations, Revenge Porn will never go away. However, just like any other crime, making the act illegal will hopefully deter both the posters and the website hosts. Some will start to balance the satisfaction gained from posting the photos against criminal punishment and a criminal record, and decide posting these photos is not worth it. Unlike consensual pornography, the only goal of posting Revenge Porn is to humiliate and harass the subject. It is the cyber equivalent of sexual harassment and stalking, which are already illegal. Photos on the Internet never go away; thus focusing efforts towards liability only after photos are posted should not be the ultimate goal. Legislation should work towards deterring people from posting the photos and hosting these websites in the first place. Criminal codes across the nation should catch up with technology and culture by criminalizing Revenge Porn practices of both those who create the websites and those who post on the websites. To find the most favorable Revenge Porn criminalization statute, this article will analyze the revenge porn statutes in place in Maryland, California, and Virginia. Maryland was one of the earliest revenge porn statutes to be codified and is one that categorized Revenge Porn under their harassment and stalking laws, which is the category where Revenge Porn fits best. California had the first criminal conviction of a Revenge Porn website host under its Revenge Porn statute. Virginia’s statute has effectively charged people for posting revenge porn, and might show to be very effective addressing that issue. This article will then address the main issue with Revenge Porn criminalization statutes: free speech and the first amendment. Finally, this article will analyze other routes of recovery for victims including federal charges, state tort law, and copyright law, and how they are not enough to solve the ultimate issues. Maryland was one of the first states to have an official “Revenge Porn” law enacted it its criminal code. It is included with other laws under the heading of “Stalking and Harassment.” Although the law criminalizes uploading revenge porn by an individual who knowingly did not receive consent to publish the video, the law specifically excludes “interactive computer services” from liability. Under 47 U.S.C. § 230(f)(2), the term “interactive computer service” is defined as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.” This means that providers like Google Chrome, Safari, and Internet Explorer are not liable for websites that can be accessed on their servers. The Maryland statute aims to punish those who post Revenge Porn by criminalizing the act of posting photos (that fit the definition) with the intent to cause severe emotional distress, knowing that the victim of the photo did not consent, and the victim would subjectively believe the images would be kept private. This statute covers a substantial amount of Revenge Porn incidents. The only purpose of posting on a Revenge Porn website is to intentionally cause emotional distress to the victim because they are posting photos that the victim assumed would be kept private and doing so without their consent. This statute on its face seems like a sufficient way to solve the problem—criminalize the activity of posting the photos thus deter people from doing it. However, the Maryland statute has a few problems. **First, Maryland’s statute does not address or criminalize the production of the website itself. It does not go for the root of the problem**, but merely the aftermath of posting the photos. The statute should also ideally include the criminalization of producing websites solely for the purpose of Revenge Porn. **However, some believe that just like “interactive computer services,” the website itself can assert federal immunity under § 230 of the federal Communications Decency Act.** The court has yet to answer this question, however, because sites are being taken down for other reasons besides being a Revenge Porn site. **Some believe that because the website owner is only setting up the website, that they are not participating in the creation of Revenge Porn**, and that they are only providing the space for their users to do whatever they want. The users and posters are the ones deciding to post the pictures, comments, and descriptions, while the website creator just pays for the URL. If users did not want to post Revenge Porn, they do not have to, and can choose to not use the site as it is intended. However, in a Google search for “myex.com,” the title of the link states: “MyEx.com Get Revenge! Naked Pics of Your Ex.” That tag was specifically created by the owner and creator of the website clearly advertising what the website is for, how it is supposed to be used, and what can be found on it. Allowing website creators to hide under this exception is nonsensical and dangerous. The owner might not be creating the Revenge Porn, but they are providing the means thus they are the equivalent to an accessory to a crime. Therefore, the Maryland statute should include a revision that punishes the creator as well as the users. However, there could be an issue with finding the creator to impose liability, although this could be remedy after the fact via IP address tracking. **Another problem with the statute is it is largely ineffective for websites like myex.com and others that allow the poster to remain anonymous. The content might be there, and all of the elements might be fulfilled, but a majority of websites dedicated to hosting Revenge Porn hide the user’s name and any identifying factors**. Unfortunately, too often the automatic response to this problem is assuming the victims should know who they send what photos to, putting the responsibility and blame back on them instead of requiring the websites to keep track of who posts on their sites. Even if that were the case and victims knew who had those specific pictures, it does not always solve the problem. As soon as the original pictures are posted, the pictures have already been on the Internet long enough for other people to download them or screenshot them. A visitor to myex.com might see pictures of someone they know, not necessarily someone he has had a sexual relationship with, and copy those pictures to post to a different site. This same scenario often happens when websites are taken down or victims request pictures be removed under DMCA. Again, the issues come from the pictures being posted in the first place and what happens after.

#### Revenge porn laws backfire – they can be enforced against people researching solutions to the problem

**Jeong:** Jeong, Sarah [Sarah Jeong is co-Editor-in-Chief of the [*Harvard Journal of Law & Gender*](http://harvardjlg.com/), and is a third-year student at Harvard Law School. She has previously done clinical work with the Berkman Center and the Electronic Frontier Foundation, though her opinions here are her own. Jeong is also the author of [Dear Miss Disruption](https://medium.com/funny-stuff/d7e5d14065f1), “an [advice column](http://valleywag.gawker.com/dear-miss-disruption-an-advice-column-from-silicon-va-1221607088) from Silicon Valley”. Follow her on Twitter @sarahjeong.] “Revenge Porn Is Bad. Criminalizing It Is Worse.” *Wired.* October 2013. RP

Very little on the web exists in isolation from the rest: content is regularly copied, mimicked, modified, and linked to. Is linking to something illegal in itself illegal? (Sometimes it is, [sometimes](http://www.chillingeffects.org/linking/faq.cgi#QID152) it isn’t). **An earlier iteration of the California revenge porn bill** [**would have found**](http://adamsteinbaugh.com/2013/05/09/california-senate-to-consider-bill-criminalizing-revenge-porn/) **a blogger who analyzes legal developments in revenge porn guilty of a misdemeanor for linking to the very sites he was analyzing. While it seems indisputable that those who blog about Hunter Moore should not be subject to criminal liability, what about someone who submits a link to a link aggregator like Reddit, Hacker News, or Slashdot? And what about the link aggregator itself**? This tension is at the heart of internet law. Indeed, section 230 of Communications Decency Act, a cornerstone of internet law, [provides a shield](http://www.law.cornell.edu/uscode/text/47/230) for the speech of online intermediaries — even that which is “obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.” Despite CDA 230, the distributors of revenge porn and the websites that host the pictures are still subject to a number of [legal liabilities](http://marshall2law.com/2013/01/14/yougotposted-com-website-raises-complex-legal-issues/), both civil and criminal: A victim can go after the initial vengeful discloser under a tort theory of public disclosure of private information and even the intentional infliction of emotional distress. A victim who personally took the photographs holds copyright in them and can have them removed from a website through the Digital Millennium Copyright Act. Porn websites – whether hosting voluntary or involuntary porn — are subject to more laws than just CDA 230; conceivably, the FBI could go after some revenge porn sites under [18 U.S.C. 2257](http://www.law.cornell.edu/uscode/text/18/2257) for not keeping records on the subjects of their photos. Finally, websites that offer to take down photos in return for payment are clearly in the business of [extortion](http://adamsteinbaugh.com/2013/10/07/call-a-spade-a-spade-mugshot-sites-and-revenge-porn-sites-are-extortion/), which, once again, is already illegal. Framing a new criminal law as a necessity is disingenuous: many of the most egregious revenge porn websites have now [shut down](http://betabeat.com/2013/04/craig-brittain-revenge-porn-is-anybody-down-obama-nudes/), and a number of civil suits (some based on causes of action mentioned above) have been undertaken against those involved. In light of these various recourses through existing laws, what does the push to criminalize revenge porn actually achieve? There is something to be said for the dubious pleasure of retributive justice. But will that tangibly help the victims? Whatever deterrent effect that criminalization could generate — such as discouraging future postings of revenge porn — is likely to be redundant given the civil litigation already taking place. More’s the pity: this moment of media attention on the stalking, harassment, and employment problems suffered by victims could have been used to legislate against exactly that. As Marcotte herself points out, revenge porn is often just another form of domestic violence or sexual  harassment. The problem of revenge porn is embedded within a larger context of violence against women and the stigmatization of the naked body, which means the issue can be tackled from many other directions. Why look to regulating the internet when restraining orders [cannot be enforced](http://www.law.cornell.edu/supct/html/04-278.ZS.html), when domestic violence victims are hampered in [initiating civil actions](http://www.law.cornell.edu/supct/html/99-5.ZO.html) against abusers, when employers can fire their employees for being sexualized on the internet? **Our efforts would be better spent seeking legislation to remedy the suffering that victims actually experience. Criminalizing revenge porn solves one problem while potentially generating many more.** An overbroad criminal law is a threat to the public, runs the risk of being struck down by a court (for violating the First Amendment), or even worse, becomes the basis of questionable convictions and imprisonments. But an overly narrow law — like the [final version](http://blog.ericgoldman.org/archives/2013/10/californias_new_1.htm) of the California revenge porn law, which does not cover selfies sent to the vengeful ex or liability for website operators — is little more than lip service to the harm suffered by victims. We do not need to choose between the internet and women, or between free speech and feminism. These are false and unnecessary dichotomies. **Refusing to criminalize revenge porn would not make us misogynists. It would instead make us prudent.**

#### Revenge porn laws commodify women’s suffering and are motivated by other goals, and aren’t needed – civil remedies solve.

**Jeong:** Jeong, Sarah [Sarah Jeong is co-Editor-in-Chief of the [*Harvard Journal of Law & Gender*](http://harvardjlg.com/), and is a third-year student at Harvard Law School. She has previously done clinical work with the Berkman Center and the Electronic Frontier Foundation, though her opinions here are her own. Jeong is also the author of [Dear Miss Disruption](https://medium.com/funny-stuff/d7e5d14065f1), “an [advice column](http://valleywag.gawker.com/dear-miss-disruption-an-advice-column-from-silicon-va-1221607088) from Silicon Valley”. Follow her on Twitter @sarahjeong.] “Revenge Porn Is Bad. Criminalizing It Is Worse.” *Wired.* October 2013. RP

-Power actors, like Anthony Weiner, can use laws to protect themselves

“FREE SPEECH IS important, but…” Oh no. Here we go again. This time, the issue is the criminalization of revenge porn. **Much of the media narrative** [**characterizes**](http://mashable.com/2013/10/21/revenge-porn/) **revenge porn as a new, runaway technological scourge too disruptive to fall under any existing law, but that is simply untrue. A number of legal remedies against both vengeful exes and website operators already exist: civil tort actions, DMCA takedowns, criminal statutes against extortion, and even a federal law that could give the FBI authority to go after the sites.** Discussions of internet law seem like an endless cycle of “but what about the women/children?” pitted against “but what about my free speech?” We’re back on the merry-go-round again with the recent furor over revenge porn — the unconsented-to public distribution of nude photos or videos, usually by a significant other (often male) who intends to humiliate or harass their ex-partner (often female). **The exploitation of women and children has always been the Trojan horse of internet regulation**, from the now old-and-venerable [Communications Decency Act of 1996](http://transition.fcc.gov/Reports/tcom1996.txt), to more recent attempts like the [ridiculous and ineffectual](https://www.wired.com/opinion/2012/12/why-we-need-to-defend-sex-offenders-online-rights/) California ballot initiative Proposition 35 (which attempted to address human trafficking by, among other things, requiring registered sex offenders to disclose their internet handles to the authorities). At each turn, such efforts have been confronted with the inconvenient existence of the First Amendment. Although First Amendment issues are certainly present with respect to revenge porn, it’s hardly the most compelling reason why we should reject the push to criminalize it. Many of the discussions of revenge porn — including the exchange between Amanda Marcotte and Cathy Reisenwitz in Talking Points Memo — have focused on free speech, forcing us to consider a false dichotomy between speech and gendered harassment. A haze of uncertainty surrounds the definition of revenge porn, as Reisenwitz [points out](http://talkingpointsmemo.com/cafe/revenge-porn-is-awful-but-the-law-against-it-is-worse). **An overbroad definition of revenge porn could net a reporter publishing screencaps of Anthony Weiner’s more infamous tweets. Although we have in our minds the perfect-paradigm case of a sympathetic victim — a nice girl with a penchant for selfies — and an unsympathetic perpetrator — a spurned, vindictive ex-boyfriend with a blatant streak of misogyny — the web of liability becomes nebulous when we think about cases that fall outside this paradigm**. (And things get more problematic when we think about websites and website operators beyond the horrifying IsAnyoneUp.com and the entirely unlikable Hunter Moore.) Dismissing such concerns, Marcotte [argues](http://talkingpointsmemo.com/cafe/angry-abusive-men-still-have-free-speech-without-revenge-porn) that giving up tabloid reporting for the sake of revenge porn victims is fair: Knowing that [Anthony] Weiner’s dick pics are out there but being unable to view them myself seems like a fair trade for a world where men are more limited in the weapons they can use to stalk, abuse, and control women. …**But the sacred constitutional freedom to snark about Anthony Weiner is hardly the point. The point is that a new criminal statute paves another way to put a human life on hold and a human body in prison — and yes, a paparazzo still counts as human. There are unintended consequences to overbroad laws, and failing to take that into consideration when advocating for increased criminal liability is irresponsible. The problem is further exacerbated by how the internet works.**

#### Limits on revenge porn are paternalizing, don’t work, and thwart feminist movements

**Haupt:** Haupt, Claudia E. [Law Clerk, Cologne, Germany. Erstes Juristisches Staatsexamen (E.J.S) (J.D. equivalent), University of Cologne, Germany; M.A., State University of New York at Albany.] “REGULATING HATE SPEECH - DAMNED IF YOU DO AND DAMNED IF YOU DON'T: LESSONS LEARNED FROM COMPARING THE GERMAN AND U.S. APPROACHES.” *Boston University International Law Journal.* Fall 2005. RP

\*\*\*Bracketed for offensiveness

The libertarian arguments protective of the First Amendment parallel those made by traditionalists in the campus speech code debate and will be illustrated in that context. **Nadine Strossen, for examples, argues against free speech restrictions based on her interpretation of First Amendment doctrine. She confronts MacKinnon in the context of feminist discours**e. n60 Strossen argues that numerous works of special value to feminists would inevitably be subject to the kind of regulatory scheme advocated by MacKinnon. **Moreover, some scholars have pointed out that the very groups that were intended to be the beneficiaries of the protective measures - especially feminists and lesbians - would be the ones hardest hit. n61 Thus, censorship would promote a multitude of reactions counterproductive to the cause. n62 It would perpetuate demeaning stereotypes, including that sex is bad for women, and the disempowering notion that women are [targets] ~~victims~~. Strossen also suggests that the proposed legislation would distract people from working towards eliminating gender-based discrimination and violence through more constructive approaches. Turning to the individual, Strossen contends that women who voluntarily work in the sex industry would be harmed and the efforts of women to develop their own sexuality would be thwarted. On a political level, she states that MacKinnon's proposed legislation would lead to an increased power of the religious right and its patriarchal agenda that would curtail women's rights while depriving feminists of a powerful tool in their struggle to advance women's equality. Similarly, an argument can be made that that laws such as those suggested by MacKinnon, which lead to an in- crease in the state's regulation of sexual images, would present many dangers to women "because they seek to embody in law an analysis of the role of sexuality and sexual images in the oppression of women with which even all feminists do not agree.**" Under this view, an analysis of sexuality as "a realm of unremitting, unequaled victimization for women" is what MacKinnon seeks to impose with the power of the state.

#### Revenge porn isn’t constitutionally protected –time place manner restrictions – it’s not speech but images

**Robertson:** Robertson, Hope [Guest Contributor, Campbell Law Observer] “The Criminalization of Revenge Porn.” *Campbell Law Review.* July 2015. RP

**Laws prohibiting Revenge Porn fall under the time, place, and manner exception to the First Amendment and do not violate free speech**. The posting of nude photos and the writing surrounding the content are two different free speech analyses**. The photos are not protected under the First Amendment, while the writing surrounding the photos (usually) is protected. The posting of photos on a website is not pure speech; it is conduct.** The United States Supreme Court has stated that there is not a “limitless variety of conduct [that] can be labeled ‘speech’ whenever the person engaging in the conduct intends thereby to express an idea.” **Therefore, the court must analyze whether the conduct is expressive. To be expressive conduct, the speaker must intend to communicate something**, and the audience must understand the message the speaker is intending to communicate. In this case, the speaker is intending to communicate certain things about his/her ex by posting these photos (the ex wronged the speaker in some way to make the speaker want revenge) and the audience understands this is the message the speaker is intending to send. **This makes the posting of photos qualify as expressive conduct, and the “Court has held that when ‘speech’ and ‘nonspeech’ (conduct) elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment Freedoms.”**

#### No explanation as to how colleges have jurisdiction in the digital realm

#### They set dangerous precedents that harm free speech.

**Stokes:** Jenna K. Stokes [J.D. Candidate, 2015, University of California, Berkeley, School of Law] “THE INDECENT INTERNET: RESISTING UNWARRANTED INTERNET EXCEPTIONALISM IN COMBATING REVENGE PORN” BERKELEY TECHNOLOGY LAW JOURNAL 2014 AG

**Another suggested civil response to the revenge porn problem is** that courts should understand the exchange of intimate media to carry with it an implied confidentiality contract, based on an implied **“right to be forgotten.”**64 This proposal is an attractive solution because it allows for a clear-cut breach of contract cause of action once revenge porn hits the web. However, **[T]his suggestion appears to be little more than a convenient sidestep around the First Amendment, allowing courts to assume that the parties contracted around their free speech rights from the outset.65 Further, if the implied contract is thought to be based on the parties’ reasonable expectations, it may not always be reasonable to assume confidentiality in the context of sharing images and videos.** Certainly, there is no such assumption with other forms of personal media.66 Although societal norms may suggest that those who share intimate media likely do not want it shared online, one might also argue that **[T]he recipient of such media operated under the assumption that because it was shared with them, the sender was open to sharing it in general. With no obvious limiting principle, implying a confidentiality contract as a rule could easily capture cases where it is inappropriate and override individuals’ freedom to contract as they so choose.**

#### Victims won’t come forward

**Citron:** Citron, Danielle. [Lois K. Macht Research Professor & Professor of Law, University of Maryland Francis King Carey School of Law] “Criminalizing Revenge Porn.” Wake Forest Law Review, 2014. AG

What is more, **[S]ince plaintiffs in civil court** generally **have to proceed under their real names, victims may be reluctant to sue for fear of** unleashing more **unwanted publicity. Generally, courts disfavor pseudonymous litigation because it is assumed to** interfere with the transparency of the judicial process, to **deny a defendant’s constitutional right to confront his or her accuser, and** to **encourage frivolous claims from being asserted by those whose names and reputations would not be on the line.** Arguments in favor of Jane Doe lawsuits are considered against the presumption of public opennessa heavy presumption that often works against plaintiffs asserting privacy invasions.81 **Even in ideal circumstances, where pseudonymous litigation is permitted[,]** and where a lawyer is willing to take the case, **it may be hard to recover much in the way of damages.** Defendants often do not have deep pockets. **Victims may be hard pressed to expend their time and money on lawsuits if defendants are effectively judgment proof.** Then too**, [A]n award of damages is no assurance that websites will comply with requests to take down the images. The removal of images is the outcome that** most **victims desire above all else, and civil litigation may be unable to make that happen**

#### Victims lack the resources to file civil suits, and lawyers are unwilling to take their cases.

**Citron:** Citron, Danielle. [Lois K. Macht Research Professor & Professor of Law, University of Maryland Francis King Carey School of Law] “Criminalizing Revenge Porn.” Wake Forest Law Review, 2014. AG

One major problem, however, is that **[M]ost victims lack resources to bring civil suits.** As we have heard from countless victims, **[M]any cannot afford to sue their perpetrators. Having lost their jobs due to the online posts, they cannot** pay their rent, let alone **cover lawyer’s fees**. It may also be hard to **[or] find lawyers willing to take their cases. Most lawyers do not know this area of law and are not prepared to handle the trickiness of online harassment evidence.** **This reduces the deterrent effect of civil litigation, as would-be perpetrators are unlikely to fear a course of action that is unlikely to materialize.**

## Cyberbullying PIC

#### Counterspeech is better than bans on cyberbullying – empirics go Aff.

**Collier:** Collier, Anne [Contributor, Net Family News] “Counterspeech: New online safety tool with huge potential.” December 2015. RP

Susan Benesch, founder of The Dangerous Speech project, tells the story of how worried people in Kenya were in the run-up to their national election in 2013. **Dangerous, inflammatory speech around the previous election in 2007 had led to widespread violence involving more than 1,000 deaths and hundreds of thousands of people being displaced, she said in a** [**talk at Harvard’s Berkman Center**](https://cyber.law.harvard.edu/events/luncheon/2014/03/benesch)**, where she is a faculty associate. But in 2013, Kenyan activists were able to counter the violent speech, especially on Twitter, which is extremely popular there. “When inflammatory speech was posted on Twitter, prominent Kenyan Twitter users (often members of the #KOT, Kenyans on Twitter, community) responded,” Benesch said, “often invoking the need to keep discourse in the country civil and productive.”** It turned out to be a far more peaceful election than the 2007 one. What the #KOT peacemakers were tapping into in that very volatile situation was the power of social norms. “**People’s behavior shifts dramatically in response to community norms,”** Benesch said in her talk, explaining that 80% of people are likely to conform their speech or behavior to the norms of their community – “even trolls,” she said. [For more on social norms, see [this](http://www.netfamilynews.org/?s=%22social+norms%22).] **In one example she gives, a Kenyan Twitter user “posted that he would be okay with the disappearance of another ethnic group and was immediately called out by other Twitter users. Within a few minutes, he had tweeted, ‘Sorry, guys, what I said wasn’t right and I take it back’.” Think about that in the context of young people’s online speech. Acts of kindness like that of** [**this US high school student**](http://abcnews.go.com/Lifestyle/washington-valedictorians-secret-instagram-reveals-tear-jerking-thoughts/story?id=31689197) **and** [**these Canadian students**](http://www.netfamilynews.org/pink-shirts-in-canada-ultimate-social-norms-model)**) are demonstrations of counterspeech that not only increases students’ safety, online and offline, but also inspires and challenges their peers’ own creative civic engagement.** So you might think of this as the “new kid on the block” of Internet safety – though it’s a safety tool for people of all ages. **Counterspeech is not new in terms of social change, but we’re at the start of its being used, consciously, as a tool for addressing and turning around destructive online behavior.** In other words, it’s a tool with enormous potential for bottom-up or peer-driven (P2P) safety and social change in both digital and physical environments – including school environments. And I hypothesize that it will be lasting because it isn’t limited to either online or offline spaces or any particular interest group, culture or nationality**. I can think of two other examples of powerful counterspeech, one in the US, the other in Myanmar. In the latter country, there’s a counterspeech movement called Panzagar, which translates to “Flower Speech,” and Facebook is its main platform** because, as Benesch put it in a [blog post](https://medium.com/internet-monitor-2014-public-discourse/flower-speech-new-responses-to-hatred-online-d98bf67735b7#.a8vtba8j1), “Facebook so dominates online life in Myanmar that some of its users believe Facebook is the Internet, and have not heard of Google.”

#### It’s not constitutionally protected speech – tons of different statutes don’t allow it.

**Citron:** Citron, Danielle Keats [Professor of Law, University of Maryland] “Free Speech Does Not Protect Cyberharrassment.” *The New York Times.* December 2014. RP

Trolling — like the kind of exploitative [abuse spewed against](http://www.9news.com/story/news/health/2014/08/14/cyberbullying-pushes-zelda-williams-to-leave-social-media/14041089/) Zelda Williams on Twitter after her father’s death last week — is often nasty and hurtful. But it is routinely protected expression. Internet users are free to use words and images to get a rise out of others, even at their most vulnerable. In this case, two individuals tweeted photographs of dead bodies to a young woman and wrote that her deceased father would be “ashamed” of her — forcing her to quit the service altogether. These acts are offensive, disturbing and mean-spirited, and yet, they are examples of constitutionally protected speech. **Hateful, offensive and distasteful ideas enjoy constitutional protection, so debate on public issues can be “**[**uninhibited, robust and wide open**](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/nytvsullivan.html)” under the First Amendment. **But there is a point when trolling escalates beyond the offensive and shocking into cyberharassment or cyberstalking — actions that are not protected. Intermediaries — usually the websites where trolls post comments — can step in to revoke the privilege of anonymity, or even remove abusive speech that violates their community guidelines but when trolling turns into cyberharassment or cyberstalking, the law can and should intervene. Online perpetrators can be criminally prosecuted for** [**criminal threats**](https://casetext.com/case/us-v-grob#.U_J9WlbbcpE)**,** [**cyberstalking**](http://www.stltoday.com/news/local/crime-and-courts/man-sentenced-in-st-louis-to-years-for-cyberstalking-wife/article_88b15634-5805-11e1-914a-001a4bcf6878.html)**,** [**cyberharassment**](http://law.justia.com/cases/federal/appellate-courts/ca1/12-2489/12-2489-2014-05-02.html)**,** [**sexual invasions of privacy**](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2368946) **and** [**bias intimidation**](http://cliffviewpilot.com/nj-devilfish-gets-5-years-in-federal-prison-for-threatening-latino-civil-rights-groups/)**. They can be** [**sued**](http://blogs.wsj.com/law/2007/06/12/students-file-suit-against-autoadmit-director-others/) **for defamation and intentional infliction of emotional distress. In a few states, they can also be held to account for** [**bias-motivated stalking**](https://www.bu.edu/law/central/jd/organizations/journals/bulr/volume89n1/documents/CITRON.pdf) **that interferes with victims’ important life opportunities, such as employment and education. Law enforcement should be able to use** [**forensic expertise**](https://freedom-to-tinker.com/blog/harlanyu/traceability-anonymous-online-comment/) **and warrants to track down individuals who engage in this conduct anonymously.** Of course, the law can only do so much: some abuse is left untouched, perpetrators can be hard to identify if they employ certain technologies and, ultimately, lawsuits require significant resources. This is an opportune moment to educate teenagers about the suffering caused by online abuse. As parents, let’s put talking about cyberharassment on par with discussions about drunk driving. And if we discover that our kids are caught up in trolling or more extreme cyberbullying, [no tool is more powerful](http://www.theatlantic.com/magazine/archive/2013/03/how-to-stop-bullies/309217/) in changing teenagers’ behavior than the possibility that they might lose their cellphones, computers or social network accounts. We should not squander this chance to reinforce the importance of respect as a baseline norm for online interaction.

#### Cyberbullying laws are the worst form of biopolitical control – they extend beyond the schools and censor students.

**Hayward:** Hayward, John O. [Senior lecturer in law, Bentley University] “Anti-Cyberbullying Laws Are a Threat to Free Speech.” *Gale.* 2013. RP

While forty-three states have anti-bullying statutes, only twenty-one prohibit cyber bullying, which usually is defined as "bullying" conducted by electronic means. Additionally, the laws can be grouped into prohibitions that explicitly include off-campus cyber bullying or implicitly include or exclude it. Typical legislative language is "immediately adjacent to school grounds," "directed at another student or students," "at a school activity," or "at school-sponsored activities or at a school-sanctioned event." **The statutes also usually contain language prohibiting cyber bullying if it results in one or more of the following: (1) causes "substantial disruption" of the school environment or orderly operation of the school, (2) creates an "intimidating," "threatening" or "hostile" learning environment, (3) causes actual harm to a student or student's property or places a student in reasonable fear of harm to self or property, (4) interferes with a student's educational performance and benefits**, (5) includes as a target school personnel or references "person" rather than "student," and (6) incites third parties to carry out bullying behavior. Five states prohibit cyber bullying if it is motivated by an actual or perceived characteristic or trait of a student. Presumably this protects gay and lesbian students and school personnel from criticism because of their sexual orientation but it could also shield obese, bulimic, short and tall students from disparagement due to their weight or height. **While many applaud anti-cyber bullying legislation, some are concerned that it gives school officials unbridled authority that will be used to burnish their image, not protect bullying victims, or that it threatens student free speech. Furthermore, if their authority is unleashed beyond the school yard, it is essentially limitless. Thus no student, even in the privacy of their home, can write about controversial topics of concern to them without worrying that it may be "disruptive" or cause a "hostile environment" at school**. In effect, students will be punished for off-campus speech based on the way people *react* to it at school. **Many of the terms are so vague that they offer no guidance to distinguish permissible from impermissible speech**. In this sense, they are akin to campus speech codes that courts invalidated in the 1990s for vagueness and overbreadth. Consequently, these laws don't simply "chill" student free speech, they plunge it into deep freeze. **This [viewpoint] argues that for these reasons, some anti-cyber bullying laws violate the First Amendment** and should be struck down as unconstitutional....

#### Targets won’t come forward

**Citron:** Citron, Danielle. [Lois K. Macht Research Professor & Professor of Law, University of Maryland Francis King Carey School of Law] “Criminalizing Revenge Porn.” Wake Forest Law Review, 2014. AG

What is more, **[S]ince plaintiffs in civil court** generally **have to proceed under their real names, victims may be reluctant to sue for fear of** unleashing more **unwanted publicity. Generally, courts disfavor pseudonymous litigation because it is assumed to** interfere with the transparency of the judicial process, to **deny a defendant’s constitutional right to confront his or her accuser, and** to **encourage frivolous claims from being asserted by those whose names and reputations would not be on the line.** Arguments in favor of Jane Doe lawsuits are considered against the presumption of public opennessa heavy presumption that often works against plaintiffs asserting privacy invasions.81 **Even in ideal circumstances, where pseudonymous litigation is permitted[,]** and where a lawyer is willing to take the case, **it may be hard to recover much in the way of damages.** Defendants often do not have deep pockets. **Victims may be hard pressed to expend their time and money on lawsuits if defendants are effectively judgment proof.** Then too**, [A]n award of damages is no assurance that websites will comply with requests to take down the images. The removal of images is the outcome that** most **victims desire above all else, and civil litigation may be unable to make that happen**

#### Victims lack the resources to file civil suits, and lawyers are unwilling to take their cases.

**Citron:** Citron, Danielle. [Lois K. Macht Research Professor & Professor of Law, University of Maryland Francis King Carey School of Law] “Criminalizing Revenge Porn.” Wake Forest Law Review, 2014. AG

One major problem, however, is that **[M]ost victims lack resources to bring civil suits.** As we have heard from countless victims, **[M]any cannot afford to sue their perpetrators. Having lost their jobs due to the online posts, they cannot** pay their rent, let alone **cover lawyer’s fees**. It may also be hard to **[or] find lawyers willing to take their cases. Most lawyers do not know this area of law and are not prepared to handle the trickiness of online harassment evidence.** **This reduces the deterrent effect of civil litigation, as would-be perpetrators are unlikely to fear a course of action that is unlikely to materialize.**

## Brand Ambassador PIC

#### Turn – if there aren’t student brand ambassadors, companies will just bring their own staff to the campus which is worse because there are more people coming in to advertise.

#### Brand ambassador roles for students are key to learning important skills

**Tarrant:** Tarrant, Sarah [Contributor, TalentEgg] “Why Brand Ambassador Roles Are Perfect For Students.” October 2015. RP

**Brand ambassador roles can help young professionals gain experience and develop skills, making them egg-cellent entry-level opportunities for students**. Plus, they can come with some pretty fun perks like store discounts, access to special events, and more! If you’re looking to hatch a unique career in the Sales and Marketing industry, here are 3 reasons why you should consider starting out as a [Brand Ambassador](http://talentegg.ca/incubator/2013/10/25/finding-brand-ambassador-role/)! A brand ambassador is someone who is hired by an organization to promote their products or services. The main difference between a brand ambassador and other marketing advocates is that brand ambassadors share their passion for a particular good or service. **Many companies invest in brand ambassadors as a way for their customers to associate a face with their brand. Adding this human aspect helps companies attract and build positive connections with their consumers. One reason to consider becoming a student brand ambassador is because of the** [**entry-level experience**](http://talentegg.ca/incubator/2015/05/15/career-beginnings-guide-entrylevel-positions-hospitality-tourism/) **you’ll gain. In this role, you’ll have the opportunity to build critical skills that can help you in other Sales and Marketing related career paths – and unlike most entry-level roles, you’ll have a lot of responsibility from day one. Two important skills you’ll develop while working as a brand ambassador are communication and interpersonal skills**. Since the main responsibility of this role is product and service endorsement, you will gain a lot of experience working directly with customers. Being able to attract a customer’s attention, build a relationship with them, and promote a product or service to them requires strong oral communication and interpersonal skills, which are transferable to other careers in Sales and Marketing.

#### Even commercial speech should be heard – restrictions on *anything* are an act of privatization that erodes democratic culture – this evidence ends the debate

**Balkin:** Balkin, Jack M. [Knight Professor of Constitutional Law and the First Amendment, Yale Law School] “CULTURAL DEMOCRACY AND THE FIRST AMENDMENT.” *Northwestern University Law Review.* Volume 110. 2016. RP

My argument, however, has been that public discourse serves a constitutional value of freedom of cultural participation beyond merely legitimating the democratic exercise of political power. Suppose that I am correct and that public discourse serves two constitutional values, rather than just one. How does this affect Post’s arguments about commercial speech? **Once we look at public discourse from a cultural perspective, several of Post’s explanations for why commercial speech is not part of public discourse become less compelling. First, there is no clear distinction between people “seeking to advance their commercial interests” and “participating in the public life of the nation.**”76 **Many people try to make money by contributing to public discourse; conversely, many advertisers seek to shape the cultural life of the nation through advancing their commercial interests and selling products. The most famous advertising campaigns are also contributions to the tropes of public culture, and businesspeople like Henry Ford and Steve Jobs famously sought to change culture both through selling their goods and through shaping what those products meant to the general public**. Second, Post argues that commercial advertisers do not “invit[e] reciprocal dialogue or discussion.”77 **But selling goods and services is dialogic, not monologic. The best salespeople have always understood that they must make a connection to their customers, and that connection comes from a cycle of listening and responding to consumer values and interests, and reshaping the salesperson’s message accordingly. The successful salesperson’s message is designed to explain how the good or service will improve a person’s life, often less in terms of efficiency and efficacy than in terms of symbolic values or social meanings.** It is true that salespeople do not enter into a dialogue with their customers willing to be convinced that their product is not right for the consumer, but sometimes this actually happens, and good salespeople often learn from these encounters. Moreover, a speaker’s lack of interest in dialogue generally does not remove expression from public discourse; outside of advertising, many people engage in public discourse without any interest in changing their minds through the give and take of dialogue. The digital age has made the dialogic nature of salesmanship even more salient. Company websites and the websites of places where goods are advertised and sold—like Amazon.com and Walmart.com—invite end- user comments. Companies attempt to measure consumer response to their products, and consumers are not shy about complaining and suggesting improvements. Post’s third argument is that the social meaning of commercial advertisements is not an attempt “to make the state responsive to” the advertiser, but an “attempt[] to sell products.”78 Many, if not most contributions to public discourse, however, cannot reasonably be understood as an attempt to make the state responsive to us. When we engage in art or gossip, when we exchange the latest tricks for engaging in our favorite hobbies, or when we decry the lack of piety, idealism, ethics, or positive attitudes in the public, or in the world at large, we are not necessarily best understood as trying to make the state responsive to us. We may even regard the state as irrelevant to our concerns. But we could well be understood as trying to affect the culture of the world around us, and in that sense we are engaged in public discourse. Moreover, what about the commercial advertiser? **Isn’t the advertiser also trying to reshape the culture to make a better world for selling its products?** So shouldn’t the social meaning of its expression be indistinguishable from the work of the artist or preacher? All three, one might argue, are trying to affect culture by participating in culture. These and other difficulties emerge when we consider commercial speech in light of the definitions of public discourse I’ve offered in this Article. First, I said that public discourse is comprised of those processes of communication that must remain open to the public to ensure cultural democracy—the ability to participate in the forms of meaning-making and mutual influence that constitute us as individuals. Later, I added that public discourse refers to those processes of communication that allow public opinion to serve as the judge of society. **It should be clear enough that commercial speech is a form of meaning-making and influence that attempts to reconstitute individuals as consumers. It hopes to make people into the kind of people who will buy products, and it hopes to remake their desires into commercial desires. It should be equally clear that commercial speech seeks to judge social life. It hopes to persuade people that their values can be judged by their purchases and possessions. From the standpoint of cultural power and cultural influence, commercial speech is clearly an important part of contemporary culture. It is one of the most powerful forms of culture circulating in our world—as powerful, in its own way, as religion in shaping how people understand themselves and their actions.**

#### Perm do the counterplan – commercial speech isn’t constitutionally protected.

**Brudney:** Brudney, Victor [Victor Brudney, Robert B. and Candice J. Hass Professor in Corporate Fi- nance Law, Emeritus, Harvard Law School.] “THE FIRST AMENDMENT AND COMMERCIAL SPEECH.” *Boston College Law Review.* 2012. RP

**Commercial speech differs from the “speech” covered by, and spe- cially protected under, the First Amendment.** Commercial speech is much less likely to be challenged by, critically responded to, or cor- rected by third parties. It is the possibility, or, indeed, the likelihood, of such “more speech” that is an essential premise for First Amendment protection of speech against government regulation. The institutional conditions that obstruct the availability of more speech to respond to commercial speech argue against special protection for the latter. Quite apart from such considerations, the context and content of commercial speech also argue against extending the First Amendment’s special protection to such speech. **First Amendment protection exists to serve the interests of the community collectively rather than of individ- ual participants in their personal affairs. Such protection is not available for commercial speech that functions only to benefit its participants in- dividually** (as speakers or as addressees)—except possibly if it contains expression that would be entitled to First Amendment protection if it were uttered other than as a component of commercial speech. **In that case, the entitlement of the commercial speech to the First Amend- ment’s special protection depends upon whether in its commercial con- text the expression would be understood by the normal addressee**— listeners, viewers, or readers—to involve more than consummation of the commercial transaction—that is, to engage consideration of the im- port of the expression for collective matters of the society.

#### Court precedent has established that advertising on campuses isn’t protected speech

**Koon:** Koon, Samantha [Contributor, The Daily Progress] “Federal judge upholds alcohol advertising ban in college newspapers.” *The Daily Progress.* September 2012. RP

If underage University of Virginia students are drinking beer, it is not because they were persuaded by advertisements in The Cavalier Daily. **A federal judge upheld a state ban on alcohol advertisements in college newspapers late last week, saying that student papers do not have a First Amendment-protected right to advertise age-restricted products to their primarily underage readerships. Judge Hannah Lauck said that the Virginia Department of Alcoholic Beverage Control asserted “a substantial interest in combating the serious problem of underage drinking and abusive drinking by college students.” This is enough, she ruled, to limit the papers’ commercial speech.** “We’re disappointed that the original ruling was upheld. I’m of the mind that the ban on alcohol advertisements is unconstitutional ...,” said Cavalier Daily Editor-in-Chief Matthew Cameron. **Virginia state code prohibits alcohol advertisements in college newspapers because they are intended to be primarily distributed to readers under 21**. According to court documents, restaurant ads are legally permitted to mention the sale of “beer,” “wine,” “mixed beverages” and “cocktails,” or use the phrase “ABC on premises.” The judge ruled that the ban on alcohol advertising restricts commercial speech, but noted that “commercial speech is regulated in a manner that might be impermissible for noncommercial speech,” the ruling reads. “While this regulation limits alcohol advertisements, it does not, nor does it tend to, restrict the length, content, or substance of noncommercial speech …,” Lauck ruled. In 2006, Virginia Tech’s Collegiate Times and the UVa’s The Cavalier Daily filed suit against the ABC, claiming that ad restrictions not only violate the newspapers’ right to free speech, but also cost the newspapers valuable ad revenue. “The Cavalier Daily estimates losses of approximately $30,000 per year, based on estimated sales of one alcohol advertisement on one-quarter page per issue,” the ruling, filed last Friday, reads. The Cavalier Daily reported that local restaurants Sakura, Coupe DeVille’s and the now-defunct Satellite Ballroom had expressed interest in placing alcohol advertisements. The Collegiate Times also estimated a $30,000 annual loss in ad sales. Both newspapers are funded almost exclusively through ad revenue, according to court documents. “Almost 80 percent of Virginia Tech students consumed alcohol in 2005 and 2006, even though students under 21 years of age comprised between 46 to 51% of the student population,” the ruling reads. Court documents say that as of Jan. 1, 2007, 36 percent of UVa’s total population and 60 percent of its undergraduate population were not of legal drinking age. Both schools have a higher rate of binge drinking than the national average, according to Lauck’s ruling. Court documents cited a study by Henry Saffer, an economics professor at Kean University, as justification for upholding the ban. “The results suggest that a 28 percent reduction in total alcohol advertising would reduce monthly alcohol participation from about 25% to 21 – 24%. Additionally, a 28% reduction in total alcohol advertising would reduce binge drinking participation from 12% to 8-10%,” the judge’s opinion reads. Saffer noted, however, that “the vast majority of studies” found that advertising had no effect on consumption rates. Moreover, he noted that increased taxation is more likely to reduce underage consumption than advertising bans. Jon P. Nelson, an expert witness provided by the Collegiate Times and The Cavalier Daily, argued that alcohol ads are designed to promote brand loyalty, and have little effect on the overall demand for alcoholic beverages, according to court documents. Cameron said he has not yet had the opportunity to speak with Rebecca Glenberg, the American Civil Liberties Union lawyer representing the newspapers in the matter. “Hopefully we can find a way to move forward,” he said. When asked if he intended to appeal the decision, Cameron said he “would not rule it out.”

## Sanctuary Campuses PIC

#### Perm do the counterplan – sanctuary campuses aren’t constitutionally protected under the First Amendment.

**Cruz:** Cruz, Melissa [Contributor, Real Clear Politics] “'Sanctuary Campuses' Defy Trump -- Though at a Risk.” *RealClearPolitics.* February 2017. RP

**However, he warned that matters could get more complicated if U.S. Immigration and Customs Enforcement moves onto campuses. Public universities cannot reasonably bar law enforcement from their grounds. The same may hold true for private institutions, McDonough noted, explaining that the “time, place and manner” restrictions under the First Amendment stipulate that the public is invited to privately owned spaces. He likened these restrictions to a shopping mall: While the building itself may be privately owned, the walkways of the mall are considered a public space.** A mall owner, for instance, could not reasonably request to bar some people from those areas while permitting others. Simply put, McDonough continued, “many campus spaces are open to the public. A private university like Georgetown couldn’t simultaneously have public spaces, and then not allow ICE on them.” Cho concurred: “**Constitutionally, there is probably no legal limit to ICE entering schools.**” Cho cited an internal ICE memo instructing agency officials not to carry out immigration enforcement on “sensitive locations,” a designation that includes college campuses. But the problem, Cho said, is that this memo “is not like the Constitution. [It’s] more like an internal guideline – it is not legally binding in any sense.” She also referenced the Obama administration’s deployment of ICE agents just outside of school grounds, including at bus stops, as a workaround for any “sensitive location” concerns. Furthermore, McDonough said public schools may have certain obligations to ICE under state laws. It is likely that campus police forces, for instance, have law enforcement requirements they must meet. Despite these legality issues, Michael Roth, the president of Wesleyan University, approaches the sanctuary label more holistically. As one of the first colleges to declare itself a sanctuary after the election, Roth has been surprised by the legal discussion surrounding the university’s decision. He believes that that focus misses a larger point. “The fact that it isn’t a legal word is not relevant at all,” Roth said. “What is important is that mass deportation has no legal standing. We must say mass deportation is illegal again, and again, and again. It does not involve the due process of law and in fact would depend on extra and likely illegal actions by law enforcement.” Roth asserted that by declaring sanctuary status, colleges are in fact asking that the federal government be held accountable to rules already in place, as many of the protections listed in sanctuary declarations are currently covered under student privacy laws. “People have expressed a fear about losing funding,” Roth noted, “but the federal government is not allowed to punish schools for using policies to protect their students’ entitled rights. Vengeance is not allowable under law.” If the school were penalized, Wesleyan University would take its case to court, “because it would be a violation of the Constitution,” he said. Yet Roth knows that not all institutions may be able to make the same call, acknowledging that public schools are “at the mercy of their state legislators.” But he believes the problem involves issues far greater than the public vs. private divide: “I think that it says something about the urgency of our political dilemma when asking the government to obey their own laws inspires fear in its citizens.”

#### No solvency – only private schools have the jurisdiction to make sanctuary campuses

**Cruz:** Cruz, Melissa [Contributor, Real Clear Politics] “'Sanctuary Campuses' Defy Trump -- Though at a Risk.” *RealClearPolitics.* February 2017. RP

**With the Trump administration’s immigration policy taking shape and the threat of increased deportations looming, nearly a dozen colleges around the country have begun taking a cue from so-called sanctuary cities to shield their undocumented students**. Calling themselves “sanctuary campuses,” these universities say they will refuse to aid federal officials in the event of a raid on their property. **Yet the majority of the self-designated campuses have one thing in common: They are private schools. For the country’s undocumented students – over 90 percent of whom attend public institutions – these new havens would do little good.**

#### Sanctuary campuses will lose billions in federal funds

**Dinan:** Dinan, Stephen [Contributor, The Washignton Times] “Congress looks to punish ‘sanctuary campus’ colleges that protect illegal immigrants.” *The Washington Times.* January 2017. RP

Forget sanctuary cities: The next heated congressional battle on immigration could be over “sanctuary campuses” — the dozens of colleges and universities that say they will resist any cooperation with federal immigration agents, unless they are forced to by law.[**Rep. Duncan Hunter**](http://www.washingtontimes.com/topics/duncan-hunter/)**, California Republican, introduced legislation this month to do just that, saying Congress should strip schools of billions of dollars in federal financial aid unless they start cooperating with authorities.** [**Mr. Hunter**](http://www.washingtontimes.com/topics/duncan-hunter/)**’s legislation would require the Department of Homeland Security to keep a list of sanctuary campuses and send it to the Education Department, which would cancel federal payments for student loans and financial aid, potentially costing schools billions of dollars**. “This effort is not about telling colleges who they can and can’t accept for enrollment, but whatever decision they make will either mean they receive federal money or they don’t — it’s that simple,” [Mr. Hunter](http://www.washingtontimes.com/topics/duncan-hunter/) said. **His bill has the backing of the Federation for American Immigration Reform, which said schools that refuse to cooperate with federal agents are putting students’ security at risk.** “Affording public benefits to illegal aliens not only serves as a magnet to future illegal immigration but is a slap in the face to the thousands of disadvantaged Americans and legal immigrant students competing for those same college slots and funding,” FAIR said in a statement.

## Swastika PIC

#### Perm do the counterplan – swastikas on dorms aren’t constitutionally protected – they violate the right to property.

**The ACLU:** The American Civil Liberties Union [Organization that sues for justice and writes about the law] “Hate Speech on Campus.” *ACLU.* 2016. RP

A: Symbols of hate are constitutionally protected if they're worn or displayed before a general audience in a public place -- say, in a march or at a rally in a public park. **But the First Amendment doesn't protect the use of nonverbal symbols to encroach upon, or desecrate, private property, such as burning a cross on someone's lawn or spray-painting a swastika on the wall of a synagogue or dorm**. In its 1992 decision in R.A.V. v. St. Paul, the Supreme Court struck down as unconstitutional a city ordinance that prohibited cross-burnings based on their symbolism, which the ordinance said makes many people feel "anger, alarm or resentment**." Instead of prosecuting the cross-burner for the content of his act, the city government could have rightfully tried him under criminal trespass and/or harassment laws.**

## Student Campaigns PIC

#### Perm do the counterplan – court rulings prove that limits are constitutionally allowed.

**Jaschik:** Jaschik, Scott [[Scott Jaschik](mailto:scott.jaschik@insidehighered.com), Editor, is one of the three founders of Inside Higher Ed. With Doug Lederman, he leads the editorial operations of Inside Higher Ed, overseeing news content, opinion pieces, career advice, blogs and other features. Scott is a leading voice on higher education issues, quoted regularly in publications nationwide, and publishing articles on colleges in publications such as The New York Times, The Boston Globe, The Washington Post, Salon, and elsewhere. He has been a judge or screener for the National Magazine Awards, the Online Journalism Awards, the Folio Editorial Excellence Awards, and the Education Writers Association Awards. Scott served as a mentor in the community college fellowship program of the Hechinger Institute on Education and the Media, of Teachers College, Columbia University. He is a member of the board of the Education Writers Association. From 1999-2003, Scott was editor of The Chronicle of Higher Education. Scott grew up in Rochester, N.Y., and graduated from Cornell University in 1985. He lives in Washington.] “Limits on Free Speech.” June 2007. RP

**A panel of the U.S. Court of Appeals for the Ninth Circuit issued the unanimous ruling in a case involving a challenge to a $100 spending limit set by the University of Montana. The court found that the university's educational mission -- and the relationship between the rules on election spending and that spending -- gave the university the right to limit the speech encompassed by campaign spending**. The ruling could be important for several reasons. **Many public universities have rules that limit spending on student elections --** [**rules that sometimes center in election disputes**](https://www.insidehighered.com/news/2005/06/15/uky) **-- and a federal appeals court ruling throwing out such rules could have led to plenty of other legal challenges**. And the lawyer for the student who challenged the Montana rules sees the decision posing a threat to student rights that involve freedom of expression. "The court has given carte blanche to state universities to regulate political speech by students," said James Bopp Jr., the lawyer. "**The court has adopted the position that First Amendment protections do not apply to political speech at public universities**." Bopp said that he will be asking the full Ninth Circuit to reconsider the case, and that he would "seriously consider" an appeal to the U.S. Supreme Court. Bopp's client is Aaron Flint, who sued the university after he was denied the right to take his seat as a senator in the campus government after he won an election in 2004, but exceeded the spending limit. The spending limit offense was a second violation for Flint, who had been permitted to hold office the previous year despite spending too much. The appeals court acknowledged that the University of Montana is a state institution, and that campaign spending limits of the sort used by the university would be illegal if attempted for Montana state or federal office. But the court said it was wrong to treat the university as another unit of state government. "We may not simply ignore the facts that the campaign expenditure limitations in this case involved election to student government and that the expenditures occurred mostly, if not exclusively, on a university campus," the court found. In this "educational context," different standards should apply, the judges said. The ruling also offered some logic for applying different standards for state and federal government and student government that may not go over well with campus politicos. In essence, the court ruled that different rules can apply because student governments don't have that much power. "The ubiquity with which political government is present to control facets of our lives is not -- thank heavens! -- replicated by student government in students' lives," the decision said. Having determined that student government elections thus constitute a "limited public forum," where more regulation is permitted than in a full public forum, the court said that the remaining question was whether the spending limit was "viewpoint neutral and reasonable." The court said that there was no evidence to suggest that the spending limit was intended to squelch any particular point of view.

#### Perm do the counterplan -- the right to give unlimited money to student elections isn’t protected constitutionally.

**Powers:** Powers, David M. [Contributor, College Student Affairs Journal] “The Constitutional Implications of Expenditure Limits in Student Government Elections.” January 2009. RP

**The first amendment to the Unites States Constitution protects the right of free speech. Of course, this freedom is not absolute. This is particularly true on college campuses. The U.S. Supreme Court has held that universities and colleges have the right to "control activity which may be detrimental to the sacred provision of higher education**" (Willis, 1997). **Further, universities have a right "to make academic judgments as how to best allocate scarce resources** [and] to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study" (Widmar v. Vincent, 1981, p. 276). **Because these rights sometimes conflict, the courts must seek to balance them with one another.** Widmar, 1981, p. 276).

#### Discount evidence that’s not about student governments – SCOTUS rulings in other contexts don’t apply – their speech isn’t protected constitutionally.

**Powers:** Powers, David M. [Contributor, College Student Affairs Journal] “The Constitutional Implications of Expenditure Limits in Student Government Elections.” January 2009. RP

**In this paper, I will examine this conflict in the context of spending limits placed by universities on candidates running for positions in student government. Most, if not all, universities place some limits on the campaign activities of their students. While the U.S. Supreme Court held in Buckley v. Valeo that the first amendment protects unlimited campaign expenditures in civil politics,** the courts have thus far declined to extend this principle to student government elections in several pivotal cases**. The most recent case to address this issue was Flint v. Dennison, decided in June 2007**. In that case, the Ninth Circuit was only the second Federal Appeals Court to examine the issue, the other being the Eleventh Circuit. This paper will analyze those holdings, as well as the rationale that those courts used to reach their decisions.

## Campaign Expenditures PIC

#### Campaign spending is key to helping the economy and educating the public.

**Dorfman:** Dortman, Jeffrey [Contributor, Forbes] “Campaign Spending Freedom Is Great For Speech and The Advertising-Media Sector.” *Forbes.* October 2014. RP

Many voices on the left complained vociferously each time in the past few years that the Supreme Court rolled back unconstitutional campaign finance restrictions. **Yet the loosening of the rules on campaign donations and campaign spending are showing positive signs in both the political arena and in an economic one: the advertising sector**. In terms of politics, it should be self-evident that more speech is better than less. The first amendment really only had two points as the Founding Fathers saw it: protect the press so they could expose any government wrongdoing and ensure freedom of speech for political arguments. [Nude dancing](http://www.forbes.com/sites/jeffreydorfman/2013/10/08/the-1st-amendment-protects-nude-dancing-so-why-not-political-speech/) was not on their minds. Read the history of the revolutionary period and the early presidential campaigns and you will realize that the campaigns were wild, often dirty, free-wheeling affairs. Today’s negative campaigners have nothing on their forefathers of two centuries ago. Yet, beginning with a perhaps natural reaction to Watergate, a few incumbent politicians who wanted to protect their own reelections by making it harder for non-incumbents to raise money pushed through a series of restrictions on campaign financing, effectively reducing freedom of speech. **We should all be glad that we are moving back in the direction of freedom of political speech. And no one has more to be glad about than the political operatives who design and buy advertising time and the corporations who sell the media slots to them. According to** [**Ashley Parker**](http://www.nytimes.com/2014/07/28/us/politics/deluge-of-political-ads-is-driven-by-outside-money.html) **in The New York Times, spending on political advertising for the 2014 elections is up 70 percent over the last midterm elections in 2010. That will add up to about $2 billion in advertising buys** just on House and Senate races with gubernatorial and local races added to that. Media consultants and campaign advisors who help design their candidate’s media strategy and place the advertising buys commonly earn high salaries and [commissions](http://www.slate.com/articles/news_and_politics/explainer/2008/02/how_much_do_campaign_staffers_make.html) equal to as much as 7 percent of the advertising spending. That means that media consultants could stand to make $50 million off the increased spending just in the Congressional races. Freedom of speech appears to be excellent for media consultants. The Supreme Court’s ruling in Citizens United might have been one of the best stimulus actions of the entire Obama presidency. For media companies that are selling the advertising space, the increased political advertising is a bit of a mixed bag. Political candidates must be offered time or space for their ads at the lowest rates the outlet has charged to any other advertisers for equivalent spots. That means that more political ads could mean lower revenues for the media companies. However, there is good news for the media companies as well. In this election cycle, [an increased share](http://www.nytimes.com/2014/10/11/us/politics/ads-paid-for-by-secret-money-flood-the-midterm-elections.html?_r=0) of the political ads is being bought by outside groups. Outside groups do not benefit from the same preferential pricing, so media companies can charge them higher rates. Thus, the Supreme Court rulings like Citizens United that have made it easier for such groups to operate is a boon to those selling space for political ads. **Political speech is a good thing. When all sides and parties are free to express their opinions and make their case in favor of their causes and candidates, we get better, more informed elections and hopefully better election results**. Beyond the political benefits of more free speech, there are also economic benefits to more political speech. **Media companies selling advertising space and the media consultants purchasing those ads both stand to make more money this election cycle thanks to the Supreme Court’s loosening restrictions on campaign financing and spending. Whatever their political beliefs about campaign finance law, the current rules are fattening their wallets while they educate the voters.**

#### Unlimited campaign spending isn’t constitutionally protected speech.

**Demos:** Demos [Organization and activist group] “SUPREME COURT ALLOWS SPENDING LIMITS FOR STUDENT GOVERNMENT ELECTIONS AT UNIVERSITY OF MONTANA, REJECTING FIRST AMENDMENT CHALLENGE.” January 2008. RP

**The Supreme Court today turned back a constitutional challenge to spending limits for student government campaigns at the University of Montana**, denying review of a June 2007 ruling by the Ninth Circuit that upheld the limits. **The Supreme Court's action is a victory for the Associated Students of the University of Montana ("ASUM") and the University, which argued that the limits on campaign spending serve to assure all students, regardless of their financial circumstances, an equal opportunity to win election to student government**. Brenda Wright, Legal Director of Demos, a non-profit organization that assisted in defending the University's spending limits, called the ruling '"a victory for fair elections and educational opportunity," stating "**the** **First Amendment was never designed to make student government participation a function of a student's wealth**." The case was brought in 2004 by former UM student Aaron Flint, who exceeded the $100 spending cap in his effort to win a seat on the ASUM Senate and was disqualified from taking his seat as a result of the violation. A nationally prominent opponent of campaign finance regulation, James Bopp, Jr., represented Flint and argued that the First Amendment guaranteed Flint the right to spend unlimited sums in his quest for a student government seat. The Ninth Circuit, however, found ample justification for ASUM's campaign limits, observing: "**Imposing limits on candidate spending requires student candidates to focus on desirable qualities such as the art of persuasion, public speaking, and answering questions face-to-face with one's potential constituents**. Students are forced to campaign personally, wearing out their shoe-leather rather than wearing out a parent's--or an activist organization's--pocketbook." **The Supreme Court's ruling today means that the Ninth Circuit's decision will stand as the leading appellate precedent on the constitutionality of rules designed to foster fair access to student government participation**. The Ninth Circuit includes Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington. Demos attorneys Brenda Wright and Lisa J. Danetz joined David Aronofsky, University of Montana Legal Counsel, in defending the University's campaign spending limits in the Supreme Court.

#### No link uniqueness – they haven’t shown that speech codes are currently preventing campaign expenditures

#### No link – their evidence is absolutely atrocious – no reason why allowing free speech would increase campaign speech – they haven’t shown that people even desire this speech in the status quo

## Frats PIC

#### *Perm do both – eliminate fraternities but also allow free speech – the perm doesn’t sever because people can say what they want, but the literal fraternities are closed down.*

#### Frats can be used for anti-racist activism – Middlebury proves.

**Pearson:** Pearson, Chris “Anti-Racist Activism & Racial Discrimination in Middlebury Fraternities.” *A Peoples History of Middlebury College.* 2017. RP

**In** **the mid-twentieth century, Middlebury College fraternities were often the sites of both anti-racist activism as well as discrimination based on race and religion. Fraternities at Middlebury College had become an integral part of the Middlebury experience for young men at the college.** By 1941, the percentage of men involved in fraternities had risen to 80% with over 800 young men involved in the fraternity system. Because of the tremendous power fraternities had, they also had the potential to use that power to make a political stance. One fraternity, Alpha Sigma Phi, did just that. Alpha Sigma Phi (ASP/ΑΣΦ) was originally founded as an offshoot of the Commons Club, not affiliated with the fraternity system. In 1911, however, it began the process of becoming a nationally and locally recognized fraternity. ASP, like the other fraternities on Middlebury’s campus, had discriminatory membership policies that prohibited those from the “negroid and Hebrew races” from pledging. In 1941, Robert E. Reuman (’45) petitioned the national leadership of ASP (of which the Middlebury chapter was a part of) for permission to initiate a Jewish student. Despite his efforts, however, Reuman was told, “only the convention of all the chapters could change the [pledging] ritual” (Stameshkin). During World War II, most ASP men (along with most other men at Middlebury), left the college to serve. During the war years, most fraternity activities were put on hold. In 1945 when several ASP members came back from the war, they attempted to reactivate the ASP chapter at Middlebury College. This group of men, including Charles J Parker (’47), John David Hunt (’49), George Booth and ASP Alumni Secretary Gordin Miesse (’20), met with Ralph Burns, the executive secretary of ASP national. In 1946, the ASP chapter was reinstated at Middlebury College. In the Fall of 1946, Burns visited the college and was thought to have given “implied permission” to Middlebury’s ASP chapter to initiate a Jewish student. **That year, Middlebury’s ASP welcomed a Jewish student into their pledge class.** However, in 1947, a revised ritual from national headquarters stated, “Our requirements rigidly exclude members of the negroid and Hebrew races” (Stameshkin). The Middlebury chapter was outraged. They attempted to change the discriminatory policy by reaching out to the other ASP chapters around the country. If there a majority of the chapters wanted to change the policy, national would have to oblige. However, by a vote of 41-26, ASP chapters voted to keep the discriminatory policy in place. Middlebury’s ASP responded to the national vote by polling their own alumni. They concluded that 29 out of the 44 Middlebury ASP alumni voted in favor of breaking from the national chapter because of their membership requirements. In May of 1947 with a unanimous vote of all members that were in the chapter at the time, the Middlebury chapter of ASP suspended its active affiliation with the national organization. With the vote, Alpha Sigma Phi changed it’s name to Alpha Sigma Psi. Alpha Sigma Psi became the first local fraternity to break with its national over racial and religious discrimination. **Inspired by ASP’s refusal to let their money dictate their political stance, Middlebury’s Inter-Fraternity Council (IFC) rejected the application of Phi Kappa Tau to establish a fraternity on campus because they only allowed white members**. The IFC also added an amendment that prohibited the future establishment of any fraternity with written discriminatory clauses. Additionally, on November 7, 1949, the IFC stated that all fraternities on campus would have to work to get their national chapters to remove their discriminatory membership policies by the fall of 1952. By that time, a judicial board would decide if frats that still had discriminatory clauses in place had made “sufficient effort” in tried to have these clauses removed. For this brief moment in time, it seemed as if Middlebury’s fraternities were going to lead the charge in anti-racism and anti-religious discrimination. However, within a few years, IFC policies started to soften. By the fall of 1952, there were still 4 frats on campus that had discriminatory clauses. Yet instead of pushing these frats to break from their national organizations like ASP did, the IFC found that the four frats had all made “satisfactory improvements” and were allowed to remain on campus. The IFC continued to make excuses for these four frats, becoming more and more lenient in their “recommendations**.” It wasn’t until 1960 that the last frat, Alpha Tau Omega, removed its “white Christian clause.”ASP led the charge against discriminatory membership clauses.** Middlebury’s ASP tried to change ASP national policy, but it soon became clear that the national organization was not ready to make that change. Rather than wait idly and continue to receive funds from their national organization, ASP decided to break from national because they believed it was the right thing to do. They let their beliefs determine the future of the organization, not money. ASP inspired the IFC to push other fraternities on campus to do the same. **Although ASP’s action did not immediately inspire all frats on campus to break from their national organizations, they can be seen as a site of major resistance that Middlebury can learn a great deal from today.**

#### Circumvention – college students just call frats something different instead and they’re just as bad.

**Jacobs:** Jacobs, Peter [Contributor, Business Insider] “Why Fraternities Will Never Disappear From American College Life.” *Business Insider.* December 2014. RP

**The only school that dismantled a truly entrenched fraternity system was Princeton University, Syrett said, and it's arguable how successful that change ultimately was. The "eating clubs" that were established in the wake of Greek life's demise, Syrett said, are not dissimilar from the system they replaced. One of Princeton's eating clubs, Tiger Inn, has recently made headlines for a series of lewd and sexist emails sent out to the membership by two student officers**, who [have since been removed from their positions](http://www.businessinsider.com/tiger-inn-kicks-out-two-officers-2014-12).

#### The counterplan literally can’t happen – it’s too expensive and would leave students with no housing.

**Jacobs:** Jacobs, Peter [Contributor, Business Insider] “Why Fraternities Will Never Disappear From American College Life.” *Business Insider.* December 2014. RP

**Perhaps the biggest reason that collegiate Greek life will stay on campuses is the practical benefit that the system grants colleges. Greek housing in particular is so ingrained into many campuses that removing it would leave the schools with potentially thousands of students in need of a place to live and a logistical nightmare.** When colleges began significantly growing during the late 19th and early 20th centuries, according to Flanagan, "**the fraternities involved themselves very deeply in the business of student housing, which provided tremendous financial savings to their host institutions, and allowed them to expand the number of students they could admit**." Flanagan also explains how this has become a potentially inescapable problem for colleges: **Today, one in eight American students at four-year colleges lives in a Greek house, and a conservative estimate of the collective value of these houses across the country is $3 billion. Greek housing constitutes** a troubling fact for college administrators (the majority of fraternity-related deaths occur in and around fraternity houses, over which the schools have limited and widely varying levels of operational oversight) and also **a great boon to them (saving them untold millions of dollars in the construction and maintenance of campus-owned and -controlled dormitories).**

#### *Bans on frats are unconstitutional, and status quo codes punish harrassment.*

***Jacobs:*** *Jacobs, Peter [Contributor, Business Insider] “Why Fraternities Will Never Disappear From American College Life.” Business Insider. December 2014. RP*

***There is another, more intangible, reason that fraternities won't disappear from college campuses anytime soon — their removal may be against the United States Constitution. When a school administration threatens its campus' fraternity system, students often respond that any ban would infringe on their right to freedom of association, protected by the Constitution.*** *Flanagan writes that while this argument may be "legally delicate," it has "withstood through the years." She writes: "****The powerful and well-funded political-action committee that represents fraternities in Washington has fought successfully to ensure that freedom-of-association language is included in all higher-education reauthorization legislation, thus 'disallowing public Universities the ability to ban fraternities.'" National fraternity leadership recognizes that individual houses need to be punished if they break school policy, or the law, but that shouldn't affect a college's entire system****. In a statement to Business Insider, Pete Smithhisler, the head of the North-American Interfraternity Conference, said: When there are unsafe situations that arise for any student, colleges and universities must act according to their own policies and procedures to ensure the safety of the entire campus. However, the NIC is opposed to unilaterally punishing all fraternities and fraternity members based on allegations limited to a handful of bad actors — especially when they are behaving within the school's rules, regulations and codes of conduct. Punishing an entire community for isolated or individual actions undermines the spirit of collaboration and education that is supposed to occur on campus. The NIC encourages colleges and universities to work collaboratively with students and fraternal partners to address the root causes or issues leading to the high-risk behaviors.*

#### The counterplan sacks endowments

**Jacobs:** Jacobs, Peter [Contributor, Business Insider] “Why Fraternities Will Never Disappear From American College Life.” *Business Insider.* December 2014. RP

**Schools may also be hesitant to get rid of fraternities because they fear a financial blow — Greeks** [**tend to be more professionally successful than unaffiliated students**](http://www.businessinsider.com/hire-fraternity-sorority-member-2014-5) **and will most likely donate more to their alma mater**. "At least one study has affirmed what had long been assumed: that **fraternity men tend to be generous to their alma maters**," Flanagan wrote. This kind of pressure probably prevents colleges from removing Greek life, even if they want to. **"Schools are beholden to donating alumni,**" Syrett said. "When they try and do something counter to the fraternities' interests, they have to worry about money."

## White Frats PIC

#### *Perm do both – eliminate fraternities but also allow free speech – the perm doesn’t sever because people can say what they want, but the literal fraternities are closed down.*

#### Basing speech on race ignores groups that experience changing oppression over time, and causes backlash.

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

**Professor Matsuda also argues that only hate speech directed at members of subjugated groups by members of dominant groups forfeits first amendment protection. Thus, while epithets directed at blacks, for example, would be actionable, those directed at whites would not. Although the vulnerability of historically disadvantaged groups has brought racial insults to a new prominence, it seems wrong both pragmatically and in principle to condition first amendment protection on the political positions of the speaker's and target's ethnic groups**. **Professor Matsuda acknowledges that the line- drawing becomes harder if the hateful speech is directed at the white target's gender, sexual preference, religious affiliation, age, poverty, or handicap.57 Further confusion exists because Professor Matsuda concedes that a group's status as subjugated can change position over time and in different localities**. She professes herself unconcerned by the sheer difficulty of such determinations, dismissing concerns with the observation: "The larger question is how anyone knows anything in life or in law. To conceptualize a condition called subordination is a legitimate alternative to denying that such a condi- tion exists." 59 But surely one can acknowledge the reality of social inequality without accepting a legal procedure, backed by the powerful apparatus of criminal prosecution, which determines whether an offended individual be- longs to a relevant group that suffers subordination in a certain place and time. **Are black males "subordinate" today in Washington, D.C.? How should a court factor the respective views of Asians, women, or Boston black males on this question? Can it be doubted that trials over these issues, the outcome of which will determine whether a member of one of these groups will suffer a criminal penalty, would exacerbate tensions among members of these groups**? Such inquiries into relative subjugation would not only be supremely diffi- cult, but they would also be unable to achieve political or constitutional legit- imacy. If, as Professor Matsuda urges, legal approaches to hate speech should turn on the experience of the victims qua victims, it is difficult to see how the outcomes can appear to be justified to non-victims. Generally, con- stitutional rules are justified by reference to some shared (if also disputed) public value, such as equality or the dignity of individuals. Advocates of the prohibition of hate speech would forfeit much to rely on the feeling of histor- ical injustice. Most groups in American society nurse grievances for past wrongs. **All racial and ethnic insults imply debasement of the individual through the invocation of the stereotypical vices of his or her group. To elevate some of these insults into constitutional standards but leave others beyond the reach of law denies our common humanity.**

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#### Authenticity tests for blackness get misapplied to oppress students in other ways.

**Johnson 03**: Johnson, E. Patrick. Appropriating blackness: Performance and the politics of authenticity. Duke University Press, 2003.

**The title of this book suggests that ‘‘blackness’’ does not belong to any one individual or group. Rather, individuals or groups appropriate this complex and nuanced racial signifier in order to circumscribe its boundaries or to exclude other individuals or groups.** When blackness is appropriated to the exclusion of others, identity becomes politi- cal. Inevitably, when one attempts to lay claim to an intangible trope that manifests in various discursive terrains, identity claims become embattled, or as noted in the quotation above by Baldwin, ‘‘color’’ or ‘‘blackness’’ becomes a ‘‘dangerous phenomenon.’’ Because the con- cept of blackness has no essence, ‘‘black authenticity’’ is overdeter- mined—contingent on the historical, social, and political terms of its production. Moreover, in the words of Regina Bendix: ‘‘the notion of [black] authenticity implies the existence of its opposite, the fake, and this dichotomous construct is at the heart of what makes authenticity problematic.’’4 **Authenticity, then, is yet another trope manipulated for cultural capital.¶ That said, I do not wish to place a value judgment on the notion of authenticity, for there are ways in which authenticating discourse enables marginalized people to counter oppressive representations of themselves. The key here is to be cognizant of the arbitrariness of authenticity, the ways in which it carries with it the dangers of fore- closing the possibilities of cultural exchange and understanding.** As Henry Louis Gates Jr. reminds us: ‘‘No human culture is inaccessible to someone who makes the effort to understand, to learn, to inhabit another world.’’5¶ **When black Americans have employed the rhetoric of black au- thenticity, the outcome has often been a political agenda that has ex- cluded more voices than it has included.**6 The multiple ways in which we construct blackness within and outside black American culture is contingent on the historical moment in which we live and our ever- shifting subject positions. For example, black Americans, whose vo- cality, leadership, and rhetoric flourished at the historical moment in which they lived, contested popular constructions of blackness in order to further their own political agendas and occasionally to stake out a space from which to argue for the inclusion of other signs of ‘‘blackness.’’¶ Indeed, if one were to look at blackness in the context of black American history, one would find that, even in relation to national- ism, the notion of an ‘‘authentic’’ blackness has always been contested: the discourse of ‘‘house niggers’’ vs. ‘‘field niggers’’; Sojourner Truth’s insistence on a black female subjectivity in relation to the black polity; Booker T. Washington’s call for vocational skill over W. E. B. Du Bois’s ‘‘talented tenth’’; Richard Wright’s critique of Zora Neale Hurston’s focus on the ‘‘folk’’ over the plight of the black man; Eldridge Cleaver’s caustic attack on James Baldwin’s homosexuality as ‘‘anti-black’’ and ‘‘anti-male’’; urban northerners’ condescending attitudes toward rural southerners and vice versa; Malcolm X’s militant call for black Ameri- cans to fight against the white establishment ‘‘by any means nec- essary’’ over Martin Luther King Jr.’s reconciliatory ‘‘turn the other cheek’’; and Jesse Jackson’s ‘‘Rainbow Coalition’’ over Louis Farra- khan’s ‘‘Nation of Islam.’’ All of these examples belong to the long- standing tradition in black American history of certain black Ameri- cans critically viewing a definition of blackness that does not validate their social, political, and cultural worldview. As Wahneema Lubiano suggests, ‘‘**the resonances of [black] authenticity depend on who is doing the evaluating.’’7¶ White Americans also construct blackness.8 Of course, the power relations maintained by white hegemony have different material ef- fects for blacks than for whites. When white Americans essentialize blackness, for example, they often do so in ways that maintain ‘‘white- ness’’ as the master trope of purity, supremacy, and entitlement, as a ubiquitous, fixed, unifying signifier that seems invisible.9 Alter- nately, the tropes of blackness that whites circulated in the past— Mammy, Sapphire, Jezebel, Jim Crow, Sambo, Zip Coon, pickaninny, and Stepin Fetchit, and now enlarged to include welfare queen, pros- titute, rapist, drug addict, prison inmate, etc.—have historically in- sured physical violence, poverty, institutional racism, and second- class citizenry for blacks.¶ An even more complicated dynamic occurs when whites appro- priate blackness. History demonstrates that cultural usurpation has been a common practice of white Americans and their relation to art forms not their own. In many instances, whites exoticize and/or fetishize blackness,** what bell hooks calls ‘‘eating the other.’’10 Thus, when white-identified subjects perform ‘‘black’’ signifiers—norma- tive or otherwise—the effect is always already entangled in the dis- course of otherness; the historical weight of white skin privilege nec- essarily engenders a tense relationship with its Others.

#### Their legal separation of people based on race based categories kills coalitions

Mike Cole 9, “Critical Race Theory and Education: A Marxist Response” 2009. p. 33

Antiracists have made some progress, in the United Kingdom at least, after years of ‘establishment’ opposition, in making antiracism a mainstream rallying point, and this is reflected, in part, in legislation (e.g., the (2000) Race Relations Amendment Act).11 Even if it were a good idea, the chances of making ‘the abolition of whiteness’ a successful political unifier and rallying point against racism are virtually non-existent. For John Preston (2007, p. 13), ‘[t]he abolition of whiteness is . . . not just an optional extra in terms of defeating capitalism (nor something which will be necessarily abolished post-capitalism) but fundamental to the Marxist educational project as praxis’. Indeed, for Preston (2007, p. 196) ‘[t]he abolition of capitalism and whiteness seem to be fundamentally connected in the current historical circumstances of Western capitalist development’. From a Marxist perspective, coupling the ‘abolition of whiteness’ to the ‘abolition of capitalism’ is a worrying development which, if it gained ground in Marxist theory in any substantial way would most certainly undermine the Marxist project, even more than it has been undermined already (for an analysis of the success of the Ruling Class in forging consensus to capitalism in the United Kingdom, see Cole, 2008g, 2008h). Implications of bringing the ‘abolition of whiteness’ into schools are discussed in chapter 7 of this volume. As is argued in this volume, racism, xeno-racism, racialization, and xeno-racialization, when informed by Marxism, are far more conducive to understanding racism in contemporary societies than is the CRT concept of ‘white supremacy’. ‘White supremacy’, I believe, should be restricted to its conventional usage.

#### The counterplan literally can’t happen – it’s too expensive and would leave students with no housing.

**Jacobs:** Jacobs, Peter [Contributor, Business Insider] “Why Fraternities Will Never Disappear From American College Life.” *Business Insider.* December 2014. RP

**Perhaps the biggest reason that collegiate Greek life will stay on campuses is the practical benefit that the system grants colleges. Greek housing in particular is so ingrained into many campuses that removing it would leave the schools with potentially thousands of students in need of a place to live and a logistical nightmare.** When colleges began significantly growing during the late 19th and early 20th centuries, according to Flanagan, "**the fraternities involved themselves very deeply in the business of student housing, which provided tremendous financial savings to their host institutions, and allowed them to expand the number of students they could admit**." Flanagan also explains how this has become a potentially inescapable problem for colleges: **Today, one in eight American students at four-year colleges lives in a Greek house, and a conservative estimate of the collective value of these houses across the country is $3 billion. Greek housing constitutes** a troubling fact for college administrators (the majority of fraternity-related deaths occur in and around fraternity houses, over which the schools have limited and widely varying levels of operational oversight) and also **a great boon to them (saving them untold millions of dollars in the construction and maintenance of campus-owned and -controlled dormitories).**

#### *Bans on frats are unconstitutional, and status quo codes punish harrassment.*

***Jacobs:*** *Jacobs, Peter [Contributor, Business Insider] “Why Fraternities Will Never Disappear From American College Life.” Business Insider. December 2014. RP*

***There is another, more intangible, reason that fraternities won't disappear from college campuses anytime soon — their removal may be against the United States Constitution. When a school administration threatens its campus' fraternity system, students often respond that any ban would infringe on their right to freedom of association, protected by the Constitution.*** *Flanagan writes that while this argument may be "legally delicate," it has "withstood through the years." She writes: "****The powerful and well-funded political-action committee that represents fraternities in Washington has fought successfully to ensure that freedom-of-association language is included in all higher-education reauthorization legislation, thus 'disallowing public Universities the ability to ban fraternities.'" National fraternity leadership recognizes that individual houses need to be punished if they break school policy, or the law, but that shouldn't affect a college's entire system****. In a statement to Business Insider, Pete Smithhisler, the head of the North-American Interfraternity Conference, said: When there are unsafe situations that arise for any student, colleges and universities must act according to their own policies and procedures to ensure the safety of the entire campus. However, the NIC is opposed to unilaterally punishing all fraternities and fraternity members based on allegations limited to a handful of bad actors — especially when they are behaving within the school's rules, regulations and codes of conduct. Punishing an entire community for isolated or individual actions undermines the spirit of collaboration and education that is supposed to occur on campus. The NIC encourages colleges and universities to work collaboratively with students and fraternal partners to address the root causes or issues leading to the high-risk behaviors.*

#### The counterplan sacks endowments

**Jacobs:** Jacobs, Peter [Contributor, Business Insider] “Why Fraternities Will Never Disappear From American College Life.” *Business Insider.* December 2014. RP

**Schools may also be hesitant to get rid of fraternities because they fear a financial blow — Greeks** [**tend to be more professionally successful than unaffiliated students**](http://www.businessinsider.com/hire-fraternity-sorority-member-2014-5) **and will most likely donate more to their alma mater**. "At least one study has affirmed what had long been assumed: that **fraternity men tend to be generous to their alma maters**," Flanagan wrote. This kind of pressure probably prevents colleges from removing Greek life, even if they want to. **"Schools are beholden to donating alumni,**" Syrett said. "When they try and do something counter to the fraternities' interests, they have to worry about money."

#### High endowments allow colleges to provide scholarship – that’s key to allowing minorities on campus.

**Freedman:** Freedman, Josh [Contributor, The Atlantic] “Why American Colleges Are Becoming a Force for Inequality.” *The Atlantic.* May 2013. RP

**Not all colleges, however, would need to raise tuition drastically to pay for a larger number of low-income students. Schools with large endowments can cover the shortfall in tuition by drawing money from these reserves**. But keeping tuition constant and paying more from the endowment is only an option for schools with [monstrous endowments](http://www.theamericanconservative.com/articles/paying-tuition-to-a-giant-hedge-fund/). **Many writers cite Amherst College as a success story, which has "aggressively recruited poor and middle-class students in recent years" and has increased its share of low-income students. But Amherst has a very large endowment for the size of its student body. Its strategy is only viable when backed with an endowment of more than three quarters of a million dollars per student from which it can draw additional funds to cover its costs while remaining competitive in its levels of spending.** Amherst is better than others, however. Some schools that already do have sizable endowments and could increase aid are instead decreasing it. Cornell, which has an endowment of about $5 billion, took $35 million from its endowment in 2009-2010 to fund financial aid. It is now [changing its policy](http://www.bloomberg.com/news/2012-08-09/cornell-mit-scale-back-aid-even-as-endowments-rise.html) to draw less from the endowment, which includes lowering its financial aid policies. For GW, with $1.33 billion in its endowment (about 1/18 of Amherst's per student), it's more difficult to use the endowment as a primary backstop. GW only has around 11.7 percent of its endowment, or $155 million, [available for student aid](https://giving.gwu.edu/sites/giving.gwu.edu/files/downloads/endowment_report.pdf). As such, GW - and most selective schools - would only be able to preserve student revenues by raising tuition.

## Armenia Genocide PIC

#### Genocide denial laws are used to crack down on political dissidents and are enforced unjustly.

**McChangama:** McChangama, Jacob [Contributor, Foreign Policy] “First They Came for the Holocaust Deniers, and I Did Not Speak Out.” *Foreign Policy.* October 2016. RP

**Outside Europe, Rwanda and Bangladesh are examples of how European memory laws have migrated across continents and are being wielded as a weapon by undemocratic regimes. Following the Rwandan genocide in 1994, perhaps understandably, tough memory laws were passed in 2003 and 2008.** Today, any person who has “publicly shown, by his or her words, writings, images, or by any other means, that he or she has negated the genocide committed, rudely minimised it or attempted to justify or approve its grounds” risks between 10 and 20 years imprisonment. **Human rights lawyer Nani Jansen estimates that as of 2014 the Rwandan memorial laws had resulted in upwards of 2,000 cases being brought; she also notes that they have been used to “restrict a free and open debate on matters of public interest in the country** and especially the restrictive effect the laws have had on free speech in the media.” **Those convicted under the law include journalists and political opponents of President Paul Kagame. When human rights organizations criticized the broad and vague nature of the country’s law,** Rwanda’s then-prosecutor-general shot back at Western critics: “**Their narrative is as if this is a draconian law meant to suppress political dissent and freedom of speech**. What is not often told however is that the laws of similar nature actually have been in place in a number of European Countries for decades!” **He then went on to specifically highlight the EU framework decision, the Holocaust denial laws in European democracies, and the case law of the European Court of Human Rights.**

#### Genocide denial laws are modeled and lead to rights violations.

**McChangama:** McChangama, Jacob [Contributor, Foreign Policy] “First They Came for the Holocaust Deniers, and I Did Not Speak Out.” *Foreign Policy.* October 2016. RP

**This year, the government of Bangladesh tabled a draft “Liberation War Denial Crimes Act” aimed at settling the historical account of that country’s bloody separation from Pakistan. The Bangladeshi draft law, too, is justified with a reference to European Holocaust denial laws.** According to the draft law, undermining, misinterpreting, distorting, disrespecting, or running propaganda campaigns against the official historical account would be punishable with up to five years in prison. According to the government’s official account, the liberation war resulted in the deaths of some 3 million people. However, a number of studies suggest alternative figures ranging as “low” as 200,000 to 300,000 deaths. Yet such historical accounts would no longer be permissible if the bill is passed. Apart from cementing a questionable historical account as unquestionable truth, **Bangladesh-based journalist David Bergman also worries that if passed, the law would shore up the current government and be used as a weapon against its opponents. European memory laws have spread and metamorphosed to the extent that they now serve as the model for criminalizing accurate but nationally inconvenient historical accounts, as well as entrenching deeply flawed alternative histories used as foundations for specific national ideologies and repressive political agendas.** This was hardly what the EU and its member states had in mind in the 1990s. But, in hindsight, this development was almost unavoidable in a globalized world, where legal norms spread to countries with very different histories, values, and systems of government. **Given the role that memory laws have come to play in undermining both academic freedom and political speech, the EU should urgently reconsider its approach. The Holocaust can still serve as the low point of modern European history, and its lessons as a focal point for European institutions, without criminalizing its denial. In fact, decriminalizing the denial of genocide and international crimes will only serve to strengthen the very values that have allowed historians to demonstrate beyond doubt the occurrence and magnitude of the Holocaust. That has ultimately been the most effective means of marginalizing deniers of historical truth to the ranks of xenophobes, pseudo-historians, and conspiracy theorists.**

## Plagiarism PIC

#### It’s not constitutionally protected – it’s copyright fraud.

**New Jersey State Bar:** New Jersey State Bar [Organization that establishes legal issues in New Jersey] “What You Need to Know About Plagiarism.” 2016. RP

**Whenever someone creates a literary, musical or artistic work—for example a painting, poem or song—their work is automatically protected under the Copyright Act**, and cannot be reproduced or used by someone else without the creator’s permission. **This protection is guaranteed in the U.S. Constitution under Article I, Section 8. Copyright protection for works created since 1978 are usually protected for the life of the creator, plus 70 years unless it is “work for hire,” where it is longe**r. For works created before 1978, the length of protection varies. “The framers of the Constitution believed that in order to encourage inventors and artists to create great things, they needed to be protected on some level, which is where the Copyright Act came from,” said Friedman. “**If you are a writer and spend your time, money and effort writing a book, or a poem, or a play, someone else should not be able to just come along and rip you off by copying it and making money from i**t. If there weren’t protections in place, why would you spend the time and energy creating something?” **Copying someone’s creative work without permission is called copyright infringement, a legal term for plagiarism.** But while the concept of copyright protection seems simple, proving infringement can be difficult.

#### Plagiarism rules get circumvented

**Duke Law Journal:**  Term Paper Companies and the Constitution, 1973 Duke Law Journal 1275-1317 (1974) Available at: <http://scholarship.law.duke.edu/dlj/vol22/iss6/3>. RP

**Administrators and faculty members may be expected to adopt a sterner, more visible, and more uniform attitude toward plagiarism than they have held in the past.** 64 In keeping with this more open approach, departmental policies on plagiarism are likely to be announced where in the past they may have been only implicit, 6 5 and where they were formerly announced orally they may now be codified and distributed in written form.166 Specific university-wide rules against plagiarism' 1 7 may be adopted on campuses which have not previously had such, and all-student or joint student-faculty judicial bodies may wish to issue policy statements setting forth their attitudes toward plagiarism.0 8 **Despite recent academic reactions, an effective response to the term paper problem is somewhat hindered by the lack of disciplinary uniformity. Currently, considerable discretion as to the imposition of sanctions 16 9 on a student is delegated to the individual faculty member. So long as sanctions in many instances of plagiarism are imposed directly and often solely by individual faculty members, internal review before a campus judicial body will also be discretionary' rather than mandatory for a student charged with academic dishonesty.**

#### A better solution is to use plagiarism as a learning opportunity – top down bans are bad

**Duke Law Journal:**  Term Paper Companies and the Constitution, 1973 Duke Law Journal 1275-1317 (1974) Available at: <http://scholarship.law.duke.edu/dlj/vol22/iss6/3>. RP

**Academicians might also more effectively confront the term paper threat in the classroom, where a number of teaching techniques can be utilized to deemphasize requirements amenable to plagiarism**.' Individual faculty members may require more in-class compositions from their students, in order to have a substantial body of written work from each student against which to compare any submitted term paper. **In some instances a more imaginative selection of topics for student papers will decrease greatly the likelihood that students will be able to locate copy papers which are on point**.1 7 a **Additionally, some faculty members may wish to give greater weight to final examinations, thereby undoubtedly re-evaluating the need for and usefulness of term papers. It is not only unlawful but unnecessary to curtail first amendment freedoms in order to control a problem capable of being resolved by colleges and universities themselves.**

## White People PIC

#### Basing speech on race ignores groups that experience changing oppression over time, and causes backlash.

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

**Professor Matsuda also argues that only hate speech directed at members of subjugated groups by members of dominant groups forfeits first amendment protection. Thus, while epithets directed at blacks, for example, would be actionable, those directed at whites would not. Although the vulnerability of historically disadvantaged groups has brought racial insults to a new prominence, it seems wrong both pragmatically and in principle to condition first amendment protection on the political positions of the speaker's and target's ethnic groups**. **Professor Matsuda acknowledges that the line- drawing becomes harder if the hateful speech is directed at the white target's gender, sexual preference, religious affiliation, age, poverty, or handicap.57 Further confusion exists because Professor Matsuda concedes that a group's status as subjugated can change position over time and in different localities**. She professes herself unconcerned by the sheer difficulty of such determinations, dismissing concerns with the observation: "The larger question is how anyone knows anything in life or in law. To conceptualize a condition called subordination is a legitimate alternative to denying that such a condi- tion exists." 59 But surely one can acknowledge the reality of social inequality without accepting a legal procedure, backed by the powerful apparatus of criminal prosecution, which determines whether an offended individual be- longs to a relevant group that suffers subordination in a certain place and time. **Are black males "subordinate" today in Washington, D.C.? How should a court factor the respective views of Asians, women, or Boston black males on this question? Can it be doubted that trials over these issues, the outcome of which will determine whether a member of one of these groups will suffer a criminal penalty, would exacerbate tensions among members of these groups**? Such inquiries into relative subjugation would not only be supremely diffi- cult, but they would also be unable to achieve political or constitutional legit- imacy. If, as Professor Matsuda urges, legal approaches to hate speech should turn on the experience of the victims qua victims, it is difficult to see how the outcomes can appear to be justified to non-victims. Generally, con- stitutional rules are justified by reference to some shared (if also disputed) public value, such as equality or the dignity of individuals. Advocates of the prohibition of hate speech would forfeit much to rely on the feeling of histor- ical injustice. Most groups in American society nurse grievances for past wrongs. **All racial and ethnic insults imply debasement of the individual through the invocation of the stereotypical vices of his or her group. To elevate some of these insults into constitutional standards but leave others beyond the reach of law denies our common humanity.**

#### Authenticity tests for blackness get misapplied to oppress students in other ways. Admin choosing a definition of blackness lets them perpetuate their power.

**Johnson 03**: Johnson, E. Patrick. Appropriating blackness: Performance and the politics of authenticity. Duke University Press, 2003.

**The title of this book suggests that ‘‘blackness’’ does not belong to any one individual or group. Rather, individuals or groups appropriate this complex and nuanced racial signifier in order to circumscribe its boundaries or to exclude other individuals or groups.** When blackness is appropriated to the exclusion of others, identity becomes politi- cal. Inevitably, when one attempts to lay claim to an intangible trope that manifests in various discursive terrains, identity claims become embattled, or as noted in the quotation above by Baldwin, ‘‘color’’ or ‘‘blackness’’ becomes a ‘‘dangerous phenomenon.’’ Because the con- cept of blackness has no essence, ‘‘black authenticity’’ is overdeter- mined—contingent on the historical, social, and political terms of its production. Moreover, in the words of Regina Bendix: ‘‘the notion of [black] authenticity implies the existence of its opposite, the fake, and this dichotomous construct is at the heart of what makes authenticity problematic.’’4 **Authenticity, then, is yet another trope manipulated for cultural capital.¶ That said, I do not wish to place a value judgment on the notion of authenticity, for there are ways in which authenticating discourse enables marginalized people to counter oppressive representations of themselves. The key here is to be cognizant of the arbitrariness of authenticity, the ways in which it carries with it the dangers of fore- closing the possibilities of cultural exchange and understanding.** As Henry Louis Gates Jr. reminds us: ‘‘No human culture is inaccessible to someone who makes the effort to understand, to learn, to inhabit another world.’’5¶ **When black Americans have employed the rhetoric of black au- thenticity, the outcome has often been a political agenda that has ex- cluded more voices than it has included.**6 The multiple ways in which we construct blackness within and outside black American culture is contingent on the historical moment in which we live and our ever- shifting subject positions. For example, black Americans, whose vo- cality, leadership, and rhetoric flourished at the historical moment in which they lived, contested popular constructions of blackness in order to further their own political agendas and occasionally to stake out a space from which to argue for the inclusion of other signs of ‘‘blackness.’’¶ Indeed, if one were to look at blackness in the context of black American history, one would find that, even in relation to national- ism, the notion of an ‘‘authentic’’ blackness has always been contested: the discourse of ‘‘house niggers’’ vs. ‘‘field niggers’’; Sojourner Truth’s insistence on a black female subjectivity in relation to the black polity; Booker T. Washington’s call for vocational skill over W. E. B. Du Bois’s ‘‘talented tenth’’; Richard Wright’s critique of Zora Neale Hurston’s focus on the ‘‘folk’’ over the plight of the black man; Eldridge Cleaver’s caustic attack on James Baldwin’s homosexuality as ‘‘anti-black’’ and ‘‘anti-male’’; urban northerners’ condescending attitudes toward rural southerners and vice versa; Malcolm X’s militant call for black Ameri- cans to fight against the white establishment ‘‘by any means nec- essary’’ over Martin Luther King Jr.’s reconciliatory ‘‘turn the other cheek’’; and Jesse Jackson’s ‘‘Rainbow Coalition’’ over Louis Farra- khan’s ‘‘Nation of Islam.’’ All of these examples belong to the long- standing tradition in black American history of certain black Ameri- cans critically viewing a definition of blackness that does not validate their social, political, and cultural worldview. As Wahneema Lubiano suggests, ‘‘**the resonances of [black] authenticity depend on who is doing the evaluating.’’7¶ White Americans also construct blackness.8 Of course, the power relations maintained by white hegemony have different material ef- fects for blacks than for whites. When white Americans essentialize blackness, for example, they often do so in ways that maintain ‘‘white- ness’’ as the master trope of purity, supremacy, and entitlement, as a ubiquitous, fixed, unifying signifier that seems invisible.9 Alter- nately, the tropes of blackness that whites circulated in the past— Mammy, Sapphire, Jezebel, Jim Crow, Sambo, Zip Coon, pickaninny, and Stepin Fetchit, and now enlarged to include welfare queen, pros- titute, rapist, drug addict, prison inmate, etc.—have historically in- sured physical violence, poverty, institutional racism, and second- class citizenry for blacks.¶ An even more complicated dynamic occurs when whites appro- priate blackness. 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#### Allowing rights on the basis of group allows cooptation by dominant elites.

**Byrne:** Byrne, J. Peter [Associate Professor, Georgetown University Law Center.] “Racial Insults and Free Speech Within the University.” *Georgetown University Law School.* 1991. RP

These comments suggest a strength of the Court's broad view of first amendment protection for offensive speech that frontal assaults have failed to touch: because democratic government is incompetent to proscribe certain forms of speech, the Court will deny it the power to do so even in cases in which a substantial majority agrees that a form of speech is worthless and harmful. **Thus, even if one were happy with a democratic determination to punish racist insults because "[r]acial supremacy is one of the ideas we have ...considered and rejected," 6 one might worry about which other ideas the controlling majority might consider to have been so decisively rejected that utterance of them could lead to prosecution**. Our political life stands upon very few moral principles that offer guidance in making these choices.61 We expect most political decisions to reflect the preferences of shifting majorities in legislatures, and we employ constitutional rules as an imperfect mecha- nism of preserving liberties that embody consensual moral principles. Before a constitutional liberty is released to permit regulation of a perceived social wrong, a convincing argument that fighting the wrong advances a moral principle rather than a political agenda is required. Our reluctance to limit constitutional liberties reflects our doubts about the capacity of legislatures to identify and apply moral principles. **Proposing legal protection for some but not all victims of racial insults exacerbates anxiety about whether such protection rests on a political agenda. Simply arguing that civic virtue ought to play a larger role in the decisionmaking of representative assemblies will not make it so without profound changes in our political institutions and culture. The distrust of democratic capacity to censor speech must be over- come before general restrictions on racist insults can be found constitutional.**

#### Allowing speech for particular groups fails to do anthing when that group is hateful to OTHER SUBORINDATED GROUPS.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**What of hateful racist and anti-Semitic speech by non-whites? The phenomena of one subordinated group inflicting racist speech upon another subordinated group is a persistent and touchy problem**. Simi- larly, members of a subordinated group sometimes direct racist lan- guage at their own group. The victim's privilege becomes problematic when it is used by one subordinated person to lash out at another. **While I have argued here for tolerance of hateful speech that comes from an experience of oppression, when that speech is used to attack a subordinated-group member, using language of persecution, an adopting a rhetoric of racial inferiority, I am inclined to prohibit such speech. History and context are important in this case because the custom in a particular subordinated community may tolerate racial insults as a form of word play**.224 Where this is the case, community members tend to have a clear sense of what is racially degrading and what is not. The appropriate standard in determining whether language is persecutorial, hateful, and degrading is the recipient's community standard. **We should avoid further victimization of subordinated groups by misunderstanding their linguistic and cultural norms.**

#### The race-specific speech codes will get co-opted and turned into a useless paradox

Henry Louis **Gates 94,** [Professor and Director of the Hutchins Center for African and African American Research at Harvard University], “War of Words: Critical Race Theory and the First Amendment”, in Speaking of Race, Speaking of Sex: Hate Speech, Civil Rights, and Civil Liberties, New York University Press, 1994. RFK

At the very least, this approach would promise a quick solution to the abuse of "fighting words" ordinances. **Consider Matsuda's own approach to legal sanctions for racist speech.** By way of distinguishing "the worst, paradigm example of racist hate messages from other forms of racist and non-racist speech," she offers three identifying characteristics: (1) The message is of racial inferiority. (2) The message is directed against a historically oppressed group. (3) The message is persecutory, hateful and degrading. The third element, she says, is "related to the `fighting words' idea"; and the first "is the primary identifier of racist speech"; but it is the second element that "attempts to further define racism by recognizing the connection of racism to power and subordination." The second element is the one that most radically departs from the current requirement that law be neutral as to content and viewpoint. But it would seem to forestall some of the abuses to which earlier speech ordinances have been put, simply by requiring the victim of the penalized speech to be a member of a "historically oppressed group." Surely there is something refreshingly straightforward about the call for "an end to unknowing." **Is Matsuda on to something? Not quite. Ironically enough, what trips up the content-specific approach is that it can never be content- specific enough.** Take a second look at Matsuda's three identifying characteristics of paradigm hate speech. First, recall, that the message is of racial inferiority. Now, **Matsuda is clear that she wants her definition to encompass, inter alia, anti-Semitic and anti-Asian prejudice; but anti-Semitism (as the philosopher Laurence Thomas, who is black and Jewish, observes) traditionally imputes to its object not inferiority, but iniquity.** Moreover, anti-Asian prejudice often more closely resembles anti-Semitic prejudice than it does anti-black prejudice. Surely anti-Asian prejudice that depicts Asians as menacingly superior, and therefore as a threat to "us," is just as likely to arouse the sort of violence that notoriously claimed the life of Vincent Chin ten years ago in Detroit. More obviously, **the test of membership in a "historically oppressed" group is either too narrow (just blacks) or too broad (just about everybody). Are poor Appalachians, a group I knew well from growing up in a West Virginia mill town, "historically oppressed" or "dominant group members"? Once we adopt the "historically oppressed" proviso, I suspect, it is a matter of time before a group of black women in Chicago are arraigned for calling a policeman a "dumb Polak." Evidence that Poles are a historically oppressed group in Chicago will be in plentiful supply; the policeman's grandmother will offer poignant firsthand testimony to that.**

#### Backlash disad – white people will get really mad if they can’t speak out and black people can which would cause PHYSICAL violence against black people

#### Their legal separation of people based on race based categories kills coalitions

Mike Cole 9, “Critical Race Theory and Education: A Marxist Response” 2009. p. 33

Antiracists have made some progress, in the United Kingdom at least, after years of ‘establishment’ opposition, in making antiracism a mainstream rallying point, and this is reflected, in part, in legislation (e.g., the (2000) Race Relations Amendment Act).11 Even if it were a good idea, the chances of making ‘the abolition of whiteness’ a successful political unifier and rallying point against racism are virtually non-existent. For John Preston (2007, p. 13), ‘[t]he abolition of whiteness is . . . not just an optional extra in terms of defeating capitalism (nor something which will be necessarily abolished post-capitalism) but fundamental to the Marxist educational project as praxis’. Indeed, for Preston (2007, p. 196) ‘[t]he abolition of capitalism and whiteness seem to be fundamentally connected in the current historical circumstances of Western capitalist development’. From a Marxist perspective, coupling the ‘abolition of whiteness’ to the ‘abolition of capitalism’ is a worrying development which, if it gained ground in Marxist theory in any substantial way would most certainly undermine the Marxist project, even more than it has been undermined already (for an analysis of the success of the Ruling Class in forging consensus to capitalism in the United Kingdom, see Cole, 2008g, 2008h). Implications of bringing the ‘abolition of whiteness’ into schools are discussed in chapter 7 of this volume. As is argued in this volume, racism, xeno-racism, racialization, and xeno-racialization, when informed by Marxism, are far more conducive to understanding racism in contemporary societies than is the CRT concept of ‘white supremacy’. ‘White supremacy’, I believe, should be restricted to its conventional usage.

#### Rollback – this violates the Constitution…..equal protection is guarneteed and Congress can’t just randomly give some people rights but not others

#### This reinscribes a black/white binary – what about those who are half black???? Can they not speak out?

#### No solvency—can’t enforce who’s white and everyone will just lie about their race because they love speech.

#### Identity politics aren’t productive and shatter coalitions

Rob 14 Carleton College, Robtheidealist, My Skinfolk Ain't All Kinfolk, www.orchestratedpulse.com/2014/03/problem-identity-politics/

Some people look at these flaws and call for an end to “identity politics”, but I think that’s a mistake. At its most basic level, identity politics merely means political activity that caters to the interests of a particular social group. In a certain sense, all politics are identity politics. However, it’s one thing to intentionally form a group around articulated interests; it’s another matter entirely when group membership is socially imposed. Personal identities are socially defined through a combination of systemic rewards/marginalization plus actual and/or potential violence. We can’t build politics from that foundation because these socially imposed identities don’t necessarily tell us anything about someone’s political interests. Successful identity politics requires shared interests, not shared personal identities. I’m not here to tell you that personal identity doesn’t matter; we rightfully point out that systemic power shapes people’s lives. Simply put, my message is that personal identity is not the only thing that matters. We spend so much energy labeling people—privileged/marginalized, oppressor/oppressed—that we often neglect to build spaces that antagonize the systems that cause our collective trauma. All You Blacks Want All the Same Things We assume that if a person is systemically marginalized, then they must have a vested interest in dismantling that system. Yet, that’s not always the case. Take Orville Lloyd Douglas, who last summer wrote an article in the Guardian in which he admitted that he hates being Black. I can honestly say I hate being a black male… I just don’t fit into a neat category of the stereotypical views people have of black men. I hate rap music, I hate most sports, and I like listening to rock music… I have nothing in common with the archetypes about the black male… I resent being compared to young black males (or young people of any race) who are lazy, not disciplined, or delinquent. Orville Lloyd Douglas, Why I Hate Being a Black Man As we can see from Douglas’ cry for help, membership in a marginalized group is no guarantee that a person can understand and effectively combat systemic oppression. Yet, we seem to treat all marginalized voices as equal, as if they are all insightful, as if there is no diversity of thought, as if—in the case of race– “All you Blacks want all the same things”. Shared identity does not equal shared interests. John Ridley, the Oscar-winning screenplay writer of 12 Years a Slave, is a good example. He’s written screenplays based on Jimi Hendrix, the L.A. riots, and other poignant moments and icons within Black history. He wants to see more Black people in Hollywood and he has a long history of successfully incorporating Black and Brown characters into comic book stories and franchises. However, in 2006, Ridley made waves with an essay in which he castigated Black people who did not live up to his standards; saying, “It’s time for ascended blacks to wish niggers good luck.” So I say this: It’s time for ascended blacks to wish niggers good luck. Just as whites may be concerned with the good of all citizens but don’t travel their days worrying specifically about the well-being of hillbillies from Appalachia, we need to send niggers on their way. We need to start extolling the most virtuous of ourselves. It is time to celebrate the New Black Americans—those who have sealed the Deal, who aren’t beholden to liberal indulgence any more than they are to the disdain of the hard Right. It is time to praise blacks who are merely undeniable in their individuality and exemplary in their levels of achievement. The Manifesto of Ascendancy for the Modern American Nigger While Ridley and I share cultural affinity, and we both want to see Black people doing well, shared cultural affinity and common identity are not enough– which recent history makes abundantly clear. Barack Obama continues to deport record numbers of Brown immigrants here at home, while mercilessly bombing Brown folks abroad. Don Lemon, speaking in support of Bill O’Reilly, said that racism would be lessened if Black people pulled up their pants and stopped littering. Last fall, 40% of Black U.S. Americans supported airstrikes against Syria. My skinfolk ain’t all kinfolk, and the Left needs to catch up. NO MORE ALLIES John Ridley, Barack Obama, myself, and Don Lemon are all Black males. We also have conflicting political positions and interests, but how can we decide which paths are valid if we only pay attention to personal identity? Instead of learning to recognize how the overarching systems maintain their power and then attacking those tools, we spend our energy finding an “other” to embody the systemic marginalization and legitimize our spaces and ideals. In some interracial spaces I feel like nothing more than an interchangeable token whose only purpose is to legitimize the politics of my White peers. If not me, then some other Black person would fill the slot. We use these “others” as authorities on various issues, and we use concepts like “privilege” to ensure that people stay in their lanes. People of color are the authorities on race, while LGBTQ people are the authorities on gender and sexuality, and so forth and so on. Yet, experience is not the same as expertise, and privilege doesn’t automatically make you clueless. As I’ve discussed, these groups are not oriented around a singular set of political ideals and practices. Furthermore, as we see in Andrea Smith’s work, there are often competing interests within these groups. We mistake essentialism for intersectionality as we look for the ideal subjects to embody the various forms of oppression; true intersectionality is a description of systemic power, not a call for diversity. If we don’t develop any substantive analysis of systemic power, then it’s impossible to know what our interests are, and aligning with one another according to shared interests is out of the question. In this climate all that remains is the ally, which requires no real knowledge or political effort, only the willingness to appear supportive of an “other”. We can’t build power that way. After having gathered to oppose organized White supremacy at the University of North Carolina, a group of organizers in Durham, North Carolina found that the Left’s emphasis on personal identity and allyship was a major reason why their efforts collapsed. They proposed that we adopt the practice of forming alliances rather than identifying allies. (h/t NinjaBikeSlut) Much of the discourse around being an ally seems to presume a relationship of one-sided support, with one person or group following another’s leadership. While there are certainly times where this makes sense, it is misleading to use the term ally to describe this relationship. In an alliance, the two parties support each other while maintaining their own self-determination and autonomy, and are bound together not by the relationship of leader and follower but by a shared goal. In other words, one cannot actually be the ally of a group or individual with whom one has no political affinity – and this means that one cannot be an ally to an entire demographic group, like people of color, who do not share a singular cohesive political or personal desire. The Divorce of Thought From Deed While it’s vital for me to learn the politics and history of marginalized experiences that differ from my own, listen to their voices, and respect their spaces and contributions — it’s also important for me to understand the ways in which these same systems have shaped my own identity/history as well. Since we know that oppression is systemic and multidimensional, then I’m going to have to step outside of personal experience and begin to develop political ideals and practices that actually antagonize those systems. I have to understand and articulate my interests, which will allow me to operate from a position of strength and form political alliances that advance those interests– interests which speak to issues beyond just my own immediate experience.

## Historically Oppressed PIC

#### Codes based on historical oppression will get co-opted and turned into a useless paradox

Henry Louis **Gates 94,** [Professor and Director of the Hutchins Center for African and African American Research at Harvard University], “War of Words: Critical Race Theory and the First Amendment”, in Speaking of Race, Speaking of Sex: Hate Speech, Civil Rights, and Civil Liberties, New York University Press, 1994. RFK

At the very least, this approach would promise a quick solution to the abuse of "fighting words" ordinances. **Consider Matsuda's own approach to legal sanctions for racist speech.** By way of distinguishing "the worst, paradigm example of racist hate messages from other forms of racist and non-racist speech," she offers three identifying characteristics: (1) The message is of racial inferiority. (2) The message is directed against a historically oppressed group. (3) The message is persecutory, hateful and degrading. The third element, she says, is "related to the `fighting words' idea"; and the first "is the primary identifier of racist speech"; but it is the second element that "attempts to further define racism by recognizing the connection of racism to power and subordination." The second element is the one that most radically departs from the current requirement that law be neutral as to content and viewpoint. But it would seem to forestall some of the abuses to which earlier speech ordinances have been put, simply by requiring the victim of the penalized speech to be a member of a "historically oppressed group." Surely there is something refreshingly straightforward about the call for "an end to unknowing." **Is Matsuda on to something? Not quite. Ironically enough, what trips up the content-specific approach is that it can never be content- specific enough.** Take a second look at Matsuda's three identifying characteristics of paradigm hate speech. First, recall, that the message is of racial inferiority. Now, **Matsuda is clear that she wants her definition to encompass, inter alia, anti-Semitic and anti-Asian prejudice; but anti-Semitism (as the philosopher Laurence Thomas, who is black and Jewish, observes) traditionally imputes to its object not inferiority, but iniquity.** Moreover, anti-Asian prejudice often more closely resembles anti-Semitic prejudice than it does anti-black prejudice. Surely anti-Asian prejudice that depicts Asians as menacingly superior, and therefore as a threat to "us," is just as likely to arouse the sort of violence that notoriously claimed the life of Vincent Chin ten years ago in Detroit. More obviously, **the test of membership in a "historically oppressed" group is either too narrow (just blacks) or too broad (just about everybody). Are poor Appalachians, a group I knew well from growing up in a West Virginia mill town, "historically oppressed" or "dominant group members"? Once we adopt the "historically oppressed" proviso, I suspect, it is a matter of time before a group of black women in Chicago are arraigned for calling a policeman a "dumb Polak." Evidence that Poles are a historically oppressed group in Chicago will be in plentiful supply; the policeman's grandmother will offer poignant firsthand testimony to that.**

#### Allowing speech for particular groups fails to do anthing when that group is hateful to OTHER SUBORINDATED GROUPS.

**Matsuda:** Matsuda, Mari [Associate Professor of Law, University of Hawaii, the William S. Richardson School of Law. B.A. 1975, Arizona State University; J.D. 1980, University of Hawaii; LL.M. 19 Harvard University] “Public Response to Racist Speech: Considering the Victim’s Speech.” *Michigan Law Review,* Volume 87. August 1989. RP

**What of hateful racist and anti-Semitic speech by non-whites? The phenomena of one subordinated group inflicting racist speech upon another subordinated group is a persistent and touchy problem**. Simi- larly, members of a subordinated group sometimes direct racist lan- guage at their own group. The victim's privilege becomes problematic when it is used by one subordinated person to lash out at another. **While I have argued here for tolerance of hateful speech that comes from an experience of oppression, when that speech is used to attack a subordinated-group member, using language of persecution, an adopting a rhetoric of racial inferiority, I am inclined to prohibit such speech. History and context are important in this case because the custom in a particular subordinated community may tolerate racial insults as a form of word play**.224 Where this is the case, community members tend to have a clear sense of what is racially degrading and what is not. The appropriate standard in determining whether language is persecutorial, hateful, and degrading is the recipient's community standard. **We should avoid further victimization of subordinated groups by misunderstanding their linguistic and cultural norms.**

## Climate Denialism PIC

#### Bans on climate denialism cause backlash against movements to stop climate change.

**Watts:** Watts, Anthony [Blogger and writer about climate change problems] “They’ve lost the argument: Petition to ban ‘climate deniers’ from Facebook.” Watts Up With That? June 2015. RP

**Breitbart** [**brought**](http://climatenexus.us4.list-manage1.com/track/click?u=d1f5797e59060083034310930&id=eb5560593d&e=9de57176c0) **our attention to a petition that calls on Facebook to ban climate change denial pages. With only 3,326 signatories out of a goal of 500,000, it doesn’t seem like the petition is going to accomplish its goal—and probably for good reason. As bad as climate denial is, shutting them out of Facebook would justify their persecution complex, and might engender more sympathy for their position**. Really, who treats Facebook as a place to discuss science? **For the most part, we think denier groups are small enough that they pretty much serve as something to point and laugh at, because they’re not likely to be gain many converts when compared to the audience of Murdoch’s media empire**. That said, the petition actually has a point. Facebook doesn’t have [too many rules,](http://climatenexus.us4.list-manage.com/track/click?u=d1f5797e59060083034310930&id=58567fd45a&e=9de57176c0) but the very last one reads that, “Pages must not contain false, misleading, fraudulent or deceptive claims or content.” The question then, is whether or not claims that say global warming has stopped and an ice age is imminent, that climate scientists are fudging the data, or that Climategate showed wrongdoing would all fall under false, misleading and deceptive claims. We don’t know what else you would call them, so perhaps a ban would be warranted after all. Though surprising, Facebook wouldn’t be the first social media site to crack down on climate deniers. In 2013, the science page of the social media giant reddit [announced](http://climatenexus.us4.list-manage.com/track/click?u=d1f5797e59060083034310930&id=c58a9c2bf3&e=9de57176c0) that any claims contradicting the consensus on climate change, evolution and vaccines must be supported by a peer-reviewed citation. Given that climate denial is almost never peer-reviewed, this resulted in a de facto ban on posts from climate change deniers. Will Facebook follow suit? Probably not. But under their rules, it sounds like they could.

#### Non unique – climate change denialism low now

**Saad and Jones:** Lydia Saad and Jeffrey M. Jones [Contributors, Gallup] “U.S. Concern About Global Warming at Eight-Year High.” *Gallup.* March 2016. RP

PRINCETON, N.J. -- **Americans are taking global warming more seriously than at any time in the past eight years, according to several measures in Gallup's annual environment poll. Most emblematic is the rise in their stated concern about the issue. Sixty-four percent of U.S. adults say they are worried a "great deal" or "fair amount" about global warming, up from 55% at this time last year and the highest reading since 2008.** Mirroring this, the March 2-6 survey -- conducted at the close of what has reportedly been the warmest winter on record in the U.S. -- documents a slight increase in the percentage of Americans who believe the effects of global warming have already begun. **Nearly six in 10 (59%) today say the effects have already begun, up from 55% in March 2015.** Another 31%, up from 28% in 2015, believe the effects are not currently manifest but will be at some point in the future. **That leaves only 10% saying the effects will never happen**, down from 16% last year and the lowest since 2007. A third key indicator of public concern about global warming is the percentage of U.S. adults who believe the phenomenon will eventually pose a serious threat to them or their way of life. Forty-one percent now say it will, up from 37% in 2015 and, by one point, the highest in Gallup's trend dating back to 1997. Americans' clear shift toward belief in global warming follows a winter that most described in the same poll as being [unusually warm](http://www.gallup.com/poll/189920/americans-attribute-warm-winter-weather-climate-change.aspx?g_source=winter%20warm&g_medium=search&g_campaign=tiles). Sixty-three percent say they experienced an unusually warm winter, and the majority of this group ascribes the warm weather pattern to human-caused climate change.

#### Tons of thumpers – national media like Fox News will always inundate people with false information about climate change anyways.

#### Warming is too far gone to fix – their impacts are inevitable – also, China is a huge alt cause.

**Lochhead March 7:** Lochhead, Carolyn [Contributor, Times Union] “Is it too late to save Earth?” *Times Union.* March 7, 2017. RP

**Within the lifetimes of today's children, scientists say, the climate could reach a state unknown in civilization. In that time, global carbon dioxide emissions from burning fossil fuels are on track to exceed the limits that scientists believe could prevent catastrophic warming. Carbon dioxide levels are higher than they have been in 15 million years. The Arctic, melting rapidly and probably irreversibly, has reached a state that the Vikings would not recognize**. "We are poised right at the edge of some very major changes on Earth," said [Anthony Barnosky](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Anthony+Barnosky%22), a [University of California](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22University+of+California%22), Berkeley professor of biology who studies the interaction of climate change with population growth and land use. "We really are a geological force that's changing the planet." The Arctic melt is occurring as the planet is just 0.8 degree Celsius (1.4 degrees Fahrenheit) warmer than it was in pre-industrial times. At current trends, Earth could warm by 4 degrees Celsius in 50 years, according to a November [World Bank](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22World+Bank%22) report. The coolest summer months would be much warmer than today's hottest summer months, the report said. "The last time Earth was 4 degrees warmer than it is now was about 14 million years ago," Barnosky said. **Experts said it is technically feasible to halt such changes by nearly ending the use of fossil fuels. It would require a wholesale shift to renewable fuels** that the United States, let alone China and other developing countries, appears unlikely to make. Indeed, many Americans do not believe humans are changing the climate. "Science is not opinion, it's not what we want it to be," said [Katherine Hayhoe](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Katherine+Hayhoe%22), an evangelical Christian, climatologist at [Texas Tech University](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Texas+Tech+University%22) and lead author on the draft climate assessment report issued this month by the [National Climate Assessment and Development Advisory Committee](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22National+Climate+Assessment+and+Development+Advisory+Committee%22). "You can't make a thermometer tell you it's hotter than it is," said Hayhoe, who with her husband, a linguist and West Texas pastor, has written a book on climate change addressed to evangelicals. "And it's not just about thermometers or satellite instruments," she said. "It's about looking in our own back yards, when the trees are flowering now compared to 30 years ago, what types of birds and butterflies and bugs we see that ... used to be further south." Robins are arriving two weeks early in Colorado. Frogs are calling sooner in Ithaca. The Sierra Nevada snowpack is melting earlier. Cold snaps like the one gripping the East still happen, but less often. Scientists are loath to pin a specific event such as Hurricane Sandy or floods in England to global warming. But "the risk of certain extreme events, such as the 2003 European heat wave, the 2010 Russian heat wave and fires, and the 2011 Texas heat wave and drought has ... doubled or more," said [Michael Wehner](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Michael+Wehner%22), a staff scientist at [Lawrence Berkeley National Laboratory](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Lawrence+Berkeley+National+Laboratory%22) and co-author of the climate assessment report. "Some of the changes that have occurred are permanent on human time scales." A key question is when greenhouse gas emissions might reach a tipping point, where changes become self-reinforcing and out of human control. Arctic sea ice reflects the sun. As it melts, the dark ocean absorbs more solar heat, raising temperatures. Similarly, the Greenland ice sheet is melting rapidly, reducing reflectivity, and possibly speeding up the melting of the West Antarctic ice sheet. The northern permafrost is thawing, with the potential to release methane, a potent greenhouse gas, and carbon dioxide stored in soils. These can produce sudden, so-called nonlinear changes that are hard to predict. "**We could be at a tipping point where the climate just abruptly warms,**" said [Mark Z. Jacobsen](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Mark+Z.+Jacobsen%22), director of [Stanford University](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Stanford+University%22)'s atmosphere/energy program. An Arctic melting "would make it more difficult for the Northern hemisphere to cool down, so all Greenland would be next. Greenland stores about five to seven meters of sea level." UC Berkeley's Barnosky said tipping points could come earlier than anticipated when factoring in population growth and land use. More than 40 percent of Earth's land surface has been covered by farms and cities. Much of the rest is cut by roads. By 2025, the percentage of development could reach half, a level that on smaller scales has led to ecological crashes. "It's just sort of simple math: the more people, the more footprint," Barnosky said. "**If we're still on a fossil fuel economy in 50 years, there is no hope for doing anything about climate change. It will be here in such a dramatic way that we won't recognize the planet we're on."**

#### Debating and challenging climate deniers is more effective than suppressing them – it makes them look foolish.

**Nye:** Nye, Bill [Scientist, engineer, comedian, author, legend and inventor] “Why I Choose to Challenge Climate Change Deniers.” *The Huffington Post.* May 2016. RP

As you may know, I am very concerned about global warming and global climate change. **The science of global warming is long settled**, and one may wonder why the United States, nominally the most technologically advanced country in the world, is not the world leader in addressing the threats enumerated by the U.S. military, the United Nations’ Intergovernmental Panel on Climate Change (IPCC), and others. I hope people will take the facts we face into account as they head to the polls this year. The ocean is warming and expanding. This effect alone will displace millions of people. The effects on agriculture, water supplies, and weather patterns will create a great many problems for a great many of us. By my reckoning, our delay, and the reluctance of conservative presidential candidates to embrace the problem and discuss it is a result of the diligent effort of a handful of climate change deniers. They have been especially successful at introducing the idea that routine predictive uncertainty, e.g. plus or minus two percent, is somehow the same as plus or minus one hundred percent. **It isn’t, and the deniers are wrong**. **Since the presentation of the facts and science concerning global warming and climate change have been heretofore insufficient to motivate enough of us voters, I am now challenging the deniers directly. By showing enough people the techniques and ignorance of the deniers, I believe we can make warming and climate change a campaign issue**, which will swing the upcoming U.S. presidential election in favor of a candidate who is not out of touch with our worldwide climate situation. **Both Marc Morano and Joe Bastardi are well-known climate change deniers** (Mr. Morano said once that he prefers the term “extreme doubter.”) In an [opinion piece](http://patriotpost.us/opinion/38793) in the unusual Patriot Post online publication, Mr. Bastardi insisted that there is nothing unusual going on in our Earth’s atmosphere and oceans. In time for Earth Day, I issued a [video challenge](http://www.huffingtonpost.com/entry/bill-nye-bets-joe-bastardi-20k-climate-change_us_571589a5e4b0018f9cbaee3a) that was published on The Huffington Post. I offered and still offer to bet Mr. Bastardi $10,000 that this year 2016 will be among the top ten warmest years on record. I offer him another $10,000 that the decade 2010-2020 will prove to be the warmest on record. Mr. Bastardi wrote a [second piece](https://patriotpost.us/opinion/42312) in which he re-stated his belief that carbon dioxide has little effect on global temperatures. Incidentally, despite publishing a “midday digest” every day, no one at the Patriot Post has responded to my enquiries. Carbon dioxide has an enormous effect on planetary temperatures. Climate change was discovered in recent times by comparing the Earth to the planet Venus. When Mr. Bastardi and I appeared on the Bill O’Reilly show six years ago, Mr. Bastardi said, “[He doesn’t] believe we have the proper measurements of Venus from over 10 billion years ago. So [he] can’t tell the relationship with Earth.” In planetary science we can tell several important things. Venus is extremely hot because of the greenhouse effect (and it’s far less than 10 billion years old). The Earth is warm enough to have liquid water, because of the same greenhouse effect. I remind you that Mr. Bastardi’s apparent belief that carbon dioxide has nothing to do with the Earth’s global temperatures is absolutely wrong. Incidentally neither Mr. Bastardi Mr. Morano would take either wager I offered. They both admit the world is getting warmer fast. Mr. Morano just said no, he would not take the bets. In complementary fashion, Mr. Bastardi did not address my offers. Instead, he proposed a new wager based on changes that may or may not occur over a single year. You may have seen his article from November 2015 in which he includes two graphs of the world’s temperature over time. I believe anyone able to think critically can see that the graphs and data Mr. Bastardi’s cited in this previous article are irrelevant. In his first graph, the four and half billion-year time scale is too long to reckon temperature changes over the last two and half centuries. In his second graph, the timescale is too short to accurately depict the overall rate of global temperature change. He has hidden or masked the phenomenon of global warming and climate change from the readers, or perhaps even from himself. Mr. Bastardi suggested that I’ve been brainwashed and that I am irrational. While such claims may or may not be true, rather than address my proposed wager he changed the subject several times. Among the adjacent subjects he included were: nuclear energy, Middle East oil, creationist Roy Spencer’s satellite measurements, veterans’ health benefits, money used to study whether the Earth is flat or round, professors improving fusion [reactor] output, no use of fossil fuels for a year, and television commercials for satellite dish service. Contrary to Mr. Bastardi’s statement, carbon dioxide certainly does affect the Earth’s climate in a big way. I hope you will consider both Mr. Morano’s and Mr. Bastardi’s tendency to change the subject along with their misjudgment, or apparent misjudgment, of atmospheric and planetary science as you head to the polls this year.

#### Open discussion of climate change is key to change people’s minds, and galvanize them behind the cause.

**Harris:** Harris, Tom [Contributor, The Daily Caller] “Free Speech Must Apply To Climate Change Debate.” *The Daily Caller.* June 2016. RP

**The debate over the causes and consequences of climate change is one of the world’s most important discussions**. At stake are literally trillions of dollars, millions of jobs, and, if climate activists are right, the fate of the environment and even our civilization. **Consequently, we need to think clearly about what is being said by all parties in the discussion.** For example, the belief that scientists discover truths, or as the United Nations often puts it, conclusions that are “unequivocal,” is utter nonsense. It is not even possible. In the controversy about the now defunct California Climate Science Truth and Accountability Act of 2016 virtually no one on either side of the debate explained that science is never about truth. Truth applies to mathematics but never to our findings about nature, which are merely educated opinions based on scientists’ interpretations of observations. Since observations always have some degree of uncertainty, they cannot prove anything true. This was the central theme of the ‘[science wars](http://www.thegreatcourses.com/courses/science-wars-what-scientists-know-and-how-they-know-it.html)’ of the late 20th century. In that conflict the intellectual left were the skeptics of the idea that we could have absolute knowledge in science. But this expected approach— skepticism and relativism from liberals and absolutism from conservatives—has been turned on its head in the global warming debate. While right-wingers call for open debate about the causes of climate change, the Left consider such discussion intolerable, even criminal, and act as if we know the future of climate decades in advance, a position that is indefensible, scientifically and philosophically. At first, it was mostly scientifically illiterate activists who made claims to certainty about future climate states. But increasingly, more scientists now use inappropriately absolute language as well, or say little about the vast uncertainties in the science. They apparently fear alienating their intellectual fellow travelers, peers who, even if they are unfamiliar with the science, support the climate movement for other reasons. Other left-wing academics who understand the illogic of confident assertions about such a complex and rapidly evolving field also say nothing rather than undermine positions that they support personally, ideals such as social justice and environmental protection. So they sell out philosophically, declining to employ the skepticism they would normally practice. This is a slippery slope. **Unquestioning acceptance of ‘truth’ in science—truth in the sense of being universal, necessary and certain—has impeded human progress throughout history**. For example, when the Greco-Egyptian writer Claudius Ptolemy proposed his Earth-centered system, he did not say it was physical astronomy, a true description of how the universe actually worked. He promoted it as mathematical astronomy, a model that worked well for astrology, astronomical observations, and creating calendars. It was the ultra-conservative Catholic Church that, relying on a literal interpretation of the Bible, promoted the Ptolemaic system as truth to be questioned at one’s peril. This was why Nicolaus Copernicus, a Canon in the Church, waited until he was on his death bed before he allowed his revolutionary book showing the Sun to be the center of the universe to be published, even though the text was completed 30 years earlier. This is also why Galileo ran into so much trouble when he claimed that the Church was wrong and that Copernicanism was the truth, a position that Galileo could not really know with certainty either. Similarly, the assumed, unquestionable truth of Isaac Newton’s laws of motion and law of universal gravitation eventually acted to slow the advancement of science until Einstein showed that there were important exceptions to the laws. When authorities preach truth about science, progress stops. The greatest misinformation in the climate change debate is that we currently know, or even can know, the future of a natural phenomenon as complex as climate change. University of Western Ontario professor Dr. Chris Essex, an expert in climate models, lays it out clearly: “Climate is one of the most challenging open problems in modern science. Some knowledgeable scientists believe that the climate problem can never be solved.” **Yet progressives often label Essex and other climate experts who hold similar points of view as ‘deniers,’ implying they are as misguided as those who deny the Holocaust.** When it comes to climate change, tolerance of alternative perspectives, a much vaunted hallmark of liberalism, vanishes. **They should welcome, not condemn, questioning of the status quo**. Science advances through fearless investigation, not frightened acquiescence to fashionable thinking. Albert Einstein once said, “Whoever undertakes to set himself up as a judge of truth and knowledge is shipwrecked by the laughter of the gods.” It might be humorous to the gods, but when eco-activists succeed in convincing elected officials to try to criminalize free speech and open scientific enquiry, everyone—left, right and center—must object vigorously. Totalitarianism, not freedom, dominated most of human history. It will dominate our future too if we let eco-extremists have their way.

## Subaltern Counterpublics PIC

### Theory to Write

#### A] The neg may not fiat that students join subaltern counterpublics – they may only fiat the creation of them by public colleges and universities

#### A] Counterplans that defend only restricting speech on a subset of the campus must be unconditional. To clarify, no condo PICs that limit speech to an area, like counterpublics

### Top Level

Open DA Blocks

## TPM

#### **Perm do the counterplan -- time, place, and manner restrictions are constitutionally fine – this speech isn’t constitutionally protected.**

**The Legal Dictionary:** The Legal Dictionary “Time Place and Manner Restrictions.” RP

**The** [**First Amendment**](http://legal-dictionary.thefreedictionary.com/first+amendment) **to the U.S. Constitution guarantees** [**Freedom of Speech**](http://legal-dictionary.thefreedictionary.com/Freedom+of+Speech). This guarantee generally safeguards the right of individuals to express themselves without governmental restraint. **Nevertheless, the Free Speech Clause of the First Amendment is not absolute**. It has never been interpreted to guarantee all forms of speech without any restraint whatsoever. **Instead, the U.S. Supreme Court has repeatedly ruled that state and federal governments may place reasonable restrictions on the time, place, and manner of individual expression. Time, place, and manner (TPM) restrictions accommodate public convenience and promote order by regulating traffic flow, preserving property interests, conserving the environment, and protecting the administration of justice.**

#### It’s better to debate ideas than keep them hidden – TPM just forces the problem underground.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**Perhaps the most insidious effect of thought restrictions is the removal of offensive thought from public view. I know of no one who argues that speech codes alone will eliminate discriminatory feelings or achieve a condition of equality and harmony on campus. In fact, it is likely that speech restrictions alone will only alter the choice of words or the forum for discussion.** The most blatantly offensive words will disappear; but in their place will come more subtle forms of discourse and newer modes of expression. **The most hateful expressions will be driven underground where they will exist undetected. Surely the values of equality and harmony will be better served when offensive thoughts are exposed to the public and their speakers are forced to answer to public criticism and disapproval. And surely the ugliness of a thought is a reason to expose rather than hide it.**

#### That still links to the Aff – zones are arbitrary.

**Hudson:** Hudson, David L. [David L. Hudson Jr. is a First Amendment expert and law professor who serves as First Amendment Ombudsman for the Newseum Institute’s First Amendment Center. He contributes research and commentary, provides analysis and information to news media. He is an author, co-author or co-editor of more than 40 books, including Let The Students Speak: A History of the Fight for Free Expression in American Schools (Beacon Press, 2011), The Encyclopedia of the First Amendment (CQ Press, 2008) (one of three co-editors), The Rehnquist Court: Understanding Its Impact and Legacy (Praeger, 2006), and The Handy Supreme Court Answer Book (Visible Ink Press, 2008). He has written several books devoted to student-speech issues and others areas of student rights. He writes regularly for the ABA Journal and the American Bar Association’s Preview of United States Supreme Court Cases. He has served as a senior law clerk at the Tennessee Supreme Court, and teaches First Amendment and Professional Responsibility classes at Vanderbilt Law School and various classes at the Nashville School of Law], "How Campus Policies Limit Free Speech," *Huffington Post*. 2016. RP

Restricting where students can have free speech. **In addition, many colleges and universities have free speech zones. Under these policies, people can speak at places of higher learning in only certain, specific locations or zones**. While there are remnants of these policies from the 1960s, they grew in number in the late 1990s and early 2000s as a way for administrators to deal with controversial expression. **These policies may have a seductive appeal for administrators, as they claim to advance the cause of free speech. But, free speech zones often limit speech by relegating expression to just a few locations**. For example, some colleges began by having only two or three free speech zones on campus. The idea of zoning speech is not unique to colleges and universities. Government officials have sought to diminish the impact of different types of expression by zoning adult-oriented expression, antiabortion protestors and political demonstrators outside political conventions**. In a particularly egregious example, a student at Modesto Junior College in California named Robert Van Tuinen was prohibited from handing out copies of the United States Constitution on September 17, 2013 - the anniversary of the signing of the Constitution. Van Tuinen was informed that he could get permission to distribute the Constitution if he preregistered for time in the “free speech zone.”** But later, Van Tuinen was told by an administrator that he would have to wait, possibly until the next month. In the words of First Amendment expert Charles Haynes, “the entire campus should be a free speech zone**.**” In other words, the default position of school administrators should be to allow speech, not limit it. Zoning speech is troubling, particularly when it reduces the overall amount of speech on campus. And many free speech experts view the idea of a free speech zone as “moronic and oxymoronic.” **College or university campuses should be a place where free speech not only survives but thrives.**

## Climate Denialism PIC

#### Bans on climate denialism cause backlash against movements to stop climate change.

**Watts:** Watts, Anthony [Blogger and writer about climate change problems] “They’ve lost the argument: Petition to ban ‘climate deniers’ from Facebook.” Watts Up With That? June 2015. RP

**Breitbart** [**brought**](http://climatenexus.us4.list-manage1.com/track/click?u=d1f5797e59060083034310930&id=eb5560593d&e=9de57176c0) **our attention to a petition that calls on Facebook to ban climate change denial pages. With only 3,326 signatories out of a goal of 500,000, it doesn’t seem like the petition is going to accomplish its goal—and probably for good reason. As bad as climate denial is, shutting them out of Facebook would justify their persecution complex, and might engender more sympathy for their position**. Really, who treats Facebook as a place to discuss science? **For the most part, we think denier groups are small enough that they pretty much serve as something to point and laugh at, because they’re not likely to be gain many converts when compared to the audience of Murdoch’s media empire**. That said, the petition actually has a point. Facebook doesn’t have [too many rules,](http://climatenexus.us4.list-manage.com/track/click?u=d1f5797e59060083034310930&id=58567fd45a&e=9de57176c0) but the very last one reads that, “Pages must not contain false, misleading, fraudulent or deceptive claims or content.” The question then, is whether or not claims that say global warming has stopped and an ice age is imminent, that climate scientists are fudging the data, or that Climategate showed wrongdoing would all fall under false, misleading and deceptive claims. We don’t know what else you would call them, so perhaps a ban would be warranted after all. Though surprising, Facebook wouldn’t be the first social media site to crack down on climate deniers. In 2013, the science page of the social media giant reddit [announced](http://climatenexus.us4.list-manage.com/track/click?u=d1f5797e59060083034310930&id=c58a9c2bf3&e=9de57176c0) that any claims contradicting the consensus on climate change, evolution and vaccines must be supported by a peer-reviewed citation. Given that climate denial is almost never peer-reviewed, this resulted in a de facto ban on posts from climate change deniers. Will Facebook follow suit? Probably not. But under their rules, it sounds like they could.

#### Non unique – climate change denialism low now

**Saad and Jones:** Lydia Saad and Jeffrey M. Jones [Contributors, Gallup] “U.S. Concern About Global Warming at Eight-Year High.” *Gallup.* March 2016. RP

PRINCETON, N.J. -- **Americans are taking global warming more seriously than at any time in the past eight years, according to several measures in Gallup's annual environment poll. Most emblematic is the rise in their stated concern about the issue. Sixty-four percent of U.S. adults say they are worried a "great deal" or "fair amount" about global warming, up from 55% at this time last year and the highest reading since 2008.** Mirroring this, the March 2-6 survey -- conducted at the close of what has reportedly been the warmest winter on record in the U.S. -- documents a slight increase in the percentage of Americans who believe the effects of global warming have already begun. **Nearly six in 10 (59%) today say the effects have already begun, up from 55% in March 2015.** Another 31%, up from 28% in 2015, believe the effects are not currently manifest but will be at some point in the future. **That leaves only 10% saying the effects will never happen**, down from 16% last year and the lowest since 2007. A third key indicator of public concern about global warming is the percentage of U.S. adults who believe the phenomenon will eventually pose a serious threat to them or their way of life. Forty-one percent now say it will, up from 37% in 2015 and, by one point, the highest in Gallup's trend dating back to 1997. Americans' clear shift toward belief in global warming follows a winter that most described in the same poll as being [unusually warm](http://www.gallup.com/poll/189920/americans-attribute-warm-winter-weather-climate-change.aspx?g_source=winter%20warm&g_medium=search&g_campaign=tiles). Sixty-three percent say they experienced an unusually warm winter, and the majority of this group ascribes the warm weather pattern to human-caused climate change.

#### Tons of thumpers – national media like Fox News will always inundate people with false information about climate change anyways.

#### Warming is too far gone to fix – their impacts are inevitable – also, China is a huge alt cause.

**Lochhead March 7:** Lochhead, Carolyn [Contributor, Times Union] “Is it too late to save Earth?” *Times Union.* March 7, 2017. RP

**Within the lifetimes of today's children, scientists say, the climate could reach a state unknown in civilization. In that time, global carbon dioxide emissions from burning fossil fuels are on track to exceed the limits that scientists believe could prevent catastrophic warming. Carbon dioxide levels are higher than they have been in 15 million years. The Arctic, melting rapidly and probably irreversibly, has reached a state that the Vikings would not recognize**. "We are poised right at the edge of some very major changes on Earth," said [Anthony Barnosky](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Anthony+Barnosky%22), a [University of California](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22University+of+California%22), Berkeley professor of biology who studies the interaction of climate change with population growth and land use. "We really are a geological force that's changing the planet." The Arctic melt is occurring as the planet is just 0.8 degree Celsius (1.4 degrees Fahrenheit) warmer than it was in pre-industrial times. At current trends, Earth could warm by 4 degrees Celsius in 50 years, according to a November [World Bank](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22World+Bank%22) report. The coolest summer months would be much warmer than today's hottest summer months, the report said. "The last time Earth was 4 degrees warmer than it is now was about 14 million years ago," Barnosky said. **Experts said it is technically feasible to halt such changes by nearly ending the use of fossil fuels. It would require a wholesale shift to renewable fuels** that the United States, let alone China and other developing countries, appears unlikely to make. Indeed, many Americans do not believe humans are changing the climate. "Science is not opinion, it's not what we want it to be," said [Katherine Hayhoe](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Katherine+Hayhoe%22), an evangelical Christian, climatologist at [Texas Tech University](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Texas+Tech+University%22) and lead author on the draft climate assessment report issued this month by the [National Climate Assessment and Development Advisory Committee](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22National+Climate+Assessment+and+Development+Advisory+Committee%22). "You can't make a thermometer tell you it's hotter than it is," said Hayhoe, who with her husband, a linguist and West Texas pastor, has written a book on climate change addressed to evangelicals. "And it's not just about thermometers or satellite instruments," she said. "It's about looking in our own back yards, when the trees are flowering now compared to 30 years ago, what types of birds and butterflies and bugs we see that ... used to be further south." Robins are arriving two weeks early in Colorado. Frogs are calling sooner in Ithaca. The Sierra Nevada snowpack is melting earlier. Cold snaps like the one gripping the East still happen, but less often. Scientists are loath to pin a specific event such as Hurricane Sandy or floods in England to global warming. But "the risk of certain extreme events, such as the 2003 European heat wave, the 2010 Russian heat wave and fires, and the 2011 Texas heat wave and drought has ... doubled or more," said [Michael Wehner](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Michael+Wehner%22), a staff scientist at [Lawrence Berkeley National Laboratory](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Lawrence+Berkeley+National+Laboratory%22) and co-author of the climate assessment report. "Some of the changes that have occurred are permanent on human time scales." A key question is when greenhouse gas emissions might reach a tipping point, where changes become self-reinforcing and out of human control. Arctic sea ice reflects the sun. As it melts, the dark ocean absorbs more solar heat, raising temperatures. Similarly, the Greenland ice sheet is melting rapidly, reducing reflectivity, and possibly speeding up the melting of the West Antarctic ice sheet. The northern permafrost is thawing, with the potential to release methane, a potent greenhouse gas, and carbon dioxide stored in soils. These can produce sudden, so-called nonlinear changes that are hard to predict. "**We could be at a tipping point where the climate just abruptly warms,**" said [Mark Z. Jacobsen](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Mark+Z.+Jacobsen%22), director of [Stanford University](http://www.timesunion.com/search/?action=search&channel=news&inlineLink=1&searchindex=gsa&query=%22Stanford+University%22)'s atmosphere/energy program. An Arctic melting "would make it more difficult for the Northern hemisphere to cool down, so all Greenland would be next. Greenland stores about five to seven meters of sea level." UC Berkeley's Barnosky said tipping points could come earlier than anticipated when factoring in population growth and land use. More than 40 percent of Earth's land surface has been covered by farms and cities. Much of the rest is cut by roads. By 2025, the percentage of development could reach half, a level that on smaller scales has led to ecological crashes. "It's just sort of simple math: the more people, the more footprint," Barnosky said. "**If we're still on a fossil fuel economy in 50 years, there is no hope for doing anything about climate change. It will be here in such a dramatic way that we won't recognize the planet we're on."**

#### Debating and challenging climate deniers is more effective than suppressing them – it makes them look foolish.

**Nye:** Nye, Bill [Scientist, engineer, comedian, author, legend and inventor] “Why I Choose to Challenge Climate Change Deniers.” *The Huffington Post.* May 2016. RP

As you may know, I am very concerned about global warming and global climate change. **The science of global warming is long settled**, and one may wonder why the United States, nominally the most technologically advanced country in the world, is not the world leader in addressing the threats enumerated by the U.S. military, the United Nations’ Intergovernmental Panel on Climate Change (IPCC), and others. I hope people will take the facts we face into account as they head to the polls this year. The ocean is warming and expanding. This effect alone will displace millions of people. The effects on agriculture, water supplies, and weather patterns will create a great many problems for a great many of us. By my reckoning, our delay, and the reluctance of conservative presidential candidates to embrace the problem and discuss it is a result of the diligent effort of a handful of climate change deniers. They have been especially successful at introducing the idea that routine predictive uncertainty, e.g. plus or minus two percent, is somehow the same as plus or minus one hundred percent. **It isn’t, and the deniers are wrong**. **Since the presentation of the facts and science concerning global warming and climate change have been heretofore insufficient to motivate enough of us voters, I am now challenging the deniers directly. By showing enough people the techniques and ignorance of the deniers, I believe we can make warming and climate change a campaign issue**, which will swing the upcoming U.S. presidential election in favor of a candidate who is not out of touch with our worldwide climate situation. **Both Marc Morano and Joe Bastardi are well-known climate change deniers** (Mr. Morano said once that he prefers the term “extreme doubter.”) In an [opinion piece](http://patriotpost.us/opinion/38793) in the unusual Patriot Post online publication, Mr. Bastardi insisted that there is nothing unusual going on in our Earth’s atmosphere and oceans. In time for Earth Day, I issued a [video challenge](http://www.huffingtonpost.com/entry/bill-nye-bets-joe-bastardi-20k-climate-change_us_571589a5e4b0018f9cbaee3a) that was published on The Huffington Post. I offered and still offer to bet Mr. Bastardi $10,000 that this year 2016 will be among the top ten warmest years on record. I offer him another $10,000 that the decade 2010-2020 will prove to be the warmest on record. Mr. Bastardi wrote a [second piece](https://patriotpost.us/opinion/42312) in which he re-stated his belief that carbon dioxide has little effect on global temperatures. Incidentally, despite publishing a “midday digest” every day, no one at the Patriot Post has responded to my enquiries. Carbon dioxide has an enormous effect on planetary temperatures. Climate change was discovered in recent times by comparing the Earth to the planet Venus. When Mr. Bastardi and I appeared on the Bill O’Reilly show six years ago, Mr. Bastardi said, “[He doesn’t] believe we have the proper measurements of Venus from over 10 billion years ago. So [he] can’t tell the relationship with Earth.” In planetary science we can tell several important things. Venus is extremely hot because of the greenhouse effect (and it’s far less than 10 billion years old). The Earth is warm enough to have liquid water, because of the same greenhouse effect. I remind you that Mr. Bastardi’s apparent belief that carbon dioxide has nothing to do with the Earth’s global temperatures is absolutely wrong. Incidentally neither Mr. Bastardi Mr. Morano would take either wager I offered. They both admit the world is getting warmer fast. Mr. Morano just said no, he would not take the bets. In complementary fashion, Mr. Bastardi did not address my offers. Instead, he proposed a new wager based on changes that may or may not occur over a single year. You may have seen his article from November 2015 in which he includes two graphs of the world’s temperature over time. I believe anyone able to think critically can see that the graphs and data Mr. Bastardi’s cited in this previous article are irrelevant. In his first graph, the four and half billion-year time scale is too long to reckon temperature changes over the last two and half centuries. In his second graph, the timescale is too short to accurately depict the overall rate of global temperature change. He has hidden or masked the phenomenon of global warming and climate change from the readers, or perhaps even from himself. Mr. Bastardi suggested that I’ve been brainwashed and that I am irrational. While such claims may or may not be true, rather than address my proposed wager he changed the subject several times. Among the adjacent subjects he included were: nuclear energy, Middle East oil, creationist Roy Spencer’s satellite measurements, veterans’ health benefits, money used to study whether the Earth is flat or round, professors improving fusion [reactor] output, no use of fossil fuels for a year, and television commercials for satellite dish service. Contrary to Mr. Bastardi’s statement, carbon dioxide certainly does affect the Earth’s climate in a big way. I hope you will consider both Mr. Morano’s and Mr. Bastardi’s tendency to change the subject along with their misjudgment, or apparent misjudgment, of atmospheric and planetary science as you head to the polls this year.

#### Open discussion of climate change is key to change people’s minds, and galvanize them behind the cause.

**Harris:** Harris, Tom [Contributor, The Daily Caller] “Free Speech Must Apply To Climate Change Debate.” *The Daily Caller.* June 2016. RP

**The debate over the causes and consequences of climate change is one of the world’s most important discussions**. At stake are literally trillions of dollars, millions of jobs, and, if climate activists are right, the fate of the environment and even our civilization. **Consequently, we need to think clearly about what is being said by all parties in the discussion.** For example, the belief that scientists discover truths, or as the United Nations often puts it, conclusions that are “unequivocal,” is utter nonsense. It is not even possible. In the controversy about the now defunct California Climate Science Truth and Accountability Act of 2016 virtually no one on either side of the debate explained that science is never about truth. Truth applies to mathematics but never to our findings about nature, which are merely educated opinions based on scientists’ interpretations of observations. Since observations always have some degree of uncertainty, they cannot prove anything true. This was the central theme of the ‘[science wars](http://www.thegreatcourses.com/courses/science-wars-what-scientists-know-and-how-they-know-it.html)’ of the late 20th century. In that conflict the intellectual left were the skeptics of the idea that we could have absolute knowledge in science. But this expected approach— skepticism and relativism from liberals and absolutism from conservatives—has been turned on its head in the global warming debate. While right-wingers call for open debate about the causes of climate change, the Left consider such discussion intolerable, even criminal, and act as if we know the future of climate decades in advance, a position that is indefensible, scientifically and philosophically. At first, it was mostly scientifically illiterate activists who made claims to certainty about future climate states. But increasingly, more scientists now use inappropriately absolute language as well, or say little about the vast uncertainties in the science. They apparently fear alienating their intellectual fellow travelers, peers who, even if they are unfamiliar with the science, support the climate movement for other reasons. Other left-wing academics who understand the illogic of confident assertions about such a complex and rapidly evolving field also say nothing rather than undermine positions that they support personally, ideals such as social justice and environmental protection. So they sell out philosophically, declining to employ the skepticism they would normally practice. This is a slippery slope. **Unquestioning acceptance of ‘truth’ in science—truth in the sense of being universal, necessary and certain—has impeded human progress throughout history**. For example, when the Greco-Egyptian writer Claudius Ptolemy proposed his Earth-centered system, he did not say it was physical astronomy, a true description of how the universe actually worked. 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Albert Einstein once said, “Whoever undertakes to set himself up as a judge of truth and knowledge is shipwrecked by the laughter of the gods.” It might be humorous to the gods, but when eco-activists succeed in convincing elected officials to try to criminalize free speech and open scientific enquiry, everyone—left, right and center—must object vigorously. Totalitarianism, not freedom, dominated most of human history. It will dominate our future too if we let eco-extremists have their way.

# Radical Democracy NC Blocks

## Generics

### Equality/Consequentialism > Generic Phil

Omitted

### Phil Turns

#### Speech codes give the government arbitrary power to decide what is and isn’t offensive – it’s epistemically suspect

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

By now, it has become a veritable cliché that the solution for harms that flow from speech is more speech. And while this cliché is often true, many scholars believe that the marketplace of ideas does not correct errors well. **However, there is little indication that lawmakers are better equipped to perceive and correct the harms caused by speech** (thus allowing greater scrutiny by the courts than with conduct harms). **Even Brian Leiter, who doubts the specialness of most speech, acknowledges that the alternative—letting the government decide when speech harms are too great—raises the problem of the epistemic arbiter.** The government may be no more capable of sorting out harmful speech from helpful speech, and mitigating the harms of speech, than individuals are. **Governmental regulation of the expressive elements of speech renders speech vulnerable to censorship based on impermissible governmental motives, like viewpoint discrimination or arbitrary and subjective understandings of harm, and creates more difficult line- drawing problems.**

#### Speech codes aren’t a pragmatic strategy – they construct speech as static when in fact it’s always changing

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

**State intervention to remedy speech harms is also problematic because the question of whether a particular instance of speech causes harm changes with time, and with society’s perception of that speech. Because speech is highly context dependent, the harm caused by speech is more malleable than the harm caused by conduct. Indeed, outlawing speech as being harmful often compounds the sense of harm listeners feel from the speech**; this phenomenon argues in favor of the strong-listener model. It is far more difficult, and often counterproductive, to weigh the harms caused by speech and balance them against speech’s virtues.

#### Restricting speech is a contradiction because the restriction itself uses speech!

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

More critically, **the very harms that flow from speech are intertwined with the way we resist speech-based harms.** The malleability of speech harms and the diffuse nature of those responsible for speech harms allow speech to serve unique and important functions in society. **Speech plays a special role in catalyzing action and change through diffuse parties without itself manifesting change. Speech is how we convince people that the harms that flow from speech are harmful, and also how we change others’ (and our own) perception of what is harm and what it means to be harmed**. Speech is one of the few ways society evolves in its consideration of what constitutes harm.

#### Restricting speech violates autonomy by holding people responsible for unintended perceptions of speech

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

3. Autonomy and Responsibility. — Distinguishing speech harms from conduct harms also promotes the view that adults generally have the capacity to lead autonomous lives and, absent extraordinary influences, they in fact do so. **Autonomy, or at least autonomy in the “negative” sense that would prevent governmental suppression of speech**, requires the normative conception of people as largely capable of resisting coercion, emotional manipulation, or temporary distortion of judgment that stem just from speech. A social climate that accepts individuals as autonomous in this way is more likely to both assign them responsibility for their actions and allow them agency to make voluntary decisions. A climate in which harms that flow from speech are regulable denies agency in ways that regulating conduct harms does not, because it presumes that others can overtake the sphere of our own minds, and it absolves us of responsibility for managing our emotions. This climate has negative implications for our abilities to consent to voluntary arrangements and also undermines ideas of legal culpability in both tort and criminal law. **In a pro-agency, pro-autonomy world, it is unfair and unnecessarily restrictive to hold a speaker responsible for acts neither intended by nor condoned by the speaker, because speech harms are often caused by diffuse parties or intermediaries. Speech has unique characteristics that create important reasons not to place blame on the speaker for harm that arises.** Tort law, which already contains sophisticated frame works for conceptualizing blame and responsibility, provides a useful concept: proximate cause. Tort law requires that a defendant be both a but-for cause and a proximate cause (or culpable party) in order to impose liability. **This sense of culpability is often based on what is reasonably foreseeable, in a normative sense, and contingent upon the foreseeability of the actions of other parties who contribute to the harm. Foreseeability concepts break down in the face of speech harms. When the harm caused by speech is context dependent, it is more diffi cult to foresee the harm it will cause, as that harm changes over time and in different contexts. And, conversely, it is usually predictable that some one, even a reasonable person, may be bothered by certain speech, even if simply because he objects to the speech**. Instead of blaming the speaker, when the harm caused by speech is largely emotional in nature, the listener should be deemed responsible for managing his own emo tional response and thus mitigating the harm caused. When the harm is per petuated by diffuse agents, for example in a context of reputational harm where the harm is created when each new audience member is exposed to the speech, there are intervening causal forces that militate against holding the speaker liable except in cases of malicious falsity. **Diffusion also happens when harm is perpetuated in a way wholly separate from the speaker’s harm, for example when a viewer of a violent movie copies an act committed in that movie.** Analogizing speech harms to conduct harms would preserve the specialness of speech and its important benefits to society. Regulating speech because it agitates others through diffuse processes, or because it causes emotional upset to a listener, necessarily undermines the reason that speech is special—because of its ability to impact others in an attenuated way, through the cognitive or emotional processes of a listener or through diffuse parties ruminating upon the speech, without causing specific or tangible harms. However, when speech begins to resemble conduct, such as when it impairs discrete, material interests through direct processes and through the fault mostly of the speaker, then courts should consider those conduct-like harms in their consequentialist calculus.

## Paternalism Good

#### Limits on free expression create learned helplessness – people are unable to think outside of the bubble colleges create.

**Shuchman:** Shuchman, Daniel [Chairman of the Foundation for Individual Rights in Education] “Free Thought Under Siege.” *The Wall Street Journal.* November 2016. RP

**Rancorous trends such as microaggressions, safe spaces, trigger warnings and intellectual intolerance have taken hold at universities with breathtaking speed.** Last year’s controversy over Halloween costumes at Yale led to the departure of two respected faculty members, and this year made the fall festival a flashpoint of conflict at campuses across the country. The recent explosion in the number of university administrators, coupled with an environment of perpetual suspicion—the University of Florida urges students to report on one another to its “Bias Education and Response Team”—drives students who need to resolve normal tensions in human interaction to instead seek intervention by mediators, diversity officers, student life deans or lawyers. **As Frank Furedi compellingly argues in this deeply perceptive and important book, these phenomena are not just harmless fads acted out by a few petulant students and their indulgent professors in an academic cocoon. Rather, they are both a symptom and a cause of malaise and strife in society at large. At stake is whether freedom of thought will long survive and whether individuals will have the temperament to resolve everyday social and workplace conflicts without bureaucratic intervention or litigation. Mr. Furedi, an emeritus professor at England’s University of Kent, argues that the ethos prevailing at many universities on both sides of the Atlantic is the culmination of an infantilizing paternalism that has defined education and child-rearing in recent decades. It is a pedagogy that from the earliest ages values, above all else, self-esteem, maximum risk avoidance and continuous emotional validation and affirmation**. (Check your child’s trophy case.) Helicopter parents and teachers act as though “fragility and vulnerability are the defining characteristics of personhood.”**The devastating result: Young people are raised into an “eternal dependency.”** Parenting experts and educators insist that the views of all pupils must be unconditionally respected, never judged, regardless of their merit. They wield the unassailable power of a medical warning: **Children, even young adults, simply can’t handle rejection of their ideas, or hearing ones that cause the slightest “discomfort,” lest they undergo “trauma.”** It is not surprising to Mr. Furedi that today’s undergraduates, having grown up in such an environment, should find any serious criticism, debate or unfamiliar idea to be “an unacceptable challenge to their personas.” **He cites a legion of examples from across the Western world, but one Brown University student perhaps epitomizes the psyche: During a campus debate, she fled to a sanctioned “safe space” because “I was feeling bombarded by a lot of viewpoints that really go against my dearly and closely held beliefs.”**

#### Cross apply Debrabander from the Aff – people have to eventually learn to become mature people and college is a chance to learn

#### Turn – people are no longer kids when they’re in college – the neg fails to set a line at which point people should start learning – it’s college or never.

## iLaw

### Framework

Omitted

### Contention

#### Turn – free speech is guaranteed in international treaties

**Howard:** Howard, Jeff “Article 19: freedom of expression anchored in international law.” February 2012. RP

**The International Covenant on Civil and Political Rights (ICCPR) is the multilateral treaty agreement central to anchoring freedom of expression in international human rights law. The vast majority of the world’s nations have both signed and ratified the treaty**. Nations that have signed but not ratified include China, Comoros, Cuba, Nauru, Palau, Sao Tome and Principe, and Saint Lucia. Nations that have neither signed nor ratified include Saudi Arabia, Antigua and Barbuda, Bhutan, Brunei, Myanmar, Fiji, Kiribati, Malaysia, the Marshall Islands, Micronesia, Oman, Qatar, Saint Kitts and Nevis, Singapore, the Solomon Islands, Tonga, Tuvalu, the United Arab Emirates and the Vatican. But what does it mean to be a signatory or a ratifying party to the ICCPR? **And if your country is a party to the ICCPR (see** [**here**](http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en) **to confirm), how might you personally use it to advance your individual right to free speech?**

#### No link – they say iLaw bans hate speech, but hate speech isn’t constitutionally protected

**Delgado:** Delgado, Richard [J.D. University of California, Berkeley, 1974. Professor of Law, UCLA Law School.] “WORDS THAT WOUND: A TORT ACTION FOR RACIAL INSULTS, EPITHETS, AND NAME-CALLING.” *Harvard Civil Rights Civil Liberties Law Review.* Volume 17. 1982. RP

**The government also has an interest in regulating the use of words harmful in themselves. In *Chaplinsky v. New Hampshire*, the United States Supreme Court stated that words which "by their very utterance inflict injury or tend to incite an immediate breach of the peace" are not protected by the first amendment.241** **Racial insults, and even some of the words which might be used in a racial insult, inflict injury by their very utterance**. 2 Words such as "nigger" and "spick" are badges of degradation even when used between friends; these words have no other connotation.

#### No link – their evidence isnt about colleges

## Virtue

### Framework

Omitted

### Contention

#### Turn – the neg kills moral development.

**Shuchman:** Shuchman, Daniel [Chairman of the Foundation for Individual Rights in Education] “Free Thought Under Siege.” *The Wall Street Journal.* November 2016. RP

**Rancorous trends such as microaggressions, safe spaces, trigger warnings and intellectual intolerance have taken hold at universities with breathtaking speed.** Last year’s controversy over Halloween costumes at Yale led to the departure of two respected faculty members, and this year made the fall festival a flashpoint of conflict at campuses across the country. The recent explosion in the number of university administrators, coupled with an environment of perpetual suspicion—the University of Florida urges students to report on one another to its “Bias Education and Response Team”—drives students who need to resolve normal tensions in human interaction to instead seek intervention by mediators, diversity officers, student life deans or lawyers. **As Frank Furedi compellingly argues in this deeply perceptive and important book, these phenomena are not just harmless fads acted out by a few petulant students and their indulgent professors in an academic cocoon. Rather, they are both a symptom and a cause of malaise and strife in society at large. At stake is whether freedom of thought will long survive and whether individuals will have the temperament to resolve everyday social and workplace conflicts without bureaucratic intervention or litigation. Mr. Furedi, an emeritus professor at England’s University of Kent, argues that the ethos prevailing at many universities on both sides of the Atlantic is the culmination of an infantilizing paternalism that has defined education and child-rearing in recent decades. It is a pedagogy that from the earliest ages values, above all else, self-esteem, maximum risk avoidance and continuous emotional validation and affirmation**. (Check your child’s trophy case.) Helicopter parents and teachers act as though “fragility and vulnerability are the defining characteristics of personhood.”**The devastating result: Young people are raised into an “eternal dependency.”** Parenting experts and educators insist that the views of all pupils must be unconditionally respected, never judged, regardless of their merit. They wield the unassailable power of a medical warning: **Children, even young adults, simply can’t handle rejection of their ideas, or hearing ones that cause the slightest “discomfort,” lest they undergo “trauma.”** It is not surprising to Mr. Furedi that today’s undergraduates, having grown up in such an environment, should find any serious criticism, debate or unfamiliar idea to be “an unacceptable challenge to their personas.” **He cites a legion of examples from across the Western world, but one Brown University student perhaps epitomizes the psyche: During a campus debate, she fled to a sanctioned “safe space” because “I was feeling bombarded by a lot of viewpoints that really go against my dearly and closely held beliefs.”**

#### Turn – any speech code is mandated by governments, which fails to allow flourishing – people need to be able to self define and find virtue for themselves.

#### Free speech is key to tolerance.

**Turiano:** Turiano, Mark [Contributor, Foundation for Economic Education] “The Virtues of Free Speech.” *Foundation for Economic Education.* September 1996. RP

**Any persuasive argument for liberty must involve a connection between liberty and human excellence.** The reason for this is clear. An argument for liberty is an argument for its goodness. The ultimate context for all human evaluation of good news is human life. To ask if liberty is good is to seek a connection between it and human goodness or excellence. Does freedom of speech have any value if we take human excellence seriously? I think so. First of all, freedom of speech has a value in the realm of political economy. The ability to speak one’s mind concerning matters of common interest is useful insofar as it helps preserve a more general freedom. A power that is not open to the scrutiny and conscientious objections of those over whom it is exercised is almost certain to be exercised irrationally. The price of liberty, to paraphrase John Philpot Curran, is eternal vigilance. Freedom of speech in this political sense preserves a sphere for the exercise of that vigilance. Freedom of speech is of instrumental value to a jealous love of liberty, without which, freedom of speech is completely impotent. **Freedom of speech concerning political matters is worth preserving because it acts as a check against the arbitrary use of power.** However, considered merely as a political tool, freedom of speech is quite limited. It can only be understood to have a bearing on matters that are of common concern. This is quite compatible with a severe repression of speech about private matters. Freedom of speech in this sense could involve my freedom to exhort my neighbors into barring the opening of an X-rated theater in our neighborhood, or in the suppression of the use of foul language. The question then is can there be a justification for expanding freedom of speech to these other areas? Such a justification must show that the protection of certain types of speech in other, non-political, areas (e.g., the arts and sciences) has a connection to human excellence. And it seems that it does; scientific and artistic achievement seem to be fostered by freedom. How far ought this freedom to extend? The description of sexual function by biologists can be clearly connected to the advancement of learning and maybe even to the curing of disease or preservation of life. The depiction of violence in some artworks might be justified for its cathartic effect. When, for example, Mel Gibson is being disemboweled in Braveheart and refuses to submit as an act of defiance to tyranny, this serves primarily as a representation of fortitude and strength of spirit, and only secondarily as a depiction of human cruelty. The cruelty is conquered by the virtue and is overshadowed by it. What then of the obscene ranting of rap musicians glorifying disregard for law and common decency? Or books and films in which people are senselessly murdered by the sociopathic protagonists, or those which amount to character assassinations of well known individuals based on outright lies and half-truths? Can there be any justification of these things? Two arguments can be made. First, human excellence is most fully manifest in what we might call a morally mature person. This is a person who manifests all of the classical virtues, including courage, prudence, and justice. Now virtue, as such, cannot be compelled, though people can be compelled (that is, forced against their own judgment) to behave in the same way that a virtuous person would. Such behavior is not an expression of virtue. Virtue requires freedom to act in light of one’s own judgment. Granted, certain types of self-expression are defective, but to prohibit them, and thus force people to behave as if they were virtuous, will not make them actually virtuous, since the element of judgment and choice is removed. There are cases where we are justified in compelling people to behave as if they were virtuous. Parents do this to their children in the hope that the children will, by so acting, become virtuous. This is the moral equivalent of putting training wheels on a bicycle. To treat an adult this way is to treat him as if he were not only without virtue but so defective in this regard that force rather than reason is required. Someone who is less than completely virtuous can be persuaded and shamed into behaving and may, given time, actually develop virtue. For example, someone who desires to produce a movie which plausibly presents his fantasies as if they were true, and in so doing dishonors the memory and reputation of a former president, might be dissuaded by means of reason or shame. Using such means is an acknowledgment of a capacity for virtue and is the best means of inculcating it. If because of irrationality or shamelessness, he persists, stronger measures might be called for. Such measures would be in place particularly if significant and foreseeable harm was caused. The bottom line is that since moral maturity requires the freedom to act according to one’s judgment, such freedom should be granted except in extreme cases. The authority of virtue is quite different from the authority of strength. Forcing someone to do or refrain from doing something tends to obscure the beauty of the same action when it is done from virtue. Because freedom, including freedom of speech, favors the development of virtue, it is valuable and ought to be preserved. **There is another persuasive argument that can be made in favor of freedom of speech**. Though this is more of a cultural than a political argument, it is based on the vast difference between being moral and being a moralist. The morally mature person—the virtuous individual—seeks always to do that which is noble and praiseworthy. In doing so, he becomes the standard of moral excellence. The moralist is the person who, in lieu of noble and praiseworthy actions, seeks merely to condemn the base and shameful. The moral man only condemns vice insofar as virtue requires it, the moralist only acts virtuously (or seems to) in order to retain the right to condemn vice. **Toleration is an attitude that acts as a check against moralism**. It should be noted that toleration is not the morally skeptical refusal to make judgments and to condemn certain types of behavior or speech. Rather, it is the recognition that such judgments should be made only when and to the extent that some good may come of them. Whereas a moralist takes pleasure in the mere condemnation of shameful behavior, a tolerant person finds such condemnation distasteful and can only make it palatable to himself if he can combine it with some noble action. The moralist is mean-spirited, the man of virtue is magnanimous. A **tolerant culture is one which encourages the virtue of magnanimity or greatness of mind.**

#### Mandating good actions, such as freedom of expression, isn’t virtuous – it can’t be coerced – this causes backlash.

**Sherry:** Sherry, Suzanna [Professor of Law, University of Minnesota] “Speaking of Virtue: A Republican Approach to University Regulation of Hate Speech.” *Minnesota Law Review.* 1991. RP

**Compelling good manners, on the other hand, is simple. It would, for example, be easy for the government to compel me to vote in a mannerly way. The government might refuse to count my vote, or perhaps even punish me in some other way, unless I wait my turn, refrain from electioneering at the polling place, speak pleasantly to the election officials, and place my completed ballot in the appropriate basket.** Even if I do not agree that these are appropriate behaviors for voters, I can still fulfill the entire purpose of the law with mannerly behavior. The lawmakers care only about my behavior, and not about my beliefs. **Thus, legislative fiat can make the voting process mannerly, but not virtuous. So it is with behavior on campus. Universities that wish to maintain a certain civility on campus may be able to enforce that type of behavior coercively. Universities that wish to cre- ate or maintain certain values in their students, however, can- not accomplish their aim merely by coercing virtuous behavior. Indeed, as with voting, an attempt to compel virtuous behavior may backfire, creating nothing but resentment and a refusal to consider the underlying normative questions. In particular, censoring expression in an attempt to create virtue is likely to make the censored speech more, rather than less, appealing.**

#### Speech codes turn on issues such as race or gender, which isn’t virtuous to base policies on.

**Sherry:** Sherry, Suzanna [Professor of Law, University of Minnesota] “Speaking of Virtue: A Republican Approach to University Regulation of Hate Speech.” *Minnesota Law Review.* 1991. RP

**The addition of hate speech regulations to many student codes of conduct which already prohibit harassment without defining it in terms of victimized groups further illustrates that these universities are attempting to coerce particular values rather than merely to create a civil environment. One university currently prohibits "[p]hysically abusing, harassing, or intentionally inflicting severe emotional distress upon a member of the university community." Nevertheless, this same university is considering a proposed additional policy condemning hate speech, which is defined as "the use of racial epithets by a dominant group or member of a dominant group to oppress, harass, or fluster a member of a subordinate group."' In contrast, a few universities have already recognized that civility is not dependent on race, gender or other similar characteristics**. In response to a request for regulations "which prohibit speech that libels, stereotypes, etc. women and members of minority groups," one university counsel provided, without further ado, its code of student conduct: the relevant portion of that code simply prohibits "[h]arassing, annoying or alarming another person... [or] addressing abusive language to any person."39 Another university apparently used the typical list of protected characteristics only as an example: "An individual who harasses another because of his or her race, sex, sexual orientation, ethnic background, religion, expression of opinion, or any other factor irrelevant to participation in the free exchange of ideas" is subject to discipline.

#### Inculcation of virtues isn’t the goal of colleges, but rather of elementary school – hearing perspectives is more important

**Sherry:** Sherry, Suzanna [Professor of Law, University of Minnesota] “Speaking of Virtue: A Republican Approach to University Regulation of Hate Speech.” *Minnesota Law Review.* 1991. RP

I see two major problems with such university attempts to coerce virtue. Both deal mainly with the differences between primary and secondary education on the one hand, and univer- sity education on the other. **First, unlike primary and secon- dary schools, producing virtuous, responsible citizens is not a major purpose of the university, and indeed conflicts with more important purposes.** Second, even if improving the virtue of its students were a legitimate university purpose, coercion at the university level cannot accomplish this goal. **Teaching virtue is at least arguably one of the purposes of primary and secondary education**. A republican polity in par- ticular would recognize the importance of instilling in children the values and virtues necessary for life in that democratic soci- ety. Historically, public education in the United States was in fact designed to transmit shared moral values, including civic virtue.4 Many modern scholars - especially neo-republicans of one sort or another - also stress the necessity of allowing schools to transmit values rather than remaining ideologically neutral.43 This indoctrination aspect of primary and secondary education is, of course, still controversial. Some scholars would restrict or prohibit explicit value transmission at any educa- tional level," and some suggest that virtue is best taught by ex- ample rather than by force.45 Finally even some who concede the importance of value inculcation would restrict it to the classroom, and not allow coercive action to infect more volun- tary spheres. **Even assuming, however, that value inculcation is a legiti- mate function of primary and secondary schools, that does not necessarily mean that it is legitimate at the university level.** Although one purpose of primary and secondary education is the transmission of societal values, the main purpose of a uni- versity is the search for knowledge. **University students and faculty participate together in a disinterested search for truth.41 For that reason, any coercive curtailment of unpopular view- points in the name of virtue is inconsistent with the very foun- dation of a university education**. One scholar has insightfully captured the essence of this inconsistency: A school cannot ban the Students for a Democratic Society from cam- pus because it disagrees with or fears its social goals, but it can ban fraternities if it views them as trivial and anti-intellectual. This distinction is valuable, because it permits a college to make choices that promote educational values while deterring sectarian exclusivity. **Moreover, even if value inculcation is one legitimate function of a university, it cannot be permitted in this context because it conflicts with the more important function of critical analysis**.49

#### Turn – a mandatory requirement doesn’t allow for inculcation of virtue.

**Mansell:** Mansell, Samuel “Proximity and Rationalisation: Reflections on the Limits of a Levinasian Ethics in the context of Corporate Governance” No date. RP

**The more flexible a set of rules can be, such as the voluntary codes and principles used by business, the more chance will exist for aligning these rules with a sense of responsibility for the Other**. This requirement for flexibility is explained by Levinas’s argument that our responsibility for the Other can never be set along one fixed dimension. So, paradoxically perhaps, whilst the sort of ethical codes used by business can serve as an escape from real responsibility, they can at the same time (through their flexible and voluntary nature) offer the possibility for a degree of alignment with responsibility that a mandatory framework cannot capture. Directors have, under the UK Combined Code of 2003 (which I mention only as an example) the choice to comply with the principles in the code, or explain why they have deviated from them. Likewise, an employee who is supposedly subject to the ‘ethical code’ of the business **will almost always have room for a flexible interpretation of what this means in any given context, and be able to apply what Aristotle** (1980) calls ‘practical wisdom’. **There is a chance that in the space left open by this flexibility, principles can be adhered to that do reflect a genuine openness of responsibility.**

## Pragmatism

### Framework

Omitted

### Contention

#### Free speech is key to democratic inquiry – it develops our understandings.

**Eberle:**  Eberle, Law @ Roger Williams, 94 (Wake Forest LR, Winter)

The Court's decision in R.A.V. reaffirms the preeminence of free speech in our constitutional value structure. n62 **Theoretically, free speech is intrinsically valuable as a chief means by which we develop our faculties and control our destinies. n63 Free speech is also of instrumental value in facilitating other worthy ends such as democratic or personal self-government, n64 public and private decisionmaking, n65 and the advancement of knowledge and truth**. n66 Ultimately, the value of free speech rests upon a complex set of justifications, as compared to reliance on any single foundation. n67 **The majority of the Court in R.A.V. preferred a nonconsequentialist view, finding that speech is valuable as an end itself, independent of any consequences that it might produce. In this view, free speech is an essential part of a just and free society that treats all people as responsible moral agents**. Accordingly, people are entrusted with the responsibility of making judgments about the use or abuse of speech. n68 From this vantage point, the majority saw a certain moral equivalency in all speech. Even hate speech merits protection under the First Amendment, because all speech has intrinsic value. T**his is so because all speech, even hate speech, is a communication to the world, and therefore implicates the speaker's autonomy or self-realization. Additionally, any information might be valuable to a listener who can then decide its importance or how best to use it.** Accordingly, any suspicion or evidence of governmental censorship must be vigilantly investigated.

#### Free speech is key to epistemic humility – we hear other viewpoints, enhancing inquiry.

**Dalmia:**  (Shikha, Senior Analyst/Award winning Journalist <http://reason.com/blog/2016/09/22/debating-nyus-jeremy-waldron-on-free-spe)>. 2016.

One: Hate speech bans make us impatient and dogmatic **The main reason that libertarians like me are partisans of free speech is not because we believe that a moral laissez faire, anything goes attitude, is in itself a good thing for society. Rather, it stems from an epistemic humility that we can't always know what is good or bad a priori – through a feat of pure Kantian moral reasoning. Moral principles, as much as scientific ones, have to be discovered and developed and the way to do so is by letting competing notions of morality duke it out in what John Stuart Mill called the marketplace of ideas. Ideas that win do so by harmonizing people's overt moral beliefs with their deeper moral intuitions or, as Jonathan Rauch notes, by providing a "moral education."** This is how Mahatma Gandhi, Martin Luther King and Frank Kamney, the gay rights pioneer, managed to open society's eyes to its injustices even though what they were suggesting was so radical for their times. But this takes time. With free speech, societies have to play the long game. It takes time to change hearts and minds and one can't be certain that one's ideas will win out in the end. One has to be willing to lose. The fruits of censorship -- winning by rigging the rules and silencing the other side -- seem immediate and certain. But they unleash forces of thought control and dogmatism and repression and intolerance that are hard to contain, precisely what we are seeing right now on campuses.

## Particularism

### Framework

Omitted

### Contention

#### Turn – people themselves can determine which speech is acceptable on a case by case basis

#### Turn – cross apply Friedersdorf – speech codes are a rubber stamp that are always applied

#### Turn – the Aff only includes constitutionally protected speech

#### No brightline for what constitutes “particular enough”

## GCB

### Framework

Omitted

### Contention

#### Turn – GCB willed me to read this Aff

#### The worst speech codes can be resisted and fought in court – they’re being defeated now

FIRE ’16 Foundation for Individual Rights in Education,(FIRE launched its Stand Up for Free Speech Litigation Project in July 2014 to combat campus speech codes, so far 7 lawsuits have been successful in removing campus speech codes) On Speech Codes, The State of Free Speech on Our Nation’s Campuses, FIRE, 2016, Date Accessed 12/5/16 <https://d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2013/06/27212854/SCR_Final-Single_Pages.pdf>

The good news is that the types of restrictions discussed in this report can be defeated. A student can be a tremendously effective advocate for change when he or she is aware of First Amendment rights and is willing to engage administrators in defense of them. P**ublic exposure is also critical to defeating speech codes, since universities are often unwilling to defend their speech codes in the face of public criticism. Unconstitutional policies also can also be defeated in court, especially at public universities, where speech codes have been struck down in federal courts across the country**. Many more policies have been revised in favor of free speech as the result of legal settlements, including seven cases brought since July 2014 as part of FIRE’s Stand Up For Speech Litigation Project. Any speech code in force at a public university is extremely vulnerable to a constitutional challenge. Moreover, a**s speech codes are consistently defeated in court, administrators are losing virtually any chance of credibly arguing that they are unaware of the law, which means that they may be held personally liable when they are responsible for their schools’ violations of constitutional rights**.58 The suppression of free speech at American universities is a national scandal. But supporters of liberty should take heart: While many colleges and universities might seem at times to believe that they exist in a vacuum, the truth is that neither our nation’s courts nor its citizens look favorably upon speech codes or other restrictions on basic freedoms.

#### God votes Aff – free speech is good

**Short**: Short, Kevin. “A Christian Defense of Free Speech.” *Truth in the Trenches,* October 5, 2016. MZ

One of the great torrents in our society is the debate over free speech in our university culture or, rather the use of speech codes based on European rather than American conceptions of free speech. Thus, we have discussions of various issues, such as trigger warnings, free speech zones. Events at Missouri State university and Yale last year, along with the famous “Chalkening” at Emory have made this a national issue. Books have been written on this topic, most recently by Kirsten Powers.[1] It is not only Liberals, however, who challenge this policy, while Powers writes about the American Left on University campuses today, it was the right who opposed free speech on campuses during the Vietnam War protests. Recent statements by San Francisco forty-niners Colin Kaeperick for not standing during the national anthem reveals that many social conservatives have similar weaknesses on the principle of free speech as many liberals do in questions regarding the Dallas Cowboy’s desire to support police with a decal on their helmet. **But why should a Christian, or anyone else, for that matter, care about free speech? From a practical standpoint, because it is a necessary element for a democracy to function; In a democratic, constitutional republic, one of the necessary prerequisites is a society that agrees to settle its differences by force of argument rather than force of arms, and thus it becomes necessary to allow all comers to make their case. In a sense then the arguments for democracy of separation of powers are therefore arguments for free speech. For many Evangelicals, the points I made in discussing freedom of religion would demonstrate freedom of speech as a corollary. If man [person] has free will, and can accept or reject God’s plan of salvation, then it seems one must also allow them access to the arguments both for an against His plan.** There are three major points where Christians can be accused of hypocrisy on this issue, and one major modern assault. Let’s look at a Christian response on all four. Pornography Christians have long been opposed to pornographic material, and in many cases by legal suppression, so is this a violation of the principle of free speech? The answer is simply, no, because pornography is not speech. Speech is quite simply the ability to communicate an idea, principle or idea. Similarly, when the constitution refers to expression in the first amendment, it refers to word choice, genre, and other elements of “written expression,” which are means to the end of communicating a point. Pornography, however, doesn’t seek to communicate an idea at all – not even ideas about human sexuality – rather it is about exciting the libido. Speech requires thought, pornographic material is antithetical to thinking.[2] Minors A second and related issue is the question of access to speech by minors. But, then, we have never understood minors to possess full access of their constitutional rights. For example, even the staunchest proponent of the most expansive interpretation of the second amendment (say someone who argued citizens should be allowed to buy surface to air missiles) would not argue said right applies to a toddler. Similarly, the right to access speech have long been understood to be filtered through the minor’s parents. When Christians and others argue that the public square should have some elements that are child friendly, or family friendly, what is really being argued is that society should not seek to make end runs around the parent’s obligation to serve as a guardian and protector, or developer of a child’s mind and spirit. Christian Campuses Some have also argued that Christian institutions stifle free speech by imposing speech codes on college campuses. This was an important discussion when the Liberty University Young Democrats club was disallowed recognition as an official club at Liberty University (mysteriously, when Liberty’s subsequent decision to do the same thing with the Young Republican’s club did not create the same stir among the popular press). This goes back to one of the major flaws in modern thought, it seems we assume an institution is either an educational institution or a religious one, I would assume many, if not most are both. The reason, however, why Christian institutions are not enemies of free speech, even when they impose codes involving speech or restricting education to those signing doctrinal statements is that these are decisions made by the student and staff at those institutions before signing those statements. It should be assumed, if a student signs a statement such as that of the creed I regularly signed at Bob Jones University, they do so not because they are being bullied into the decision, but rather because they already agree with the positions espoused. In accepting the limits to a certain breadth of opinion, the theological student at such an institution gains a greater depth of understanding of Christian theology and thought, something a believer may very well prize, similarly, since these institutions serve in part to train pastors, they provide an to associated churches credentials for pastoral ministry, something that requires a doctrinal commitment of some kind. Nor is this uncommon in other fields; an Evangelical systematic theology class begins with the assumptions that Evangelical Christianity is true (it is in a sense, post apologetic and post conversion), this is similar to the physics professor who does not bother trying to prove that the universe we exist in is actually real. A second consideration is the false idea that students in Christian colleges are not being exposed to the breadth of scholarship, simply because the facility is an Evangelical one. While at the Bob Jones Memorial Seminary, I read Bultmann’s New Testament Theology, various pieces written by Karl Barth on the Bible, various writings by Catholic scholars (often in areas where Evangelicals and Catholics disagree), a textbook on Church history written from a decidedly non-Evangelical basis. In short, the marketplace of ideas is perhaps an old fashioned idea, in reality we have an internet of free speech, and even those in Christian research universities interact with those outside of Christianity. **In a sense, the Evangelical university and seminary serves as Christian think-tanks, interacting with the philosophical ideas and worldviews of their non-Christian counterparts.**

#### They get no offense – if God is real, it’s Deist and doesn’t care what people do

**Bristow:** Bristow, William, "Enlightenment", The Stanford Encyclopedia of Philosophy (Summer 2011 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/sum2011/entries/enlightenment/>. DD

*Deism*. Deism is the form of religion most associated with the Enlightenment. According to deism, **[W]e can know by the natural light of reason that the universe is created and governed by a supreme intelligence[.]**; however, although **[T]his** supreme **being** has a plan for creation from the beginning, the being **does not interfere with creation[.]**; the deist typically rejects miracles and reliance on special revelation as a source of religious doctrine and belief, in favor of the natural light of reason. Thus, **[A] deist typically rejects the divinity of Christ, as repugnant to reason**; the deist typically demotes the figure of **Jesus** from agent of miraculous redemption to **[was an] extraordinary moral teacher. Deism is the form of religion fitted to the new discoveries in natural science, according to which the cosmos displays an intricate machine-like order; the deists suppose that the supposition of God is necessary as the source or author of this order**. Though not a deist himself, **Isaac Newton** inadvertently encourages deism in his *Opticks* (1704) by **[argued] that we must infer from the order and beauty in the world** to **the existence of an intelligent supreme[.]** being as the cause of this order and beauty. Samuel Clarke, perhaps the most important proponent and popularizer of Newtonian philosophy in the early eighteenth century, supplies some of the more developed arguments for the position that the correct exercise of unaided human reason leads inevitably to the well-grounded belief in God. He argues that **[T]he Newtonian physical system implies the existence of a transcendent cause, the creator God**. In his first set of Boyle lectures, *A Demonstration of the Being and Attributes of God* (1705), Clarke presents the metaphysical or “argument *a priori*” for God's existence. This argument concludes from **[T]he rationalist principle that whatever exists must have a sufficient reason or cause of its existence to the existence of a transcendent, necessary being who stands as the cause of the chain of natural causes and effects**. Clarke also supports the empirical argument from design, the argument that concludes from the evidence of order in nature to the existence of an intelligent author of that order. In his second set of Boyle lectures, *A Discourse Concerning the Unchangeable Obligations of Natural Religion* (1706), Clarke argues as well that the moral order revealed to us by our natural reason requires the existence of a divine legislator and an afterlife, in which the supreme being rewards virtue and punishes vice. In his Boyle lectures, Clarke argues directly against the deist philosophy and maintains that what he regards as the one true religion, Christianity, is known as such on the basis of miracles and special revelation; still, Clarke's arguments on the topic of natural religion are some of the best and most widely-known arguments in the period for the general deist position that natural philosophy in a broad sense grounds central doctrines of a universal religion.

#### Free speech about religion is key to safeguard the right to worship – the Aff spills over positively.

**Malik:** Malik, Kenan [I am a writer, lecturer and broadcaster. My latest book is *The Quest for a Moral Compass: A Global History of Ethics*.] “Why hate speech should not be banned.” *Pandaemonium.* 2012. RP

KM: It is as idiotic to imagine that one could defame religion as it is to imagine that one could defame politics or literature. Or that the Bible or the Qur’an should not be criticized or ridiculed in the same way as one might criticize or ridicule The Communist Manifesto or On the Origin of Species or Dante’s Inferno. A religion is, in part, a set of beliefs – about the world, its origins, and humanity’s place in it – and a set of values that supposedly derive from those beliefs. Those beliefs and values should be treated no differently to any other sets of beliefs, and values that derive from them. **I** **can be hateful of conservatism or communism. It should be open to me to be equally hateful of Islam and Christianity.** Proponents of religious defamation laws suggest that religion is not just a set of beliefs but an identity, and an exceptionally deeply felt one at that. It is true that religions often form deep-seated identities. But, then, so do many other beliefs. Communists were often wedded to their ideas even unto death. Many racists have an almost visceral attachment to their beliefs. Should I indulge them because their views are so deeply held? And while I do not see my humanism as an identity with a big ‘I’, I would challenge any Christian or Muslim to demonstrate that my beliefs are less deeply held than theirs. **Freedom of worship – including the freedom of believers to believe as they wish and to preach as they wish – should be protected**. Beyond that, religion should have no privileges. **Freedom of worship is, in a sense, another form of freedom of expression – the freedom to believe as one likes about the divine and to assemble and enact rituals with respect to those beliefs. You cannot protect freedom of worship, in other words, without protecting freedom of expression. Take, for instance, Geert Wilders’ attempt to outlaw the Qur’an in Holland because it ‘promotes hatred’.** Or the investigation by the British police a few years ago of Iqbal Sacranie, former head of the Muslim Council of Britain, for derogatory comments he made about homosexuality. Both are examples of the way that defense of freedom of religion is inextricably linked with defense of freedom of speech. Or, to put it another way, in both cases, had the authorities been allowed to restrict freedom of expression, it would have had a devastating impact on freedom of worship. That is why the attempt to restrict defamation of religion is, ironically, an attack not just on freedom of speech but on freedom of worship too – and not least because one religion necessarily defames another. Islam denies the divinity of Christ, Christianity refuses to accept the Qur’an as the word of God. Each Holy Book blasphemes against the others. One of the ironies of the current Muslim campaign for a law against religious defamation is that had such a law existed in the seventh century, Islam itself would never have been born. The creation of the faith was shocking and offensive to the adherents of the pagan religions out of which it grew, and equally so to the two other monotheistic religions of the age, Judaism and Christianity. Had seventh-century versions of today’s religious censors had their way, the twenty-first-century versions may still have been fulminating against offensive speech, but it certainly would not have been Islam that was being offended. At the heart of the debate about defamation of religion are actually not questions of faith or hatred, but of political power. **Demanding that certain things cannot be said, whether in the name of respecting faith or of not offending cultures, is a means of defending the power of those who claim legitimacy in the name of that faith or that culture**. It is a means of suppressing dissent, not from outside, but from within. What is often called offense to a community or a faith is actually a debate within that community or faith. In accepting that certain things cannot be said because they are offensive or hateful, those who wish to restrict free speech are simply siding with one side in such debates – and usually the more conservative, reactionary side

## Critical Pedagogy NC

### Theory Interp

#### The neg may not advocate only restricting speech if that speech trades off with critical pedagogy

### Contention

#### Limits on free expression create learned helplessness – people are unable to think outside of the bubble colleges create.

**Shuchman:** Shuchman, Daniel [Chairman of the Foundation for Individual Rights in Education] “Free Thought Under Siege.” *The Wall Street Journal.* November 2016. RP

**Rancorous trends such as microaggressions, safe spaces, trigger warnings and intellectual intolerance have taken hold at universities with breathtaking speed.** Last year’s controversy over Halloween costumes at Yale led to the departure of two respected faculty members, and this year made the fall festival a flashpoint of conflict at campuses across the country. The recent explosion in the number of university administrators, coupled with an environment of perpetual suspicion—the University of Florida urges students to report on one another to its “Bias Education and Response Team”—drives students who need to resolve normal tensions in human interaction to instead seek intervention by mediators, diversity officers, student life deans or lawyers. **As Frank Furedi compellingly argues in this deeply perceptive and important book, these phenomena are not just harmless fads acted out by a few petulant students and their indulgent professors in an academic cocoon. Rather, they are both a symptom and a cause of malaise and strife in society at large. At stake is whether freedom of thought will long survive and whether individuals will have the temperament to resolve everyday social and workplace conflicts without bureaucratic intervention or litigation. Mr. Furedi, an emeritus professor at England’s University of Kent, argues that the ethos prevailing at many universities on both sides of the Atlantic is the culmination of an infantilizing paternalism that has defined education and child-rearing in recent decades. It is a pedagogy that from the earliest ages values, above all else, self-esteem, maximum risk avoidance and continuous emotional validation and affirmation**. (Check your child’s trophy case.) Helicopter parents and teachers act as though “fragility and vulnerability are the defining characteristics of personhood.”**The devastating result: Young people are raised into an “eternal dependency.”** Parenting experts and educators insist that the views of all pupils must be unconditionally respected, never judged, regardless of their merit. They wield the unassailable power of a medical warning: **Children, even young adults, simply can’t handle rejection of their ideas, or hearing ones that cause the slightest “discomfort,” lest they undergo “trauma.”** It is not surprising to Mr. Furedi that today’s undergraduates, having grown up in such an environment, should find any serious criticism, debate or unfamiliar idea to be “an unacceptable challenge to their personas.” **He cites a legion of examples from across the Western world, but one Brown University student perhaps epitomizes the psyche: During a campus debate, she fled to a sanctioned “safe space” because “I was feeling bombarded by a lot of viewpoints that really go against my dearly and closely held beliefs.”**

#### The neg reifies a police culture – speech codes allow wide discretion to punish at will – their subjectivity means that ANYTHING can be prohibited, creating a slippery slope.

**Shuchman:** Shuchman, Daniel [Chairman of the Foundation for Individual Rights in Education] “Free Thought Under Siege.” *The Wall Street Journal.* November 2016. RP

**The new demands for “balancing” free speech with sensitivity and respect have several unifying themes, according to Mr. Furedi. One is that they are based on the subjective sensitivities of anyone who claims to be offended. If words can cause trauma and are almost akin to violence, an appeal to health and safety guarantees that “the work of the language police can never cease.”** Microaggressions, by definition, are committed unconsciously and without intent. **Since “it is almost impossible to refute an allegation of microaggression,” the author views them as the ultimate “weaponisation” of offense- taking. Emory University students, for instance, demanded redress for their “genuine concern and pain” after seeing the name of a major presidential candidate written in chalk on campus, an incident proving “that** in a world where anything can be triggering, people will be triggered by anything.” There is a “beguiling” appeal to well-intentioned calls for civility and respect, Mr. Furedi says. After all, “sensitivity is an attractive human feature and essential for minimising conflict.” He cites the Chancellor of the University of California at Berkeley’s seemingly benign exhortation that “we can only exercise our right to free speech insofar as we feel safe and respected.” Yet Mr. Furedi convincingly demonstrates that, by ranking liberty on par with or subordinate to other values, “the deification of the commandment ‘Do Not Offend’” transforms fundamental liberties into liberties “contingent on other people’s sensibility.” **Freedom becomes a “negotiable commodity” that inexorably will be bargained away.** Ironically, Mr. Furedi observes, for a movement that claims to be driven by concern for individual empowerment, respect and autonomy, the new campus values actually represent an astonishingly pessimistic and condescending view of the ability of human beings to deal with the basic challenges of life. They are premised on the “supposition that people lack the intellectual or moral independence to evaluate critically the views to which they are exposed.” **As a practical matter, the notion that human dignity mandates protection from the pain of “hurtful” speech is “possibly the most counterproductive” rationale for constraining freedom; “people acquire dignity” by learning to deal with “the problems that confront them,**” not by relying on the “goodwill” of an administrative elite. Throughout history, the impulse to censorship has been driven by political or religious zealotry. In the 21st century, Mr. Furedi posits, speech suppression has assumed the mantle of mental-health therapy. But policing actual speech and books is not sufficient. **In today’s environment, no matter what you say, it is exclusively the “individual who is hurt or offended . . . who decides what you really meant.” Thus people’s inner lives and imputed motivations, even unconscious ones, have become “legitimate terrain for intervention” by authorities. In an unprecedented twist, students themselves are agitating for the imposition of campus thought control**. Academic freedom is not an academic matter, Mr. Furedi reminds us. It “has a vital significance for the quality of public life.” A generation of litigious college graduates, seeking protection from new ideas and afraid to take any risks, is an ominous glimpse into the future of our public life.

## Skep

### Top Level

Omitted

### Presumption

Omitted

## Hobbes

### Case t/o Hobbes

Omitted

### Framework

Omitted

### Contention

#### Missing internal link – the resolution questions colleges, not state actors

#### Rights expand the power of the state

**The Anarchist Library:** The Anarchist Library [Organization dedicated to revolution] “Not Just Free Speech, but Freedom Itself: A Critique of Civil Liberties.” *The Anarchist Library.* 2010. RP

There appears to be a broad consensus in the US political spectrum in favor of the right to free speech. While opponents may quibble over the limits, such as what constitutes obscenity, pundits from left to right agree that free speech is essential to American democracy. Appeals to this tradition of unrestricted expression confer legitimacy on groups with views outside the mainstream, and both fascists and radicals capitalize on this. Lawyers often defend anarchist activity by referencing the First Amendment’s provision preventing legislation restricting the press or peaceable assembly. We can find allies who will support us in free speech cases who would never support us out of a shared vision of taking direct action to create a world free of hierarchy. **The rhetoric of free speech and First Amendment rights give us a common language with which to broaden our range of support and make our resistance more comprehensible to potential allies, with whom we may build deeper connections over time. But at what cost? This discourse of rights seems to imply that the state is necessary to protect us against itself, as if it is a sort of Jekyll and Hyde split personality that simultaneously attacks us with laws and police and prosecutors while defending us with laws and attorneys and judges. If we accept this metaphor, it should not be surprising to find that the more we attempt to strengthen the arm that defends us, the stronger the arm that attacks us will become. Once freedom is defined as an assortment of rights granted by the state, it is easy to lose sight of the actual freedom those rights are meant to protect and focus instead on the rights themselves—implicitly accepting the legitimacy of the state. Thus, when we build visibility and support by using the rhetoric of rights, we may undercut the possibility of struggle against the state itself. We also open the door for the state to impose others’ “rights” upon us.**

#### Free speech legitimates the state

**Balkin:** Balkin, Jack M. [Knight Professor of Constitutional Law and the First Amendment, Yale Law School] “CULTURAL DEMOCRACY AND THE FIRST AMENDMENT.” *Northwestern University Law Review.* Volume 110. 2016. RP

**In just the same way, there are three ways that First Amendment freedoms legitimate state power. First, freedom of speech informs the public and produces better state decisionmaking in the long run. This is Meiklejohn’s explanation. Second, freedom of speech allows people to feel that the government is responsive to them and is not alien from them. This is Post’s explanation. Third, freedom of speech shows appropriate concern and respect for people living under the state’s rule. Respecting people’s ability to participate in culture and to express their values, emotions, opinions and ideas, even if these do not concern politics or public issues, respects people’s freedom to think and discuss what matters to them.**

#### Free speech makes it easier for the state to monitor people, expanding powers

**The Anarchist Library:** The Anarchist Library [Organization dedicated to revolution] “Not Just Free Speech, but Freedom Itself: A Critique of Civil Liberties.” *The Anarchist Library.* 2010. RP

In the US, many take it for granted that it is easier for the state to silence and isolate radicals in countries in which free speech is not legally protected. If this is true, who wouldn’t want to strengthen legal protections on free speech? **In fact, in nations in which free speech is not legally protected, radicals are not always more isolated—on the contrary, the average person is sometimes more sympathetic to those in conflict with the state**, as it is more difficult for the state to legitimize itself as the defender of liberty. Laws do not tie the hands of the state nearly so much as public opposition can; given the choice between legal rights and popular support, radicals are much better off with the latter. One dictionary defines civil liberty as “the state of being subject only to laws established for the good of the community.” This sounds ideal to those who believe that laws enforced by hierarchical power can serve the “good of the community”—but who defines “the community” and what is good for it, if not those in power? **In practice, the discourse of civil liberties enables the state to marginalize its foes: if there is a legitimate channel for every kind of expression, then those who refuse to play by the rules are clearly illegitimate.** Thus we may read this definition the other way around: under “civil liberty,” all laws are for the good of the community, and any who challenge them must be against it. **Focusing on the right to free speech, we see only two protagonists, the individual and the state.** Rather than letting ourselves be drawn into the debate about what the state should allow, anarchists should focus on a third protagonist—the general public. We win or lose our struggle on the terrain of how much sovereignty the populace at large is willing to cede to the state, how much intrusion it is willing to put up with. **If we must speak of rights at all, rather than argue that we have the right to free speech let us simply assert that the state has no right to suppress us. Better yet, let’s develop another language entirely.**

## Symbolic Justice

### Framework

Omitted

### Contention

#### Missing internal link – the resolution questions colleges, not state actors

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## Polls

### Contention

#### Polls go Aff.

**Fang:** Fang, Marina [Contributor, The Huffington Post] “Most College Students Want Free Speech on Campuses – But Not When It’s Hate Speech.” *Huffington Post.* April 2016. RP

**College students want free speech on their campuses but want their administrators to intervene when it turns into hate speech, though they disagree on whether college campuses are open environments and on how the media should cover campus protests, according to a new Gallup survey on the First Amendment released Monday.** About 78 percent of students surveyed said that colleges should allow “all types of speech and viewpoints**,” while 22 percent noted that “colleges should prohibit biased or offensive speech in the furtherance of a positive learning environment.”**

## Deont

### Case t/o Kant

Omitted

### Framework

Omitted

### Contention – Top Level

#### The Aff solves way more deont violations than it causes -- there are plenty of free speech restrictions that are bad under Kant like people “annoying” administrators, ideological orientation, academic censorship, and criminalizing dissent

#### Speech restrictions prevent people from acting on agency

Lambert: (Saber, writer @ being libertarian, “The Degradation of Free Speech and Personal Liberty,” April 9, 2016, https://beinglibertarian.com/the-degradation-of-free-speech-and-personal-liberty

Many **individuals in society claim that they live in a free nation full of individual liberties. North American constitutions** such as the ones implemented in the United States and Canada a**llow for freedom of speech.** However, **it is evident that the government has implemented** and enforced **policies to the contrary.** There are a plethora of entertainment programs that have strict **censorship policies that go against freedom** of speech as it disallows, for example, television producers and musicians to use words or phrases that may be offensive directly or indirectly to a person or group. Regardless, if it is possibly offensive to one or many, the U.S. and Canadian constitutions allow for individuals to say very controversial things. However, **restricting one’s freedom of speech** in the form of censorship **greatly impacts the exchange of ideas that** are said to contribute to the (possibly) improvement of society. **It is not up to the government to decide what individuals choose to say,** read, or hear, and it should not be up to the government to decide what is acceptable within society. The Federal Communications Commission (FCC) in the United States controls all forms of television broadcasting and claims “it is a violation of federal law to air obscene programming at any time. It is also a violation of federal law to air indecent programming or profane language during certain hours.” It is quite clear that **censorship by institutional power is a way to control a society** in the sense that it determines what individuals in society can legally say, hear, or read. **It is against the majoritarian virtues** and values **that are constitutionally instilled within a society, and is often paralleled to a form of dictatorship** – no matter how miniscule.

#### No link – their offense literally just says hate speech is bad but never justifies why the state should prohibit hate speech – the Aff also condemns it through actions like counterspeech.

#### There’s nothing intrinsic about speech that makes it harmful

**Haiman:** Haiman, Franklyn [Franklyn Haiman is John Evans Professor Emeritus of Communications Studies at Northwestern University. He is the author of Speech and Law in a Free Society and "Speech Acts" and the First Amendment.] “The Remedy is More Speech.” Summer 1991. RP

The answers to these seemingly compelling arguments are many, and even more compelling. **The view of racist slurs as equivalent to physical blows ignores some crucial differences. A physical blow will hurt, no matter what the victim's state of mind; a verbal attack will hurt only if comprehended. If uttered in a foreign language, or in euphemisms equally unfamiliar, it will do no damage, for its meaning will not have been understood. It is the meaning that hurts, which is another way of saying that not only has an idea been communicated, but a very powerful and hateful one at that. If no meaningful idea were involved, there would be no injury.**

#### *Debate and discourse aren’t intrinsically violent—even if it results in violent things the speech in and of itself isn’t harmful.*

*Anderson 6 — Amanda Anderson, Caroline Donovan Professor of English Literature and Department Chair at Johns Hopkins University, Senior Fellow at the School of Criticism and Theory at Cornell University, holds a Ph.D. in English from Cornell University, 2006 (“Reply to My Critic(s),” Criticism, Volume 48, Number 2, Spring, Available Online to Subscribing Institutions via Project MUSE, p. 285-287)*

*Let's first examine the claim that my book is "unwittingly" inviting a resurrection of the "Enlightenment-equals-totalitarianism position." How, one wonders, could a book promoting argument and debate, and promoting reason-giving practices as a kind of common ground that should prevail over assertions of cultural authenticity, somehow come to be seen as a dangerous resurgence of bad Enlightenment? Robbins tells us why: I want "argument on my own terms"—that [End Page 285] is, I want to impose reason on people, which is a form of power and oppression. But what can this possibly mean?* ***Arguments stand or fall based on whether they are successful and persuasive,*** *even an argument in favor of argument.* ***It simply is not the case that an argument in favor of the importance of reasoned debate to liberal democracy is tantamount to oppressive power. To assume so is to assume, in the manner of Theodor Adorno and Max Horkheimer, that reason is itself violent, inherently, and that it will always mask power and enforce exclusions.*** *But to assume this is to assume the very view of Enlightenment reason that Robbins claims we are "thankfully" well rid of. (I leave to the side the idea that any individual can proclaim that a debate is over, thankfully or not.) But perhaps Robbins will say, "I am not imagining that your argument is directly oppressive, but that what you argue for would be, if it were enforced." Yet my book doesn't imagine or suggest it is enforceable; I simply argue in favor of, I promote, an ethos of argument within a liberal democratic and proceduralist framework. As much as Robbins would like to think so, neither I nor the books I write can be cast as an arm of the police. Robbins wants to imagine a far more direct line of influence from criticism to political reality, however, and this is why it can be such a bad thing to suggest norms of argument. Watch as the gloves come off: Faced with the prospect of submitting to her version of argument—roughly, Habermas's version—and of being thus authorized to disagree only about other, smaller things, some may feel that there will have been an end to argument, or an end to the arguments they find most interesting. With current events in mind, I would be surprised if there were no recourse to the metaphor of a regular army facing a guerilla insurrection, hinting that Anderson wants to force her opponents to dress in uniform, reside in well-demarcated camps and capitals that can be bombed, fight by the rules of states (whether the states themselves abide by these rules or not), and so on—in short, that she wants to get the battle onto a terrain where her side will be assured of having the upper hand. Let's leave to the side the fact that this is a disowned hypothetical criticism. (As in, "Well, okay, yes, those are my gloves, but those are somebody else's hands they will have come off of.") Because far more interesting, actually, is the sudden elevation of stakes. It is a symptom of the sorry state of affairs in our profession that it plays out repeatedly this tragicomic tendency to give a grandiose political meaning to every object it analyzes or confronts. We have evidence of how desperate the situation is when we see it in a critic as thoughtful as Bruce Robbins, where it emerges as the need to allegorize a point about an argument in such a way that it gets cast as the equivalent of war atrocities. It is especially ironic in light of the fact that to the extent that I do give examples of the importance of liberal democratic proceduralism, I invoke the disregard of the protocols of international adjudication in the days leading up to the invasion of Iraq; I also speak [End Page 286] about concerns with voting transparency.* ***It is hard for me to see how my argument about proceduralism can be associated with the policies of the Bush administration when that administration has exhibited a flagrant disregard of democratic procedure and the rule of law. I*** *happen to think that a renewed focus on proceduralism is a timely venture, which is why I spend so much time discussing it in my final chapter. But I hasten to add that I am not interested in imagining that proceduralism is the sole political response to the needs of cultural criticism in our time: my goal in the book is to argue for a liberal democratic culture of argument, and to suggest ways in which argument is not served by trumping appeals to identity and charismatic authority. I fully admit that my examples are less political events than academic debates; for those uninterested in the shape of intellectual arguments, and eager for more direct and sustained discussion of contemporary politics, the approach will disappoint. Moreover, there will always be a tendency for a proceduralist to under-specify substance, and that is partly a principled decision, since the point is that agreements, compromises, and policies get worked out through the communicative and political process. My book is mainly concentrated on evaluating forms of arguments and appeals to ethos, both those that count as a form of trump card or distortion, and those that flesh out an understanding of argument as a universalist practice. There is an intermittent appeal to larger concerns in the political democratic culture, and that is because I see connections between the ideal of argument and the ideal of deliberative democracy. But there is clearly, and indeed necessarily, significant room for further elaboration here.*

#### Restricting speech is a contradiction because the restriction itself uses speech

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

More critically, **the very harms that flow from speech are intertwined with the way we resist speech-based harms.** The malleability of speech harms and the diffuse nature of those responsible for speech harms allow speech to serve unique and important functions in society. **Speech plays a special role in catalyzing action and change through diffuse parties without itself manifesting change. Speech is how we convince people that the harms that flow from speech are harmful, and also how we change others’ (and our own) perception of what is harm and what it means to be harmed**. Speech is one of the few ways society evolves in its consideration of what constitutes harm.

#### People don’t even know they’re being stifled – cross apply Friedersdorf – codes are used absent knowledge from students. That’s a violation because people’s freedom is being taken and they don’t even know.

#### Regardless of the content, outlawing types of free speech violates Kantian ethics.

**Varden**, Helga, “A Kantian Conception of Free Speech,” in Freedom of Expression in a Diverse World, edited by Deirdre Golash. New York: Springer, 2010. RP

There is clear textual support that Kant provides the kind of twofold defense of free speech argued here, namely that communication of thought does not typically involve private wrongdoing and that the state must protect free speech in order to function as a representative authority. **To outlaw free speech, Kant argues in the essay “What is Enlightenment?”, is to “renounce enlightenment... [and] to violate the sacred right of humanity and trample it underfoot” (8: 39). Outlawing free speech is not only stupid, since it makes enlightenment or governance through reason impossible, but it involves denying people their right of humanity**. Their right of humanity is denied by outlawing free speech, because such legislation involves using coercion against the citizens even when their speech does not deprive anyone of what is theirs. Moreover, outlawing free speech evidences a government “which misunderstands itself” (8: 41). Similarly, Kant argues both in this text and in “Theory and Practice” that such legislation expresses sheer irrational behavior on the part of a government. “*[F]reedom of the pen*”, Kant writes in the latter essay, is the sole palladium of the people’s rights. For to want to deny them this freedom is not only tantamount to taking from them any claim to a right with respect to the supreme commander (according to Hobbes), but is also to withhold from the latter – whose will gives order to the subjects as citizens only by representing the general will of the people – all knowledge of matters that he himself would change if he knew about them and to put him in contradiction with himself.... (8: 304, cf. 8: 39f) **Free speech is seen as the ultimate safeguard or protection of the people’s rights. Therefore, a public authority – an authority representing the will of the citizens and yet the will of no one in particular – cannot outlaw free speech, since citizens qua citizens cannot be seen as consenting to it. Such a decree would bring the sovereign ‘in contradiction with himself’ since it would involve denying the sovereign the vital information it needs in order to act as the representative of the people**. In “What is Enlightenment?” Kant expands this point: “[t]he *public* use of one’s reason must always be free... by the public use of one’s own reason I understand that use which someone makes of it *as a scholar* before the entire public of the *world of readers*” (8: 37). Every citizen must have the right to engage truthfully, yet critically in public affairs – to be a scholar – and so to raise her voice and explain why she judges the current public system of laws to be unjust or unfair. If such voices are not raised, the public authority cannot possibly be able to govern wisely; without a public expres- sion of the consequences for right of particular laws, the public authority does not have the information required to secure right for all and so to represent its citizen

#### The use of words don’t involve a violation of freedom.

**Varden**, Helga, “A Kantian Conception of Free Speech,” in Freedom of Expression in a Diverse World, edited by Deirdre Golash. New York: Springer, 2010. RP

**This distinction between internal and external use of choice and freedom explains why Kant maintains that most ways in which a person uses words in his interactions with others cannot be seen as involving wrongdoing from the point of view of right**: “such things as merely communicating his thoughts to them, telling or promising them something, whether what he says is true and sincere or untrue and insincere” do not constitute wrongdoing because “it is entirely up to them [the listeners] whether they want to believe him or not” (6: 238**). The utterance of words in space and time does not have the power to hinder anyone else’s external freedom, including depriving him of his means**. Since words as such cannot exert physical power over people, it is impossible to use them as a means of coercion against another. **For example, if you block my way, you coerce me by hindering my movements: you hinder my external freedom. If, however, you simply tell me not to move, you have done nothing coercive, nothing to hinder my external freedom, as I can simply walk passed you.** So, even though by means of your words, you attempt to influence my internal use of choice by providing me with possible reasons for acting, you accomplish nothing coercive. That is, you may *wish* that I take on your proposal for action, but you do nothing to force me to do so. Whether or not I *choose to act* on your suggestion is still entirely up to me. T**herefore, you cannot *choose* for me. My choice to act on your words is beyond the reach of your words, as is any other means I might have**. Indeed, even if what you suggest is the virtuous thing to do, your words are powerless with regard to making me act virtuously. Virtuous action requires not only that I act on the right maxims, but that I also do so because it is the right thing to do, or from duty. **Because the choice of maxims (internal use of choice) and duty (internal freedom) are beyond the grasp of coercion, Kant holds that most uses of words, including immoral ones such as lying, cannot be seen as involving wrongdoing from the point of view of right.**

#### Restricting speech violates autonomy by holding people responsible for unintended perceptions of speech

**Goldberg:** Goldberg, Erica [Climenko Fellow and Lecturer on Law, Harvard Law School; Assistant Professor, Ohio Northern Law School (beginning August 2016).] “FREE SPEECH CONSEQUENTIALISM.” *Columbia Law Review.* Volume 116. 2016. RP

3. Autonomy and Responsibility. — Distinguishing speech harms from conduct harms also promotes the view that adults generally have the capacity to lead autonomous lives and, absent extraordinary influences, they in fact do so. **Autonomy, or at least autonomy in the “negative” sense that would prevent governmental suppression of speech**, requires the normative conception of people as largely capable of resisting coercion, emotional manipulation, or temporary distortion of judgment that stem just from speech. A social climate that accepts individuals as autonomous in this way is more likely to both assign them responsibility for their actions and allow them agency to make voluntary decisions. A climate in which harms that flow from speech are regulable denies agency in ways that regulating conduct harms does not, because it presumes that others can overtake the sphere of our own minds, and it absolves us of responsibility for managing our emotions. This climate has negative implications for our abilities to consent to voluntary arrangements and also undermines ideas of legal culpability in both tort and criminal law. **In a pro-agency, pro-autonomy world, it is unfair and unnecessarily restrictive to hold a speaker responsible for acts neither intended by nor condoned by the speaker, because speech harms are often caused by diffuse parties or intermediaries. Speech has unique characteristics that create important reasons not to place blame on the speaker for harm that arises.** Tort law, which already contains sophisticated frame works for conceptualizing blame and responsibility, provides a useful concept: proximate cause. Tort law requires that a defendant be both a but-for cause and a proximate cause (or culpable party) in order to impose liability. **This sense of culpability is often based on what is reasonably foreseeable, in a normative sense, and contingent upon the foreseeability of the actions of other parties who contribute to the harm. Foreseeability concepts break down in the face of speech harms. When the harm caused by speech is context dependent, it is more diffi cult to foresee the harm it will cause, as that harm changes over time and in different contexts. And, conversely, it is usually predictable that some one, even a reasonable person, may be bothered by certain speech, even if simply because he objects to the speech**. Instead of blaming the speaker, when the harm caused by speech is largely emotional in nature, the listener should be deemed responsible for managing his own emo tional response and thus mitigating the harm caused. When the harm is per petuated by diffuse agents, for example in a context of reputational harm where the harm is created when each new audience member is exposed to the speech, there are intervening causal forces that militate against holding the speaker liable except in cases of malicious falsity. **Diffusion also happens when harm is perpetuated in a way wholly separate from the speaker’s harm, for example when a viewer of a violent movie copies an act committed in that movie.** Analogizing speech harms to conduct harms would preserve the specialness of speech and its important benefits to society. Regulating speech because it agitates others through diffuse processes, or because it causes emotional upset to a listener, necessarily undermines the reason that speech is special—because of its ability to impact others in an attenuated way, through the cognitive or emotional processes of a listener or through diffuse parties ruminating upon the speech, without causing specific or tangible harms. However, when speech begins to resemble conduct, such as when it impairs discrete, material interests through direct processes and through the fault mostly of the speaker, then courts should consider those conduct-like harms in their consequentialist calculus.

#### There’s always a risk that words can harm someone, which would justify never having any speech – limits on speech are zero sum.

Anderson 6 — Amanda Anderson, Caroline Donovan Professor of English Literature and Department Chair at Johns Hopkins University, Senior Fellow at the School of Criticism and Theory at Cornell University, holds a Ph.D. in English from Cornell University, 2006 (“Reply to My Critic(s),” *Criticism*, Volume 48, Number 2, Spring, Available Online to Subscribing Institutions via Project MUSE, p. 285-287)

Probyn's piece is a mixture of affective fallacy, argument by authority, and bald ad hominem. **There's a pattern here: precisely the tendency to personalize argument** and to foreground what Wendy Brown has called "states of injury." Probyn says, for example, that she "felt ostracized by the book's content and style." Ostracized? **Argument here is seen as directly harming persons, and this is precisely the state of affairs to which I object. Argument is not injurious to persons. Policies are injurious to persons and institutionalized practices can alienate and exclude. But argument itself is not directly harmful; once one says it is, one is very close to a logic of censorship. The most productive thing to do in an open academic culture (and in societies that aspire to freedom and democracy) when you encounter a book or an argument that you disagree with is to produce a response or a book that states your disagreement. But to assert that the book itself directly harms you is tantamount to saying that you do not believe in argument or in the free exchange of ideas**, that your claim to injury somehow damns your opponent's ideas.

### A2 Seditious Speech

#### Seditious speech is sometimes good – revolution is fine if the state is unjust and a condition of barbarism.

**Cummiskey:** Cummiskey, David [Kantian Philosopher] “Justice and Revolution in Kant’s Political Philosophy.” *Bates College.* No date. RP

**When the law systematically excludes some people from its equal protection, when the government functions as a tool of oppression rather than a guarantor of individual rights, then it is an unconditional duty of justice to resist or to transform the unlawful state in the most effective manner available**. **As we saw above, Kant clearly argues that whenever there is a potential conflict over mutual rights, there is a duty to enter into a shared civil society** (MM 256 and 306-308). Kant is quite explicit on this point, it is “an unconditioned and primary duty with respect to every external relation in general among men, who cannot help but influence one another” (TP 289). It follows that, if the included are situated such that they unavoidably influence the excluded, the included have an unconditioned and primary duty to enter into a juridical condition with the excluded. We have also seen that **“everyone may use violent means to compel another to enter into a juridical state of society**” (MM 312, Ladd**). It thus also follows that everyone, the included and the excluded, have a coercively enforceable duty to enter into a fully inclusive civil society**. Although Kant rejects happiness based principles of justice, his theory of justice has a clear consequentialist element. The juridical postulate of practical reason (the duty to make property possible) entails a duty to *bring about a state of affairs* where reciprocal property rights are determined by and enforced by a united general will. We are to do *whatever is necessary*, including using violent means, to bring about this juridical state of affairs. Given these consequentialist aspects of Kant’s theory of justice, in principle, **it must be permissible to use coercive or violent means to undermine, reform, or remove a regime using coercive power to perpetuate a non-juridical state of affairs**. Whether, in any particular circumstance, violent revolutionary activity is also advisable must be determined by difficult, pragmatic, consequentialist considerations. Caution should, of course, rule such decisions. Still, there are unfortunate cases where the calculus is clear and action is called for. **Revolution is not only permissible, it is also, regrettably, sometimes required.**

#### Seditious speech is justified as a means of securing other Kantian rights, like property.

**Cummiskey:** Cummiskey, David [Kantian Philosopher] “Justice and Revolution in Kant’s Political Philosophy.” *Bates College.* No date. RP

Second, **the duty to enter a juridical condition is based on the necessity of justifying property acquisition under the constraint of the universal principle of justice:** Justice (Right) is “the sum of the conditions under which the choice of one can be united with the choice of another in accordance with a universal law of freedom” (MM 230). **We are all duty bound to enter into or bring about a civil society because otherwise property claims and negative freedom would conflict**. But, the successful organization of overwhelming force, also known as state power, does not necessarily transform a state of nature into the requisite juridical condition. **The structure of Kant’s argument simply cannot generate a duty to obey a supreme coercive power that systematically violates the negative freedom and basic rights of some of its subjects**. A commitment to basic civil rights for all is thus a limiting condition on the duty to obey the powers that be.

#### When laws don’t reflect the general will, there’s no obligation to obey them

**Cummiskey:** Cummiskey, David [Kantian Philosopher] “Justice and Revolution in Kant’s Political Philosophy.” *Bates College.* No date. RP

The error in Kant’s argument for an absolute prohibition on revolution should now be clear. Kant is assuming that even in imperfect societies, everyone subject to the sovereign power is also included in the juridical or lawful condition of the society. Clearly, however, **an individual may be subject to the coercive power of a society without being a free and equal citizen of the society. It is a minimal condition of political inclusion, or citizenship, that one’s interests, as both a finite and a rational being, count in the determination of the general will.** The mere fact that I am faced with awesome organized coercive power cannot entail that this power in any way reflects a general will which is mine. Indeed, state power often does not even purport to reflect a united general will of all of its subjects. **The apartheid laws of South Africa, for example, clearly asserted the privileged interests of some citizens, and these laws served to enforce the systematic oppression of other subjects**. In such a case**, part of the society, the included, are refusing to enter into an inclusive civil society** with the excluded individual(s). Provided that the excluded are willing to enter into a more just civil society with the included, we have a “state of nature” where the included are using superior power to oppress and exploit the excluded. **Resistance is essentially a form of self defense in response to an unjust aggression. Given Kant’s argument, the excluded can use violent means to force the included to enter into a more fully inclusive civil society.**

## Cap NC

[this argues that constitutve aims of people comes first and that cap violates this notion of agency]

### Framework

Omitted

### Contention

#### They have no uniqueness for the contention – cap is entrenched in the status quo and there’s no neg advocacy.

#### Speech limits stifle alternative viewpoints that are key to a criticism of cap

**Workers’ Liberty:** Workers’ Liberty [Blog that writes about capitalism and perspectives about addressing it] “Universities, capitalism and free speech.” *Workers’ Liberty.* March 2015. RP

**For centuries, university campuses have been, relatively speaking,** a haven within capitalist society for free debate **and criticism**. A high point, for much of the 20th century, was the right which universities in Latin America won to keep the police off their campuses and have university officials elected by staff and students. That began with the University Reform Movement in Córdoba, in northern Argentina, which opposed a focus on learning by rote, inadequate libraries, poor instruction, and restrictive admission criteria, and spread across the subcontinent. **The student radicalism which spread across much of the world in 1968 started, in 1964-5, with a Free Speech Movement at the University of California, Berkeley**. The central avenues through campus had become a lively scene, with street stalls and political gatherings; the university authorities tried to clamp down, and were eventually defeated. **Today free debate and criticism on campus is under threat from several angles. The government wants universities to ban speakers from their campuses who would be quite legal elsewhere. University administrations ban meetings, even without government prompting, when they think they might cause trouble or uproar. Campus space is increasingly commercialised and franchised-out, and university bosses try to stop student postering, leafleting, and campaigning affecting the “commercial space”.** Student unions are increasingly run by people who think that a spell as student union president will look good on their CV when they apply for a managerial job. University lecturers’ careers depend on how many articles they get published in “leading” (i.e., in almost all fields, orthodox) journals. **Over generations of academic turnover, this produces university departments filled with staff who have been selected by capacity to get wordage into those journals, and who in turn will go on to run those journals, oblivious to critiques or alternative approaches.** This narrows the range of teaching and debate on courses. Finally, and paradoxically, the shutting-down of debate is sometimes promoted by student activists who consider themselves left-wing. A chief example is the bans on the Socialist Workers Party imposed by Goldsmiths and Edinburgh University student unions, and attempted elsewhere.

#### Campus free speech is key to fight capitalism – restrictions create internal strife that make movements impossible

Halberstam Jack Halberstam, You Are Triggering me! The Neo-Liberal Rhetoric of Harm, Danger and Trauma, Bully Bloggers, 5/7/16.

**What does it mean when younger people who are benefitting from several generations now of queer social activism** by people in their 40s and 50s (who in their childhoods had no recourse to anti-bullying campaigns or social services or multiple representations of other queer people building lives) fee**l abused, traumatized, abandoned, misrecognized, beaten, bashed and damaged?** These **younger folks**, with their gay-straight alliances, their supportive parents and their new right to marry regularly **issue calls for “safe space**.” However, as Christina Hanhardt’s Lambda Literary award winning book, Safe Space: Neighborhood History and the Politics of Violence, shows, **the safe space agenda has worked in tandem with urban initiatives to increase the policing of poor neighborhoods and the gentrification of others.** Safe Space: Gay Neighborhood History and the Politics of Violence traces the development of LGBT politics in the US from 1965-2005 and explains how **LGBT activism was transformed from a multi-racial coalitional grassroots movement with strong ties to anti-poverty groups and anti-racism organizations to a mainstream, anti-violence movement with aspirations for state recognition. And, as LGBT communities make “safety” into a top priority** (and that during an era of militaristic investment in security regimes) **and ground their quest for safety in competitive narratives about trauma, the fight against aggressive new forms of exploitation, global capitalism and corrupt political systems falls by the way side. Is this the way the world ends? When groups that share common cause, utopian dreams and a joined mission find fault with each other instead of tearing down the banks and the bankers, the politicians and the parliaments, the university presidents and the CEOs? Instead of realizing**, as Moten and Hearny put it in The Undercommons, **that “we owe each other everything,” we** enact punishments on one another and stalk away from projects that should unite us, and **huddle in small groups feeling** erotically **bonded through our self-righteousness**. I want to call for a time of accountability and specificity: not all LGBT youth are suicidal, not all LGBT people are subject to violence and bullying, and indeed class and race remain much more vital factors in accounting for vulnerability to violence, police brutality, social baiting and reduced access to education and career opportunities. **Let’s call an end to the finger snapping moralism, let’s question contemporary desires for immediately consumable messages of progress, development and access; let’s all take a hard long look at the privileges that often prop up public performances of grie**f and outrage; let’s acknowledge that being queer no longer automatically means being brutalized and let’s argue for much more situated claims to marginalization, trauma and violence. **Let’s not fiddle while Rome** (or Paris) **burns,** trigger while the water rises, weep while trash piles up; **let’s recognize these internal wars for the distraction they have become. Once upon a time, the appellation “queer” named an opposition to identity politics, a commitment to coalition, a vision of alternative worlds. Now it has become a weak umbrella term for a confederation of identitarian concerns. It is time to move on, to confuse the enemy, to become illegible, invisible, anonymous** (see Preciado’s Bully Bloggers post on anonymity in relation to the Zapatistas). In the words of José Muñoz, “we have never been queer.” In the words of a great knight from Monty Python and the Holy Grail, “we are now no longer the Knights who say Ni, we are now the Knights who say “Ekki-ekki-ekki-ekki-PTANG. Zoom-Boing, z’nourrwringmm.”

#### Student movements can create counter-hegemony with radical anti-capitalist organization on a broad scale.

Delgado & Ross: [Sandra Delgado (doctoral student in Curriculum Studies at the University oritish Columbia) and E. Wayne Ross (Professor in the Faculty of Education at the University of British Columbia), "Students in Revolt: The Pedagogical Potential of Student Collective Action in the Age of the Corporate University", 2016].

As students’ collective actions keep gaining more political relevance, student and university movements also establish themselves as spaces of counter-hegemony (Sotiris, 2014). **Students are constantly opening new possibilities to displace and resist the commodification of education offered by mainstream educational institutions. As Sotiris (2014) convincingly argues, movements within the university have not only the potential to subvert educational reforms, but in addition, they have become “strategic nodes” for the transformation of the processes and practices in higher education, and most importantly for the constant re-imagination and the recreation of “new forms of subaltern counter-hegemony**” (p. 1). The strategic importance of university and college based moments lays precisely in the role that higher education plays in contemporary societies, namely their role in “the development of new technologies, new forms of production and for the articulation of discourses and theories on contemporary issues and their role in the reproduction of state and business personnel.” (p.8) **Universities and colleges therefore, have a crucial contribution in “the development of class strategies** (both dominant and subaltern), in the production of subjectivities, (and) in the transformation of collective practices” (p.8) The main objective of this paper is to examine how contemporary student movements are disrupting, opposing and displacing entrenched oppressive and dehumanizing reforms, practices and frames in today’s corporate academia. This work is divided in four sections. The first is an introduction to student movements and an overview of how student political action has been approached and researched. The second and third sections take a closer look at the repertoires of contention used by contemporary student movements and propose a framework based on radical praxis that allows us to better understand the pedagogical potential of student disruptive action. The last section contains a series of examples of students’ repertoires or tactics of contention that exemplifies the pedagogical potential of student social and political action. An Overview of Student Movements Generally speaking, students are well positioned as political actors. They have been actively involved in the politics of education since the beginnings of the university, but more broadly, students have played a significant role in defining social, cultural and political environments around the world (Altbach, 1966; Boren, 2001). **The contributions and influences of students and student movements to revolutionary efforts and political movements beyond the university context are undeniable.** **One example is the role that students have played in the leadership and membership of the political left** (e.g. students’ role in the Movimiento 26 de Julio - M-26-7 in Cuba during the 50’s and in the formation of The New Left in the United States, among others). Similarly, several political and social movements have either established alliances with student organizations or created their own chapters on campuses to recruit new members, mobilize their agendas in education and foster earlier student’s involvement in politics2 (Altbach, 1966; Lipset, 1969). Students are often considered to be “catalysts” of political and social action or “barometers” of the social unrest and political tension accumulated in society (Barker, 2008). **Throughout history student movements have had a diverse and sometimes contradictory range of political commitments. Usually, student organizations and movements find grounding and inspiration in Anarchism and Marxism, however it is also common to see movements leaning towards liberal and conservative approaches**. Hence, student political action has not always been aligned with social movements or organizations from the political left. In various moments in history students have joined or been linked to rightist movements, reactionary organizations and conservative parties (Altbach, 1966; Barker, 2008). Students, unlike workers, come from different social classes and seemly different cultural backgrounds. As a particularly diverse social group, students are distinguished for being heterogeneous and pluralists in their values, interests and commitments (Boren, 2001). Such diversity has been a constant challenge for maintaining unity, which has been particularly problematic in cases of national or transnational student organizations (Prusinowska, Kowzan, & Zielińska, 2012; Somma, 2012). To clarify, social classes are defined by the specific relationship that people have with the means of production. In the case of students, they are not a social class by themselves, but a social layer or social group that is identifiable by their common function in society (Stedman, 1969). The main or central aspect that unites student is the transitory social condition of being a student. In other words, students are a social group who have a common function, role in society or social objective, which is “to study” something (Lewis, 2013; Simons & Masschelein, 2009). Student movements can be understood as a form of social movement (LuesherMamashela, 2015). They have an internal organization that varies from traditionally hierarchical structures, organizational schemes based on representative democracy with charismatic leadership, to horizontal forms of decision-making (Altbach, 1966; Lipset, 1969). **As many other movements, student movements have standing claims, organize different type of actions, tactics or repertoires of contention, 3 and they advocate for political, social or/and educational agendas, programs or pleas.**

#### Free speech is key to a capitalist struggle – restrictions on speech result in the suppression of radical speakers.

**Farber:** Farber, Samuel [Samuel Farber has been involved in left and socialist politics for well over fifty years. His most recent book is [The Politics of Che Guevara: Theory and Practice](http://www.haymarketbooks.org/pb/The-Politics-of-Che-Guevara).] “A Socialist Approach to Free Speech.” Jacobin Magazine. February 2017. RP

**When grappling with the question of free speech, socialists should look not to Isaiah Berlin, the model of courage in defense of free speech evoked by Garton Ash, but to Rosa Luxemburg, who insisted that free expression was designed for those who disagree**. The view presented here differs not only from liberalism but also from left currents that adhere to authoritarian-from-above visions of socialism. **Among these are the longstanding notions explicitly or implicitly advocating for an “educational dictatorship” of enlightened intellectuals, as found in Herbert Marcuse’s work. In A Critique of Pure Tolerance, he argues that we should suppress the powerful’s right to free speech because they aim to brainwash the minds of the people. His argument rests on the implicit claim that intellectuals like him should decide what ideas the people should be exposed to.** Like Garton Ash, Marcuse bases his analysis of free speech on tolerance and similarly cannot produce a solid defense of the right to free expression. **This seems ironic since Marcuse and those who agreed with him were a small minority — their ideas were more likely to be suppressed than the rulers’**. Luxemburg’s position also differs from Stalinist and neo-Stalinist politics in all its expressions, which wrongly maintain that Marx was not interested in defending “bourgeois” individual rights and political democracy. In fact, Marx’s politics were deeply rooted in his time’s radical democratic movements. In his first article, he sharply criticizes the government decree that established censorship, arguing: The writer is thus subjected to the most frightful terrorism, the jurisdiction of suspicion. Laws about tendency, laws that do not provide objective norms, are laws of terrorism, such as were conceived by the state’s exigencies under Robespierre and the state’s rottenness under the Roman emperors. For some left currents, free speech and other democratic freedoms serve as an ideological cover for the bourgeoisie’s defense of private property**. In fact, the capitalist bourgeoisie has never been deeply committed to free speech and other civil liberties, happily coexisting with a wide variety of antidemocratic political regimes, South African apartheid and fascism included**. In the last analysis, private ownership of the means of production allows capitalists to maintain social and economic power independent of the political system. Indeed, breaking the ruling class control over socioeconomic power and establishing collective ownership depends on democracy: “the first step in the revolution by the working class,” proclaimed The Communist Manifesto, “is to raise the proletariat to the position of ruling class, to win the battle of democracy.” **For the most part, struggles for democratic rights — such as free speech, the abolition of slavery, universal suffrage, workers’, and women’s rights — came after the bourgeois revolution. They were democratic conquests won through popular struggle. Free speech, free association, and other democratic freedoms allowed workers to fight for their interests.** Some proponents of socialism from above tend to defend democratic freedoms only for the working class, but this perspective has a narrow and parochial view of a class that should be, as Lenin argued, “the tribune of the people,” the representative of the interests of the great social majority, and runs contrary to the socialist tradition’s strong emphasis on demanding universal political rights such as suffrage. In a more cynical vein, this political current has demanded free speech and other democratic rights only when they belong to the persecuted opposition. In contrast to this view, as Hal Draper argued in his 1968 article “Free Speech and Political Struggle”: “There can be no contradiction, no gulf in principle between what is demanded of the existing state, and what we propose for the society we want to replace it, a free society.” **Consistent with this approach, we must defend free speech on its own terms**, not merely because it helps to organize and fight for a new society. In this, free speech does not differ from the economic advances the working class and its allies have won. They are valuable both in their own right and because they strengthen the working class and its allies in their struggle for their emancipation.

## Contractarianism

### Framework

Omitted

### Contention

#### Turn – colleges have a contractual obligation to obey the constitution

**FIRE 1**: FIRE. [Foundation for Individual Rights in Education] “Private Universities.” *FIRE*, 2016. BS

**When discussing free speech on campus, it is important to understand the relevance of the First Amendment to private and public institutions.** **As** state **agents, all public colleges and universities are legally bound to respect the constitutional rights of their students.** That the protections of the First Amendment apply on public campuses is well-settled law. **Private universities are not directly bound by the First Amendment,** which limits only government action. However, the vast majority of private universities have traditionally viewed themselves—and sold themselves—as bastions of free thought and expression. Accordingly, private colleges and universities should be held to the standard that they themselves establish. If **a private college** advertises itself as a place where free speech is esteemed and protected—as most of them do—then it sh**ould be held to the same standard as a public institution.** Furthermore, private colleges and universities are contractually bound to respect the promises they make to students. Many institutions promise freedom of expression in university promotional materials and student conduct policies, but then deliver selective censorship once the first tuition check is cashed. They may not be bound by the First Amendment, but private institutions are still leg ally obligated to provide what they promise. Private institutions may not engage in fraud or breach of contract. It is important to note, however, that **if a** private **college wishes to place a particular set of moral**, philosophical, or religious **teachings above a commitment to free expression, it has every right to do so**. The freedom to associate voluntarily with others around common goals or beliefs is an integral part of a pluralistic and free society. If a private university states clearly and publicly that it values other commitments more highly than freedom of expression**, that institution has considerably more leeway** in imposing its views on students, who have given their informed consent by choosing to attend.

#### **That means you vote Aff – SCOTUS says codes aren’t protected**

**Welch:** Welch, Benjamin M. [University of Nebraska-Lincoln] “An Examination of University Speech Codes’ Constitutionality and Their Impact on High-Level Discourse.” *Graduate College at the University of Nebraska*,August 2014. MZ

**Court cases influencing university speech codes have occurred at fairly regular intervals, beginning in the late 1980s and continuing today. Also consistent is the seemingly** constant **decision by the courts in favor of the First Amendment and on** campus rights. Like any other legal issue, precedent from rulings prior to recent cases are often applied to determine legality and constitutionality. **He adds:** Judge Damon Keith wrote that: Though some statements might be seen as universally offensive, different people find different things offensive… Several players testified they were not offended by Dambrot's use of the N-word while student Norris and affirmative action officer Haddad were extremely offended… **Defining what is offensive is, in fact, wholly delegated to university officials. This “unrestricted delegation of power” gives rise to the second type of vagueness**. For these reasons, the CMU policy is also void for vagueness.98 ***McCauley v. University of the Virgin Islands*** 99 One of the more recent examples of the courts’ dealings with university speech codes on university campuses today, McCauley provides an examination into constitutionally suspect policies currently on the books at institutions of higher learning around the nation. Today’s policies generally put emphasis on “harassment.” In 2005, UVI student Stephen McCauley ventured to a beach with two of his classmates, who soon thereafter engaged in a sexual act. The next day, the female of the group charged the male with rape. After learning of the charge, McCauley visited the female, Jenna Piasecki, repeatedly over the course of the next month to discuss the charge. Piasecki complained to administration that McCauley had harassed her, and UVI officials repeatedly told McCauley to refrain from contacting Piasecki. In November of that year, McCauley was charged with violating the Student Code of Conduct, which prohibited: Committing, conspiring to commit, or causing to be committed any act which causes or is likely to cause serious physical or mental harm or which tends to injure or actually injures, frightens, demeans, degrades or disgraces any person. This includes but is not limited to violation of the University policies on hazing, sexual harassment or sexual assault. It also prohibited “offensive” or “unauthorized” signs and conduct causing “emotional distress.” Shortly after the charge, McCauley filed suit against UVI and administrators for violating his First Amendment rights and freedom of association. He was shortly thereafter criminally charged with witness tampering, and university proceedings were placed on hold until 2009 until completion of the criminal investigation, when a charge of violating UVI’s drug and alcohol policy was added to the initial complaint. He was ordered to write a letter of apology to Piasecki and pay $200. The district court had previously invalidated the policy as constitutionally overbroad in McCauley’s suit, but allowed two other policies to remain intact despite comparing precedent and court decisions regarding university speech rights to those of K- 12 students. In this case, the court **struck down the two remaining policies as flawed, writing that** “desire to protect the listener cannot be convincingly trumpeted as a basis for censoring speech for university students.”100 Additional reasons for striking down the policies included prohibition of conduct causing “emotional distress,” wherein the court opined that literally **every phrase made by a student has capacity to subjectively cause another emotional distress. The court said “substantial” damage to free speech is committed with this and similar policies on the books. The Third Circuit also confirmed that it is not appropriate for universities to treat their students as children, and that “Public universities have significantly less leeway in regulating student speech than public elementary or high schools.”101**

**Outweighs their Court of appeals evidence**

**a. It’s out of context – it’s not even about constitutional speech**

**b. SCOTUS rulings are most reliable**

#### No link – the neg can restrict the most offensive types of speech that inhibit learning – the Aff only applies to CONSTITUTIONALLY PROTECTED SPEECH

#### Only free speech is consistent with the ideal of the university – a marketplace of ideas allows good ideas to compete with bad ones.

**Leonard:** Leonard, James [Director of Law Library and Professor of Law, Ohio Northern University] “Killing with Kindness: Speech Codes in the American University.” *Ohio Northern University Law Review.* Volume 19. 1993. RP

**Even the most ardent proponents of speech codes on campuses will agree that restrictions on expression are a departure from the normal university climate.3' Freedom of thought, inquiry, and ex- pression have come to be regarded as indispensable to the fulfillment of the modern university's mission**. Of course, the "mission" of the university is not a monolithic concept. **Institutions of higher learning are dedicated to the advancement of knowledge through scholarship and research and to the equally important task of educating students**. In either case, free expression plays a critical role. **We can identify three specific roles which freedom of thought and speech play in the modern university. First, and most importantly, it sustains a "mar- ketplace of ideas" which promotes the creation of new knowledge and critical thinking.** Second, it protects individual autonomy and dignity. Finally, a rule of free expression teaches members of the university community a sense of tolerance that is essential to the functioning of a diverse society. Without exception, the paramount value of the university is the advancement of knowledge. Although the principle of unfettered academic inquiry has not always prevailed in American higher edu- cation, and does not apply in some situations,32 **there is little doubt that the concept of unrestricted debate in search of the truth has become an ethic of higher education**. To that end, we have converted our institutions into "common markets" of ideas without barriers to the free flow of theory, thought, hypothesis, and claims of certainty or §kepticism 33 Ideas must compete with each other on their own merit though a process of open communication and free debate. **Like many others, I have an unwavering faith that good ideas will eventually prevail over the bad ones in a fair competition.**34 My greatest fear is that our commitment to seeking knowledge wherever it may lie will first be compromised and then destroyed by well-intentioned attempts to promote other values within the university environment.

#### Turn – limits on content of speech is bad for education – it paternalizes students and shields them.

**Shuchman:** Shuchman, Daniel [Chairman of the Foundation for Individual Rights in Education] “Free Thought Under Siege.” *The Wall Street Journal.* November 2016. RP

**Rancorous trends such as microaggressions, safe spaces, trigger warnings and intellectual intolerance have taken hold at universities with breathtaking speed.** Last year’s controversy over Halloween costumes at Yale led to the departure of two respected faculty members, and this year made the fall festival a flashpoint of conflict at campuses across the country. The recent explosion in the number of university administrators, coupled with an environment of perpetual suspicion—the University of Florida urges students to report on one another to its “Bias Education and Response Team”—drives students who need to resolve normal tensions in human interaction to instead seek intervention by mediators, diversity officers, student life deans or lawyers. **As Frank Furedi compellingly argues in this deeply perceptive and important book, these phenomena are not just harmless fads acted out by a few petulant students and their indulgent professors in an academic cocoon. Rather, they are both a symptom and a cause of malaise and strife in society at large. At stake is whether freedom of thought will long survive and whether individuals will have the temperament to resolve everyday social and workplace conflicts without bureaucratic intervention or litigation. Mr. Furedi, an emeritus professor at England’s University of Kent, argues that the ethos prevailing at many universities on both sides of the Atlantic is the culmination of an infantilizing paternalism that has defined education and child-rearing in recent decades. It is a pedagogy that from the earliest ages values, above all else, self-esteem, maximum risk avoidance and continuous emotional validation and affirmation**. (Check your child’s trophy case.) Helicopter parents and teachers act as though “fragility and vulnerability are the defining characteristics of personhood.”**The devastating result: Young people are raised into an “eternal dependency.”** Parenting experts and educators insist that the views of all pupils must be unconditionally respected, never judged, regardless of their merit. They wield the unassailable power of a medical warning: **Children, even young adults, simply can’t handle rejection of their ideas, or hearing ones that cause the slightest “discomfort,” lest they undergo “trauma.”** It is not surprising to Mr. Furedi that today’s undergraduates, having grown up in such an environment, should find any serious criticism, debate or unfamiliar idea to be “an unacceptable challenge to their personas.” **He cites a legion of examples from across the Western world, but one Brown University student perhaps epitomizes the psyche: During a campus debate, she fled to a sanctioned “safe space” because “I was feeling bombarded by a lot of viewpoints that really go against my dearly and closely held beliefs.”**

## Valley Revenge Porn NC?

### Contention

#### Revenge porn isn’t constitutionally protected speech.

**Citron:** Citron, Danielle [Contributor, Forbes] “Debunking the First Amendment Myths Surrounding Revenge Porn Laws.” *Forbes.* April 2014. RP

**Disclosing someone’s nude image in violation of trust and confidence  (often known as nonconsensual pornography or revenge porn) is a**[**destructive invasion of privacy**](http://www.theguardian.com/commentisfree/2014/apr/17/revenge-porn-must-be-criminalized-laws)**that can cause irreversible harm to a person’s physical and emotional well-being, professional reputation, and financial security**. Lawmakers are rightfully paying attention. Seven states have criminalized the practice; 18 states have pending bills; Representative Jackie Speier has expressed interest in making it a federal crime. Some object to criminalizing invasions of sexual privacy because free speech will be chilled. That’s why it is [crucial](http://www.slate.com/articles/news_and_politics/jurisprudence/2013/11/making_revenge_porn_a_crime_without_trampling_free_speech.html) to craft narrow statutes that only punish individuals who knowingly and maliciously invade another’s privacy and trust. Other features of anti-revenge porn laws can ensure that defendants have clear notice about what constitutes criminal activity and exclude innocent behavior and images related to matters of public interest. Even so, some argue that revenge porn laws are doomed to fail because nonconsensual pornography does not fall within a category of unprotected speech. To criminalize revenge porn, they say, the Court would have to recognize it as new category of unprotected speech, which it would not do. Another argument is that even if law could secure civil remedies for revenge porn, it could not impose criminal penalties because the First Amendment treats criminal and civil laws differently. These objections are unfounded and deserve serious attention lest they be taken seriously. Let’s first address the argument that revenge porn laws are unconstitutional because they do not involve categorically unprotected speech like true threats. Advocates rely [United States v. Stevens](http://www.supremecourt.gov/opinions/09pdf/08-769.pdf), which struck down a statute punishing depictions of animal cruelty distributed for commercial gain. In Stevens, the Court rejected the government’s argument that depictions of animal cruelty amounted to a new category of unprotected speech. As the Court explained, the First Amendment does not permit the government to prohibit speech just because it lacks value or because the “ad hoc calculus of costs and benefits tilts in a statute’s favor.” The Court explained that it lacks “freewheeling authority to declare new categories of speech outside the scope of the First Amendment.” The Court did not say that only speech falling within explicitly recognized categories (such as defamation, true threats, obscenity, imminent incitement of violence, and crime-facilitating speech) are proscribable. To the contrary, the Court specifically recognized that other forms of speech have “enjoyed less rigorous protection as a historical matter, even though they have not been recognized as such explicitly.” **Disclosing private communications about purely private matters is just the sort of speech referred to in Stevens that has enjoyed less rigorous protection as a historical matter**. We do not need a new category of unprotected speech to square anti-revenge porn criminal laws with the First Amendment. Now for the cases establishing that precedent. [Smith v. Daily Mail](http://scholar.google.com/scholar_case?case=740614020734478800&hl=en&as_sdt=6&as_vis=1&oi=scholarr), decided in 1979, addressed the constitutionality of a newspaper’s criminal conviction for publishing the name of a juvenile accused of murder. The Court laid down the now well-established rule that “if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish the publication of the information, absent a need to further a state interest of the highest order.” Ever since the Court has refused to adopt a bright-line rule precluding civil or criminal liability for truthful publications “invading ‘an area of privacy’ defined by the State.” Rather the Court has issued [narrow decisions](http://scholar.google.com/scholar_case?case=11083261902857685106&hl=en&as_sdt=6&as_vis=1&oi=scholarr) that specifically acknowledge that press freedom and privacy rights are both “plainly rooted in the traditions and significant concerns of the society.’” Consider [Bartnicki v. Vopper](http://scholar.google.com/scholar_case?case=2171346211086974391&hl=en&as_sdt=6&as_vis=1&oi=scholarr). There, an unidentified person intercepted and recorded a cell phone call between the president of a local teacher’s union and the union’s chief negotiator. During the call, one of the parties talked about “go[ing] to the homes” of school board members to “blow off their front porches.” A radio commentator, who received a copy of the intercepted call in his mailbox, broadcast the tape. The radio personality incurred civil penalties for publishing the cell phone conversation in violation of the Wiretap Act. The Court characterized the wiretapping penalty as presenting a “conflict between interests of the highest order—on the one hand, the interest in the full and free dissemination of information concerning public issues, and, on the other hand, the interest in individual privacy and, more specifically, in fostering private speech.” For the Court, free speech interests appeared on both sides of the calculus. **The Court recognized that “the disclosure of the contents of a private conversation can be an even greater intrusion on privacy than the interception itsel**f.” The penalties were struck down because the private cell phone conversation about the union negotiations “unquestionably” involved a “matter of public concern.” Because the private call did not involve “trade secrets or domestic gossip or other information of purely private concern,” the privacy concerns vindicated by the Wiretap Act had to “give way” to “the interest in publishing matters of public importance.” The state interest in protecting the privacy of communications is strong enough to justify regulation if the communications involve “purely private” matters, like nude images. Neil Richards has persuasively [argued](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1862264), and lower courts have ruled, a lower level of First Amendment scrutiny applies to the nonconsensual publication of “domestic gossip or other information of purely private concern.” Appellate courts have affirmed the constitutionality of civil penalties under the wiretapping statute for the unwanted disclosures of private communications involving “purely private matters.” Along similar lines, lower courts have upheld claims for public disclosure of private fact in cases involving the nonconsensual publication of sex videos. **In Michaels v. Internet Entertainment Group, Inc., an adult entertainment company obtained a copy of a sex video made by a celebrity couple, Bret Michaels and Pamela Anderson Lee. The court enjoined the publication of the sex tape because the public had no legitimate interest in graphic depictions of the “most intimate aspects of” a celebrity couple’s relationship. As the court explained, a video recording of two individuals engaged in sexual relations “represents the deepest possible intrusion into private affairs.”** These decisions support the constitutionality of efforts to criminalize revenge porn**. Nude photos and sex tapes are among the most private and intimate facts; the public has no legitimate interest in seeing someone’s nude images without that person’s consent**. A prurient interest in viewing someone’s private sexual activity does not change the nature of the public’s interest. On the other hand, the nonconsensual disclosure of a person’s nude images would assuredly chill private expression. Without any expectation of privacy, victims would not share their naked images. With an expectation of privacy, victims would be more inclined to engage in communications of a sexual nature. Such sharing may enhance intimacy among couples and the willingness to be forthright in other aspects of relationships. The fear of public disclosure of private intimate communications would have a “chilling effect on private speech.” When would victims’ privacy concerns have to cede to society’s interest in learning about matters of public importance? Recall that women revealed to the press that former Congressman Anthony Weiner had sent them sexually explicit photographs of himself via Twitter messages. His decision to send such messages sheds light on the soundness of his judgment. Unlike the typical revenge porn scenario involving private individuals whose affairs are not of broad public interest, the photos of Weiner are a matter of public import, and so their publication would be constitutionally protected. Another way to understand the constitutionality of revenge porn statutes is through the lens of confidentiality law. Woodrow Hartzog persuasively [contends](http://www.theatlantic.com/technology/archive/2013/05/how-to-fight-revenge-porn/275759/) that revenge porn is a “legally actionable breach of confidence.” As Neil Richards and Daniel Solove have [argued](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=969495), confidentiality regulations are [less troubling](http://www.oyez.org/cases/1990-1999/1990/1990_90_634) from a First Amendment perspective because they penalize the breach of an assumed or implied duty rather than the injury caused by the publication of words. Instead of prohibiting a certain kind of speech, confidentiality law enforces express or implied promises and shared expectations. Now for the view that civil revenge porn remedies might stand but that criminal penalties cannot because the First Amendment has different rules for them. Generally speaking, the First Amendment rules for tort remedies and criminal prosecutions are the same. On the point, Eugene Volokh has said that the Court has “refused invitations to treat civil liability differently from criminal liability for First Amendment purposes.” In an e-mail exchange, he pointed to "New York Times Co. v. Sullivan, Garrison v. Louisiana, and the Court’s rejection of Justice Stevens’ proposal in the late 1970s to bar criminal prosecutions for obscenity.” In New York Times v. Sullivan, the Court explained, “What a State may not constitutionally bring about by means of a criminal statute is likewise beyond the reach of its civil law.” As the Court recognized, the treatment is the same though the threat of civil damage awards can be more inhibiting than the fear of criminal prosecution and civil defendants do not enjoy special protections that are available to criminal defendants, such as the requirement of proof beyond a reasonable doubt. It’s worth noting Volokh’s view that “the vagueness doctrine may be more in play in criminal cases than in civil cases (compare FCC v. Pacifica Foundation and its stress on absence of criminal liability); a mens rea of recklessness or worse may be required for criminal liability in public concern libel cases (by analogy to Gertz v. Robert Welch’s holding about punitive damages).” In his view (and in mine): “I don’t think that the revenge porn statutes that I’ve seen suffer from vagueness problems.”So these two myths should be seen and understood for what they are: misleading and uninformed. If we are going to oppose revenge porn efforts, let's be honest about why. Opponents may reject them on policy grounds. They can worry that it is a bad idea to criminalize revenge porn. They can insist it is no big deal, though I'd disagree as would the countless victims, advocacy groups like the [Cyber Civil Rights Initiative](http://www.cybercivilrights.org/) and [Without My Consent](http://www.withoutmyconsent.org/), and my colleague [Mary Anne Franks](http://www.law.miami.edu/faculty-administration/mary-anne-franks.php). Let the discussions on the merits begin.

#### No explanation as to how colleges have jurisdiction in the digital realm

#### Restrictions on revenge porn harm liberty.

**Stokes:** Jenna K. Stokes [J.D. Candidate, 2015, University of California, Berkeley, School of Law] “THE INDECENT INTERNET: RESISTING UNWARRANTED INTERNET EXCEPTIONALISM IN COMBATING REVENGE PORN” BERKELEY TECHNOLOGY LAW JOURNAL 2014 AG

**Another suggested civil response to the revenge porn problem is** that courts should understand the exchange of intimate media to carry with it an implied confidentiality contract, based on an implied **“right to be forgotten.”**64 This proposal is an attractive solution because it allows for a clear-cut breach of contract cause of action once revenge porn hits the web. However, **[T]his suggestion appears to be little more than a convenient sidestep around the First Amendment, allowing courts to assume that the parties contracted around their free speech rights from the outset.65 Further, if the implied contract is thought to be based on the parties’ reasonable expectations, it may not always be reasonable to assume confidentiality in the context of sharing images and videos.** Certainly, there is no such assumption with other forms of personal media.66 Although societal norms may suggest that those who share intimate media likely do not want it shared online, one might also argue that **[T]he recipient of such media operated under the assumption that because it was shared with them, the sender was open to sharing it in general. With no obvious limiting principle, implying a confidentiality contract as a rule could easily capture cases where it is inappropriate and override individuals’ freedom to contract as they so choose.**

## Burden NC

### Comparative Worlds

Omitted

## Constitutivism

### Framework

Omitted

### Contention

#### Turn – discourse isn’t intrinsically violent—even if it results in violent things the speech in and of itself isn’t harmful.

Anderson 6 — Amanda Anderson, Caroline Donovan Professor of English Literature and Department Chair at Johns Hopkins University, Senior Fellow at the School of Criticism and Theory at Cornell University, holds a Ph.D. in English from Cornell University, 2006 (“Reply to My Critic(s),” *Criticism*, Volume 48, Number 2, Spring, Available Online to Subscribing Institutions via Project MUSE, p. 285-287)

Let's first examine the claim that my book is "unwittingly" inviting a resurrection of the "Enlightenment-equals-totalitarianism position." How, one wonders, could a book promoting argument and debate, and promoting reason-giving practices as a kind of common ground that should prevail over assertions of cultural authenticity, somehow come to be seen as a dangerous resurgence of bad Enlightenment? Robbins tells us why: I want "argument on my own terms"—that [End Page 285] is, I want to impose reason on people, which is a form of power and oppression. But what can this possibly mean? Arguments stand or fall based on whether they are successful and persuasive, even an argument in favor of argument. It simply is not the case that an argument in favor of the importance of reasoned debate to liberal democracy is tantamount to oppressive power. To assume so is to assume**,** in themanner of Theodor Adorno and Max Horkheimer,that reason is itself violent, inherently, and that it will always mask power and enforce exclusions. But to assume this is to assume the very view of Enlightenment reason that Robbins claims we are "thankfully" well rid of. (I leave to the side the idea that any individual can proclaim that a debate is over, thankfully or not.) But perhaps Robbins will say, "I am not imagining that your argument is directly oppressive, but that what you argue for would be, if it were enforced." Yet my book doesn't imagine or suggest it is enforceable; I simply argue in favor of**,** I promote, an ethos of argument within a liberal democratic and proceduralist framework. As much as Robbins would like to think so, neither I nor the books I write can be cast as an arm of the police. Robbins wants to imagine a far more direct line of influence from criticism to political reality, however, and this is why it can be such a bad thing to suggest norms of argument. Watch as the gloves come off: Faced with the prospect of submitting to her version of argument—roughly, Habermas's version—and of being thus authorized to disagree only about other, smaller things, some may feel that there will have been an end to argument, or an end to the arguments they find most interesting. With current events in mind, I would be surprised if there were no recourse to the metaphor of a regular army facing a guerilla insurrection, hinting that Anderson wants to force her opponents to dress in uniform, reside in well-demarcated camps and capitals that can be bombed, fight by the rules of states (whether the states themselves abide by these rules or not), and so on—in short, that she wants to get the battle onto a terrain where her side will be assured of having the upper hand. Let's leave to the side the fact that this is a disowned hypothetical criticism. (As in, "Well, okay, yes, those are my gloves, but those are somebody else's hands they will have come off of.") Because far more interesting, actually, is the sudden elevation of stakes. It is a symptom of the sorry state of affairs in our profession that it plays out repeatedly this tragicomic tendency to give a grandiose political meaning to every object it analyzes or confronts**.** We have evidence of how desperate the situation is when we see it in a critic as thoughtful as Bruce Robbins, where it emerges as the need to allegorize a point about an argument in such a way that it gets cast as the equivalent of war atrocities**.** It is especially ironic in light of the fact that to the extent that I do give examples of the importance of liberal democratic proceduralism, I invoke the disregard of the protocols of international adjudication in the days leading up to the invasion of Iraq; I also speak [End Page 286] about concerns with voting transparency. It is hard for me to see how my argument about proceduralism can be associated with the policies of the Bush administration when that administration has exhibited a flagrant disregard of democratic procedure and the rule of law. I happen to think that a renewed focus on proceduralism is a timely venture, which is why I spend so much time discussing it in my final chapter. But I hasten to add that I am not interested in imagining that proceduralism is the sole political response to the needs of cultural criticism in our time: my goal in the book is to argue for a liberal democratic culture of argument, and to suggest ways in which argument is not served by trumping appeals to identity and charismatic authority. I fully admit that my examples are less political events than academic debates; for those uninterested in the shape of intellectual arguments, and eager for more direct and sustained discussion of contemporary politics, the approach will disappoint. Moreover, there will always be a tendency for a proceduralist to under-specify substance, and that is partly a principled decision, since the point is that agreements, compromises, and policies get worked out through the communicative and political process. My book is mainly concentrated on evaluating forms of arguments and appeals to ethos, both those that count as a form of trump card or distortion, and those that flesh out an understanding of argument as a universalist practice. There is an intermittent appeal to larger concerns in the political democratic culture, and that is because I see connections between the ideal of argument and the ideal of deliberative democracy. But there is clearly, and indeed necessarily, significant room for further elaboration here.

#### Turn – a radical democracy is constitutive of our schools – cross apply Debrabander – schools are meant to train students for the purpose of higher education and learning

#### There is no one use of free speech – empirics determine the usage of it – it isn’t some monolithic good.

## Inoperative Community NC

### Offense

#### Limits on discussion assumes a community that is regulated on the basis of individual identities.

**Davis:** Davis, Diane “Addicted to Love: Or, Toward an Inessential Solidarity.” 1999.

Our fix of finitude, however, reminds us that this so-called home is haunted. In fact, etymologically speaking, "what haunts is also a haunt something that doubles. . .for a familiar place. Haunting belongs to the family of Heim" (Ronell, Dictations xviii). Heim, then, is never not unheimlich; a home is never not haunted. What goes for the subject's home-base, ethos, is spooked, relentlessly, by itsown fractal interiorities, its own unditchable and unsharable alterity?its finitude, which is precisely what it shares with others.15 There never was any "internal peace" in "self-identification," as Lyotard has warned, that was not purchased at the price of what itmust exorcise: "The Volk shuts itself up in theHeim, and it identifies itself through the narratives attached to names" (Differend 151)?that is, through the identification associated with Geschlecht? exorcising its spooks so as to preserve its illusion of stasis, of sobriety. **When "communication" signifies only "reasonable exchange" among subjects, you can bet that alterity already will have been barred from the conversation**. This is why Nancy charges that "**the conventional chatter that attempts to promote reasonable exchange"** as synonymous with communication "**serves only to obscure violence, betrayal, and lies**" ("Exscription" 319)? serves, that is, only to cover over the finitude itought to be exposing. It may be that any theory of **communication that places a speaking subject in charge of building community effaces the sharing it attempts to promote. The "subject representing," after all, is not the same as the "being-communicating**" (Nancy, Inoperative 24). Communication. . .happens? it is beyond our control; it is, in fact, who we are: **communication is "the predicament of being**" for any ekstatic existent (24). In as much as this existent functions as "threshold," it is continuously exposed to an in-common outside and so is always already communicating finite being to finite being by virtue of that exposure, by virtue of an involuntary. . .touch. **There is no escaping community or this irrepressible communication, which neither expresses a bond**[age] **nor** approximates **a Vulcan mind-meld but simply operates as an exposition of the finitude**.. .that.. .**we**.. .**share**?an exposition, as George Bataille has put it, that "tears [us] together" (22). A subject's representations can aim to crank up this rustle of finitude or to tune it out, but communication will have been happening, either way. Maybe this needs to be made explicit: this originary "communication," this sharing, does not signify "under/standing." That is,what "communication" gives us to understand, Nancy explains, is only "that **there is no common understanding of** [or in] **community, that sharing does not constitute an understanding** (or a concept, or an intuition, or a schema), **that it does not constitute a knowledge, and that it gives no one, including community itself,mastery over being-in-common**" ("Myth Interrupted" 69). **Communication is no more or less than the exposition of the overflowing, inappropriable, unsharable finitude that we share**. And neither speaking nor writing is a means of this communication; rather, each is "communication itself, an exposure" (Nancy, Inoperative 31). Communication as understanding, Nancy observes, "is always disappointing," it's always "the communication of a disappointment, a nonpossibility, awithdrawal of communication" ("Speaking" 314-15). One can never be sure that a communique will arrive at itsdestination, and one can be fairly certain that ifitdoes, itwon't arrive aswhat itwas when itwas sent. And yet, in all the missed connections, in all the another communication is exposed: a communication [that] communicates the withdrawal or understanding and/but also the opening of another kind of sharing (315).16 This is not to say that what gets said is insignificant. But it is to say that **a certain irrepressible communication is not about exchanging information, arguing a point, or expressing a bond: it's only about exposing understanding's withdrawal and so exposing finitude**. . .as what we share. **The ethical question** par excellence for the third sophistic rhetorician **is not how to move an audience toward a predetermined action or attitude but rather how to crank up the "noise,"** the excess, **the interference that must be silenced for** the sake of "reasonable erits," for the sake of cutting **unifying figures. The question,** in other words, **that finitude prompts is not how to use language to build community; it is, rather, how to amplify the communications of community that are drowned out by the processes of identification**.17

## Levinas

### Blum and Levinas/Perspectives

Omitted

### Contention

#### Turn – the Aff is a negative action – it involves not putting a restriction on people, which codes allow – speech codes are more mandatory

#### Turn – free speech allows people to define the good for themselves – codes construct a monolithic notion of the good which totalizes – people can speak their minds

#### Turn – speech codes are enforced on everything – cross apply Strossen – there’s a spillover. That’s a violation – speech codes become a mandatory requirement enforced on people