### Fwk

#### Prefer reflective equilibrium as a procedure to evaluate the framework debate.

1. Regress-all completely deductive justifications fail because they arrive at basic premises of logic that cannot be argued against or explained. Finding coherence among these shared assumptions is the only way to ground ethics.
2. Motivation-ethics is by definition a guide to action but if an ethical theory fails to motivate us then we would have no reason to act upon it. Reflective equilibrium uses common intuitions so we’re more likely to abide by it
3. Moral uncertainty-philosophers have been debating for millennia so no foundational premise can have complete plausibility-instead we should give credence to multiple ethical views. And: if the neg challenges reflective equilibrium they need a competitive counter methodology to evaluate the framework debate- otherwise I’m the only one with a way to weigh offense.

#### Rule consequentialism coheres with our intuitive beliefs.

Hooker Brad Hooker (Professor of Philosophy at the University of Reading) “Rule Consequentialism” Stanford Encyclopedia of Philosophy 2008 http://plato.stanford.edu/entries/consequentialism-rule/ JW

We have seen that rule-consequentialism evaluates rules on the basis of the expected value of their acceptance by the overwhelming majority. What rules will such an approach endorse? It will endorse rules prohibiting physically attacking innocent people or their property, taking the property of others, breaking one's promises, and lying. It will also endorse rules requiring one to pay[ing] special attention to the needs of one's family and friends, but more generally to be willing to help others with their (morally permissible) projects. Why? The crude answer is that a society where such rules are widely accepted would be likely to have more good in it than one lacking such rules. The fact that these rules are endorsed by rule-consequentialism makes rule-consequentialism attractive. For, intuitively, these rules seem right. However, other moral theories endorse these rules as well. Most obviously, a familiar kind of moral pluralism contends that these intuitively attractive rules constitute the most basic level of morality, i.e., that there is no deeper moral principle underlying and unifying these rules. Call this view Rossian pluralism (in honor of its champion W. D. Ross (1930; 1939)). Rule-consequentialism may agree with Rossian pluralism in endorsing rules against physically attacking the innocent, stealing, promise breaking, and rules requiring various kinds of loyalty and more generally doing good for others. But rule-consequentialism goes beyond Rossian pluralism by specifying an underlying unifying principle that provides impartial justification for such rules. Other moral theories try to do this too. Such theories include some forms of Kantianism (Audi 2001; 2004), some forms of contractualism (Scanlon 1998), and some forms of virtue ethics (Hursthouse 1999; 2002; Foot 2000). In any case, the first way of arguing for rule-consequentialism is to argue that it specifies an underlying principle that provides impartial justification for intuitively plausible moral rules, and that no rival theory does this as well (Urmson 1953; Brandt 1967; Hospers 1972; Hooker 2000).

#### Thus, the standard is consistency with rule consequentialism. Prefer the standard:

#### 1. Morality must be universalizable.

Pettit Phillip “Non-Consequentialism and Universalizability” The Philosophical Quarterly Vol. 50 No. 199 pp. 175-190 April 2000 JW

Every prescription as to what an agent ought to do should be capable of being universalized, so that it applies not just to that particular agent, and not just to that particular place or time or context, or whatever.7 So at any rate we generally assume in our moral reasoning. If we think that it is right for one agent in one circumstance to act in a certain way, but wrong for another, then we commit ourselves to there being some further descriptive difference between the two cases, in particular a difference of a non- particular or universal kind. Thus if we say that an agent A ought to choose option O in circumstances C – these may include the character of the agent, the behaviour of others, the sorts of consequences on offer, and the like – then we assume that something similar would hold for any similarly placed agent. We do not think that the particular identity of agent A is relevant to what A ought to do, any more than we think that the particular location or date is relevant to that issue. In making an assumption about what holds for any agent in C- type circumstances, of course, we may not be committing ourselves to anything of very general import. It may be, for all the universalizability constraint requires, that C-type circumstances are highly specific, so specific, indeed, that no other agent is ever likely to confront them.

#### Only consequentialism can be universalized.

Pettit 2 Phillip “Non-Consequentialism and Universalizability” The Philosophical Quarterly Vol. 50 No. 199 pp. 175-190 April 2000 JW

There is no difficulty in seeing how the universalizability challenge is supposed to be met under consequentialist doctrine. Suppose that I accept consequentialist doctrine and believe of an agent A that in A’s particular circumstances C, A ought to choose an option O. For simplicity, suppose that I am myself that agent and that as a believer in consequentialism I think of myself that I ought to do O in C. If that option really is right by my consequentialist lights, then that will be because of the neutral values that it promotes. But if those neutral values make O the right option for me in those circumstances, so they will make it the right option for any other agent in such circumstances. Thus I can readily square the prescription to which my belief in consequentialism leads with my belief in universalizability. I can happily universalize my self-prescription to a prescription for any arbitrary agent in similar circumstances. In passing, a comment on the form of the prescription that the universalizability challenge will force me to endorse. I need not think that it is right that in the relevant circumstances every agent do O; that suggests a commitment to a collective pattern of behaviour. I shall only be forced to think, in a person-by-person or distributive way, that for every agent it is right that in those circumstances he do O. Let doing O in C amount to swimming to the help of a child in trouble in the water. Universalizability would not force me to think that it is right that everyone swim to the help of a child in such a situation; there might be many people around, and, were they all to swim, then they would frustrate one another’s efforts. It only requires me to think, as we colloquially put it, that it is right that anyone swim to the help of the child: no one is exempt from this person-by-person non-collective prescription (even if all do face a collective requirement to decide who in particular is going to do the swimming).8 So much for the straightforward way in which consequentialism can make room for universalizability. But how is the universalizability challenge supposed to be met under non-consequentialist theories? According to non- consequentialist theory, the right choice for any agent is to instantiate a certain pattern P: this may be the pattern of conforming to the categorical imperative, manifesting virtue, respecting rights, honouring special obligations, or whatever. Suppose that I accept such a theory and that it leads me to say of an agent – again, let us suppose, myself – that I ought to choose O in these circumstances C, or that O is the right choice for me in these circumstances. Can I straightforwardly say, as I could under consequentialist doctrine, that just for the reasons that O is the right choice for me – in this case, that it involves instantiating pattern P – so it will be the right choice for any agent in C-type circumstances? I shall argue that there are difficulties in the path of such a straightforward response and that these raise a problem for non-consequentialism. III. A PROBLEM FOR NON-CONSEQUENTIALIST UNIVERSALIZATION Suppose I do say, in the straightforward way, that pattern P requires not just that I do O in C, but also, for any agent whatsoever, that that agent should do O in C as well. Suppose I say, in effect, that it is right for me to do O in C only if it would be right for any agent X to do O in C. Whatever makes it right that I do O in C makes it right, so the response goes, that any agent do O in C. This response, so I now want to argue, is going to lead me, as a non- consequentialist thinker, into trouble. Judging that an action is right involves approving of the deed and gives one a normative reason to prefer it. Imagine someone who said that he thought his doing something or other, or indeed another person’s doing something or other, was the right choice and who thereby communicated that he approved of it. Would it not raise a question as to whether he knew what he was saying if he went on to add that he did not think that there was any good reason for him to prefer that the action should take place rather than not? If the judgement of rightness is to play its distinctive role in ad- judicating or ranking actions – if it is to connect with approval in the stan- dard way – then, whether or not it actually motivates the person judging, it must be taken to provide him with a normative reason to prefer that the action should take place. When I think that it is right that I do O in C, therefore, I commit myself to there being a normative reason for me to prefer that I do O. And when I assert that it is right that anyone should do O in C-type circumstances, I commit myself – again because of the reason-giving force of the notion of rightness – to there being a normative reason for holding a broader preference. I commit myself to there being a normative reason for me to prefer, with any agent whatsoever, that in C-type circumstances that agent do O. The problem with these reasons and these commitments, however, is that they may come apart. For it is often going to be possible that, perversely, the best way for me to satisfy the preference that, for any arbitrary agent X, that agent do O in C-type circumstances, is to choose non-O myself in those circumstances.9 Choosing non-O myself means that there is one person – me – in respect of whom the general preference is not satisfied, but in the perverse circumstances it will mean that there are more agents or actions in respect of whom it is satisfied than there would be did I choose O. Perverse circumstances of this kind are not just abstract possibilities, for what an agent does can easily affect the incentives or opportunities of others in a way that generates perversity. The best way to get people to renounce violence may be to take it up oneself and threaten resistance to their violence; the best way to get people to help their children may be to proselytize and not pay due attention to one’s own. More generally, the best way to promote the instantiation of pattern P, where this is the basic pattern to which one swears non-consequentialist allegiance, may be to flout that pattern oneself.

#### 2. Actor specificity- Policymaking must be consequentialist since collective action results in conflicts that only rule util can resolve. Side constraints paralyze state action since policy makers have to consider tradeoffs between multiple people. States lack intentionality since they're composed of multiple individuals—there is no act-omission distinction for them since they create permissions and prohibitions in terms of policies so authorizing action could never be considered an omission since the state assumes culpability in regulating the public domain.

#### Even if act util is true—use rule util as a decision procedure.

Chappell 05 on Mackie “Indirect Utilitarianism” June 11 2005 Philosophy, et cetera <http://www.philosophyetc.net/2005/06/indirect-utilitarianism.html>

J.L. Mackie (p.91) offers six utilitarian reasons for opposing "the direct use of utilitarian calculation as a practical working morality": 1. Shortage of time and energy will in general preclude such calculations. 2. Even if time and energy are available, the relevant information commonly is not. 3. An agent's judgment on particular issues is likely to be distorted by his own interests and special affections. 4. Even if he were intellectually able to determine the right choice, weakness of will would be likely to impair his putting of it into effect. 5. Even decisions that are right in themselves and actions based on them are liable to be misused as precedents, so that they will encourage and seem to legitimate wrong actions that are superficially similar to them. 6. And, human nature being what it is, a practical working morality must not be too demanding: it is worse than useless to set standards so high that there is no real chance that actions will even approximate to them.

#### Impact calc:

A) Reject DA scenarios based on unstable conceptions of uniqueness and contingent on variable circumstances—that requires new rules based on fluctuations and constantly subject to change which would be impossible to internalize into agents making morality fail.

B) Extinction impacts first tends towards negative utility since every potential action could have a long and contrived link scenario like picking up a pen—that causes policy paralysis

C) Prefer high probability impacts—lack of credible specific brink means that we don’t know when the neg impacts will occur but the aff impact aggregates every day, meaning the magnitude will be greater by the time your scenario occurs.

### ROTB

#### The role of the ballot is to evaluate the simulated consequences of the aff policy. Prefer this

#### 1. The state is inevitable- speaking the language of power through policymaking is the only way to create social change in debate.

Coverstone 5 Alan Coverstone (masters in communication from Wake Forest, longtime debate coach) “Acting on Activism: Realizing the Vision of Debate with Pro-social Impact” Paper presented at the National Communication Association Annual Conference November 17th 2005 JW 11/18/15

An important concern emerges when Mitchell describes reflexive fiat as a contest strategy capable of “eschewing the power to directly control external actors” (1998b, p. 20). Describing debates about what our government should do as attempts to control outside actors is debilitating and disempowering. Control of the US government is exactly what an active, participatory citizenry is supposed to be all about. After all, if democracy means anything, it means that citizens not only have the right, they also bear the obligation to discuss and debate what the government should be doing. Absent that discussion and debate, much of the motivation for personal political activism is also lost. Those who have co-opted Mitchell’s argument for individual advocacy often quickly respond that nothing we do in a debate round can actually change government policy, and unfortunately, an entire generation of debaters has now swallowed this assertion as an article of faith. The best most will muster is, “Of course not, but you don’t either!” The assertion that nothing we do in debate has any impact on government policy is one that carries the potential to undermine Mitchell’s entire project. If there is nothing we can do in a debate round to change government policy, then we are left with precious little in the way of pro-social options for addressing problems we face. At best, we can pursue some Pilot-like hand washing that can purify us as individuals through quixotic activism but offer little to society as a whole. It is very important to note that Mitchell (1998b) tries carefully to limit and bound his notion of reflexive fiat by maintaining that because it “views fiat as a concrete course of action, it is bounded by the limits of pragmatism” (p. 20). Pursued properly, the debates that Mitchell would like to see are those in which the relative efficacy of concrete political strategies for pro-social change is debated. In a few noteworthy examples, this approach has been employed successfully, and I must say that I have thoroughly enjoyed judging and coaching those debates. The students in my program have learned to stretch their understanding of their role in the political process because of the experience. Therefore, those who say I am opposed to Mitchell’s goals here should take care at such a blanket assertion. However, contest debate teaches students to combine personal experience with the language of political power. Powerful personal narratives unconnected to political power are regularly co-opted by those who do learn the language of power. One need look no further than the annual state of the Union Address where personal story after personal story is used to support the political agenda of those in power. The so-called role-playing that public policy contest debates encourage promotes active learning of the vocabulary and levers of power in America. Imagining the ability to use our own arguments to influence government action is one of the great virtues of academic debate. Gerald Graff (2003) analyzed the decline of argumentation in academic discourse and found a source of student antipathy to public argument in an interesting place. I’m up against…their aversion to the role of public spokesperson that formal writing presupposes. It’s as if such students can’t imagine any rewards for being a public actor or even imagining themselves in such a role. This lack of interest in the public sphere may in turn reflect a loss of confidence in the possibility that the arguments we make in public will have an effect on the world. Today’s students’ lack of faith in the power of persuasion reflects the waning of the ideal of civic participation that led educators for centuries to place rhetorical and argumentative training at the center of the school and college curriculum. (Graff, 2003, p. 57) The power to imagine public advocacy that actually makes a difference is one of the great virtues of the traditional notion of fiat that critics deride as mere simulation. Simulation of success in the public realm is far more empowering to students than completely abandoning all notions of personal power in the face of governmental hegemony by teaching students that “nothing they can do in a contest debate can ever make any difference in public policy.” Contest debating is well suited to rewarding public activism if it stops accepting as an article of faith that personal agency is somehow undermined by the so-called role playing in debate. Debate is role-playing whether we imagine government action or imagine individual action. Imagining myself starting a socialist revolution in America is no less of a fantasy than imagining myself making a difference on Capitol Hill. Furthermore, both fantasies influenced my personal and political development virtually ensuring a life of active, pro-social, political participation. Neither fantasy reduced the likelihood that I would spend my life trying to make the difference I imagined. One fantasy actually does make a greater difference: the one that speaks the language of political power. The other fantasy disables action by making one a laughingstock to those who wield the language of power. Fantasy motivates and role-playing trains through visualization. Until we can imagine it, we cannot really do it. Role-playing without question teaches students to be comfortable with the language of power, and that language paves the way for genuine and effective political activism. Debates over the relative efficacy of political strategies for pro-social change must confront governmental power at some point. There is a fallacy in arguing that movements represent a better political strategy than voting and person-to-person advocacy. Sure, a full-scale movement would be better than the limited voice I have as a participating citizen going from door to door in a campaign, but so would full-scale government action. Unfortunately, the gap between my individual decision to pursue movement politics and the emergence of a full-scale movement is at least as great as the gap between my vote and democratic change. They both represent utopian fiat. Invocation of Mitchell to support utopian movement fiat is simply not supported by his work, and too often, such invocation discourages the concrete actions he argues for in favor of the personal rejectionism that under girds the political cynicism that is a fundamental cause of voter and participatory abstention in America today.

#### 2. Fairness. Anything else moots 6 minutes of 1ac offense – forces a 1ar restart. They get a 13-7 minute advantage which means we have worse discussion, even if the subject of discussion is slightly better. At the very worst that means I get to weigh the case to preserve my offense. Unfairness denies effective dialogue on kritikal issues which turns your impacts.

Galloway 7 Ryan Galloway, Samford Comm prof, Contemporary Argumentation and Debate, Vol. 28, 2007

Debate as a dialogue sets an argumentative table, where all parties receive a relatively fair opportunity to voice their position. Anything that fails to allow participants to have their position articulated denies one side of the argumentative table a fair hearing. The affirmative side is set by the topic and fairness requirements. While affirmative teams have recently resisted affirming the topic, in fact, the topic selection process is rigorous, taking the relative ground of each topic as its central point of departure. Setting the affirmative reciprocally sets the negative. The negative crafts approaches to the topic consistent with affirmative demands. The negative crafts disadvantages, counter-plans, and critical arguments premised on the arguments that the topic allows for the affirmative team. According to fairness norms, each side sits at a relatively balanced argumentative table. When one side takes more than its share, competitive equity suffers. However, it also undermines the respect due to the other involved in the dialogue. When one side excludes the other, it fundamentally denies the personhood of the other participant (Ehninger, 1970, p. 110). A pedagogy of debate as dialogue takes this respect as a fundamental component. A desire to be fair is a fundamental condition of a dialogue that takes the form of a demand for equality of voice. Far from being a banal request for links to a disadvantage, fairness is a demand for respect, a demand to be heard, a demand that a voice backed by literally months upon months of preparation, research, and critical thinking not be silenced. Affirmative cases that suspend basic fairness norms operate to exclude particular negative strategies. Unprepared, one side comes to the argumentative table unable to meaningfully participate in a dialogue. They are unable to “understand what ‘went on…’” and are left to the whims of time and power (Farrell, 1985, p. 114).

### Inherency

#### Most universities maintain speech codes that violate the constitution.

Moore 16 James R. Moore (Cleveland State University) “You Cannot Say That in American Schools: Attacks on the First Amendment” Social Studies Research and Practice Volume 11 Number 1 112 Spring 2016 <http://www.socstrpr.org/wp-content/uploads/2016/04/MS06579_Moore.pdf>

The first amendment, a crucial component of American constitutional law, is under attack from various groups advocating for censorship in universities and public schools. The censors assert that restrictive speech codes preventing anyone from engaging in any expression deemed hateful, offensive, defamatory, insulting, or critical of sacred religious or political beliefs and values are necessary in a multicultural society. These speech codes restrict critical comments about race, religion, gender, sexual orientation, physical characteristics, and other traits in the name of tolerance, sensitivity, and respect. Many hate speech codes are a violation of the first amendment and have been struck down by federal and state courts. They persist in jurisdictions where they have been ruled unconstitutional; most universities and public schools have speech codes. This assault on the first amendment might be a concern to all citizens, especially university professors and social studies educators responsible for teaching students about the democratic ideals enshrined in our constitution. Teachers should resist unconstitutional speech codes and teach their students that the purpose of the first amendment is to protect radical, offensive, critical, and controversial speech. 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).

### Plan Text

#### Public colleges and universities in the United States ought not restrict any constitutionally protected speech.

### Adv 1 = Counterspeech

#### Hate speech on the rise now—Trump.

Okeowo 16 Alexis (New Yorker staff writer) “HATE ON THE RISE AFTER TRUMP’S ELECTION” The New Yorker November 16th 2016 <http://www.newyorker.com/news/news-desk/hate-on-the-rise-after-trumps-election> JW

Since Donald Trump won the Presidential election, there has been a dramatic uptick in incidents of racist and xenophobic harassment across the country. The Southern Poverty Law Center has reported that there were four hundred and thirty-seven incidents of intimidation between the election, on November 8th, and November 14th, targeting blacks and other people of color, Muslims, immigrants, the L.G.B.T. community, and women. One woman in Colorado told the S.P.L.C. that her twelve-year-old daughter was approached by a boy who said, “Now that Trump is President, I’m going to shoot you and all the blacks I can find.” At a school in Washington State, students chanted “build a wall” in a cafeteria. In Texas, someone saw graffiti at work: “no more illegals 1-20-17,” a reference to Inauguration Day. Such harassment occurred throughout Trump’s campaign, but now appears to have taken on a new boldness, empowered by the election of a Ku Klux Klan-endorsed candidate who has denigrated women and racial and religious minorities. “This represents a big increase in what we’ve seen since the campaign, and these incidents are far and wide: we’re seeing them in schools, we’re seeing them in places of business, we’re seeing them in museums and gas stations,” Richard Cohen, the president of the S.P.L.C., said. “White supremacists are celebrating, and it’s their time, the way they see it.” Cohen said that an online survey of teachers found that more than half had seen an increase in hostile speech during the campaign. Students of color have wondered aloud if their parents will be deported. “We’ve seen a great deal of really troubling stuff in the last week, a spike in harassment, a spike in vandalism, physical assaults. Something is happening that was not happening before,” Jonathan Greenblatt, the national director of the Anti-Defamation League, said. “We’ve been inundated with reports; it’s really crazy out there.” The A.D.L. has also been recording incidents of threats and harassment, and, in October, released a report on a rise in anti-Semitic harassment, often aimed at journalists, on Twitter during the Presidential campaign. (As Ryan Lizza wrote, Twitter has been slow to respond to user complaints.) Some of the harassment would, arguably, have happened without Trump’s rhetoric. But his election has encouraged people to monitor and report such incidents.

#### Allowing open contestation of ideas without restriction leads to social progress—LGBTQ rights, feminism, and abolitionism prove.

Rauch 13 Jonathan (contributing editor at The Atlantic and National Journal and a senior fellow at the Brookings Institution.) “The Case for Hate Speech” The Atlantic November 2013 <https://www.theatlantic.com/magazine/archive/2013/11/the-case-for-hate-speech/309524/> JW

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.

#### Counterspeech solves hate speech—empirical examples prove.

Calleros 95 (Charles, Winter, Professor of Law, Arizona State University, 27 Ariz. St. L.J. 1249, “PATERNALISM, COUNTERSPEECH, AND CAMPUS HATE-SPEECH CODES: A REPLY TO DELGADO AND YUN”, lexis)

Delgado and Yun summarize the support for the counterspeech argument by paraphrasing Nat Hentoff: "Antiracism rules teach black people to depend on whites for protection, while talking back clears the air, emphasizes self-reliance, and strengthens one's self-image as an active agent in charge of one's own destiny." n50 Delgado and Yun also cite to those who believe that counterspeech may help educate the racist speaker by addressing the ignorance and fear that lies behind hostile racial stereotyping. n51 But they reject this speech-protective argument, stating that "it is offered blandly, virtually as an article of faith" by those "in a position of power" [\*1257] who "rarely offer empirical proof of their claims." n52 The authors argue that talking back in a close confrontation could be physically dangerous, is unlikely to persuade the racist speaker to reform his views, and is impossible "when racist remarks are delivered in a cowardly fashion, by means of graffiti scrawled on a campus wall late at night or on a poster placed outside of a black student's dormitory door." n53 They also complain that "even when successful, talking back is a burden" that minority undergraduates should not be forced to assume. n54 In rejecting the counterspeech argument, however, Delgado and Yun cast the argument in its weakest possible form, creating an easy target for relatively summary dismissal. When the strategies and experiential basis for successful counterspeech are fairly stated, its value is more easily recognized. First, no responsible free speech advocate argues that a target of hate speech should directly talk back to a racist speaker in circumstances that quickly could lead to a physical altercation. If one or more hateful speakers closely confronts a member of a minority group with racial epithets or other hostile remarks in circumstances that lead the target of the speech to reasonably fear for her safety, in most circumstances she should seek assistance from campus police or other administrators before "talking back." Even staunch proponents of free speech agree that such threatening speech and conduct is subject to regulation and justifies more than a purely educative response. n55 The same would be true of Delgado's and Yun's other [\*1258] examples of speech conveyed in a manner that defaces another's property or invades the privacy of another's residence. n56 When offensive or hateful speech is not threatening, damaging, or impermissibly invasive and therefore may constitute protected speech, education and counterspeech often will be an appropriate response. n57 However, proponents of free speech do not contemplate that counterspeech always, or even normally, will be in the form of an immediate exchange of views between the hateful speaker and his target. Nor do they contemplate that the target should bear the full burden of the response. Instead, effective counterspeech often takes the form of letters, discussions, or demonstrations joined in by many persons and aimed at the entire campus population or a community within it. Typically, it is designed to expose the moral bankruptcy of the hateful ideas, to demonstrate the strength of opinion and numbers of those who deplore the hateful speech, and to spur members of the campus community to take voluntary, constructive action to combat hate and to remedy its ill effects. n58 Above all, it 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. Moreover, having triggered such a reaction with their own voices, the targets of the hateful speech may well feel a sense of empowerment to compensate for the undeniable pain of the speech. n59 One may be tempted to join Delgado and Yun in characterizing such a scenario as one "offered blandly, virtually as an article of faith" and without experiential support. n60 However, campus communities that have creatively used this approach can attest to the surprising power of counterspeech. [\*1259] Examples of counterspeech to hateful racist and homophobic speech at Arizona State and Stanford Universities are especially illustrative. n61 In an incident that attracted national attention, the campus community at Arizona State University ("A.S.U.") constructively and constitutionally responded to a racist poster displayed on the outside of the speaker's dormitory door in February 1991. Entitled "WORK APPLICATION," it contained a number of ostensibly employment-related questions that advanced hostile and demeaning racial stereotypes of African-Americans and Mexican-Americans. Carla Washington, one of a group of African-American women who found the poster, used her own speech to persuade a resident of the offending room voluntarily to take the poster down and allow her to photocopy it. After sending a copy of the poster to the campus newspaper along with an opinion letter deploring its racist stereotypes, she demanded action from the director of her residence hall. The director organized an immediate meeting of the dormitory residents to discuss the issues. In this meeting, I explained why the poster was protected by the First Amendment, and the women who found the poster eloquently described their pain and fears. One of the women, Nichet Smith, voiced her fear that all nonminorities on campus shared the hostile stereotypes expressed in the poster. Dozens of residents expressed their support and gave assurances that they did not share the hostile stereotypes, but they conceded that even the most tolerant among them knew little about the cultures of others and would benefit greatly from multicultural education. n62 The need for multicultural education to combat intercultural ignorance and stereotyping became the theme of a press conference and public rally organized by the student African-American Coalition leader, Rossie Turman, who opted for highly visible counterspeech despite demands from some students and staff to discipline the owner of the offending poster. 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. n63 The four women who initially confronted the racist poster were empowered by the meeting at the dormitory residence and later received awards from the local chapter of the NAACP for their activism. n64 Rossie [\*1260] Turman was rewarded for his leadership skills two years later by becoming the first African-American elected President of Associated Students of A.S.U., n65 a student body that numbered approximately 40,000 students, only 2.3 percent of them African-American. n66 Although Delgado and Yun are quite right that the African-American students should never have been burdened with the need to respond to such hateful speech, Hentoff is correct that the responses just described helped them develop a sense of self-reliance and constructive activism. Moreover, the students' counterspeech inspired a community response that lightened the students' burden and provided them with a sense of community support and empowerment. Indeed, the students received assistance from faculty and administrators, who helped organize meetings, wrote opinion letters, spoke before the Faculty Senate, or joined the students in issuing public statements at the press conference and public rally. n67 Perhaps most important, campus administrators wisely refrained from disciplining the owners of the poster, thus directing public attention to the issue of racism and ensuring broad community support in denouncing the racist poster. Many members of the campus and surrounding communities might have leapt to the racist speaker's defense had the state attempted to discipline the speaker and thus had created a First Amendment issue. Instead, they remained united with the offended students because the glare of the public spotlight remained sharply focused on the racist incident without the distraction of cries of state censorship. Although the counterspeech was not aimed primarily at influencing the hearts and minds of the residents of the offending dormitory room, its vigor in fact caught the residents by surprise. n68 It prompted at least three of them to apologize publicly and to display curiosity about a civil rights movement that they were too young to have witnessed first hand. n69 [\*1261] This effective use of education and counterspeech is not an isolated instance at A.S.U., but has been repeated on several occasions, albeit on smaller scales. n70 One year after the counterspeech at A.S.U., Stanford University responded similarly to homophobic speech. In that case, a first-year law student sought to attract disciplinary proceedings and thus gain First Amendment martyrdom by shouting hateful homophobic statements about a dormitory staff member. The dean of students stated that the speaker was not subject to discipline under Stanford's code of conduct but called on the university community to speak out on the issue, triggering an avalanche of counterspeech. Students, staff, faculty, and administrators expressed their opinions in letters to the campus newspaper, in comments on a poster board at the law school, in a published petition signed by 400 members of the law school community disassociating the law school from the speaker's epithets, and in a letter written by several law students reporting the incident to a prospective employer of the offending student. n71 The purveyor of hate speech indeed had made a point about the power of speech, just not the one he had intended. He had welcomed disciplinary sanctions as a form of empowerment, but the Stanford community was alert enough to catch his verbal hardball and throw it back with ten times the force. Thus, the argument that counterspeech is preferable to state suppression of offensive speech is stronger and more fully supported by experience than is conceded by Delgado and Yun. In both of the cases described above, the targets of hateful speech were supported by a community united against bigotry. The community avoided splitting into factions because the universities eliminated the issue of censorship by quickly announcing that the hateful speakers were protected from disciplinary retaliation. Indeed, the counterspeech against the bigotry was so powerful in each case that it underscored the need for top administrators to develop standards for, and some limitations on, their participation in such partisan speech. n72 Of course, the community action in these cases was effective and empowering precisely because a community against bigotry existed. At A.S.U. and Stanford, as at most universities, the overwhelming majority of students, faculty, and staff are persons of tolerance and good will who deplore at least the clearest forms of bigotry and are ready to speak out [\*1262] against intolerance when it is isolated as an issue rather than diluted in muddied waters along with concerns of censorship. Just as the nonviolent demonstrations of Martin Luther King, Jr., depended partly for their success on the consciences of the national and international audiences monitoring the fire hoses and attack dogs on their television sets and in the print media, n73 the empowerment of the targets of hateful speech rests partly in the hands of members of the campus community who sympathize with them. One can hope that the counterspeech and educational measures used with success at A.S.U. and Stanford stand a good chance of preserving an atmosphere of civility in intellectual inquiry at any campus community in which compassionate, open minds predominate. 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. n74 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. n77 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 [\*1263] 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.

#### Social science proves counterspeech solves.

Strossen 1 (Nadine, National President, American Civil Liberties Union; Professor of Law, New York Law School, 25 S. Ill. U. L. J. 243, “Incitement to Hatred: Should There Be a Limit?”, lexis)

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 [\*276] 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." n82 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. Social scientific studies also underscore the efficacy of another non-censorial alternative to suppressing hate speech: affirmative action measures to increase the participation of members of minority groups in the relevant communities. The most pertinent studies have been done on countering homophobia, but they have implications for redressing other forms of bias as well. These studies show that the most constructive way to decrease people's negative attitudes toward lesbians and gay men is to give them an opportunity to get to know and interact with lesbians and gay men in settings such as school and work, where they are collaborating on common endeavors. n83 Accordingly, by helping to ensure that members of various minority or disempowered groups are represented on campus and in the workplace, affirmative action measures can play a positive role in reducing present and future prejudice and discrimination.

### Adv 2 = Speech Codes are Bad

#### Speech codes just drive hatefulness underground, which makes it impossible to address and more pernicious.

ACLU 01 American Civil Liberty Union “Hate Speech on Campus” 2001 https://www.aclu.org/other/hate-speech-campus JW

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.

#### Allowing limitations on free speech because its “offensive” creates emotional trauma and more violence in the real world.

Lukianoff and Haidt 15 Jonathan Haidt (social psychologist and professor of ethical leadership at the NYU-Stern School of Business) and Greg Lukianoff (president and CEO of the Foundatino of Individual Rights in Education) “The Coddling of the American Mind” The Atlantic September 2015 <http://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356/>

Because there is a broad ban in academic circles on “blaming the victim,” it is generally considered unacceptable to question the reasonableness (let alone the sincerity) of someone’s emotional state, particularly if those emotions are linked to one’s group identity. The thin argument “I’m offended” becomes an unbeatable trump card. This leads to what Jonathan Rauch, a contributing editor at this magazine, calls the “offendedness sweepstakes,” in which opposing parties use claims of offense as cudgels. In the process, the bar for what we consider unacceptable speech is lowered further and further. Since 2013, new pressure from the federal government has reinforced this trend. Federal antidiscrimination statutes regulate on-campus harassment and unequal treatment based on sex, race, religion, and national origin. Until recently, the Department of Education’s Office for Civil Rights acknowledged that speech must be “objectively offensive” before it could be deemed actionable as sexual harassment—it would have to pass the “reasonable person” test. To be prohibited, the office wrote in 2003, allegedly harassing speech would have to go “beyond the mere expression of views, words, symbols or thoughts that some person finds offensive.” But in 2013, the Departments of Justice and Education greatly broadened the definition of sexual harassment to include verbal conduct that is simply “unwelcome.” Out of fear of federal investigations, universities are now applying that standard—defining unwelcome speech as harassment—not just to sex, but to race, religion, and veteran status as well. Everyone is supposed to rely upon his or her own subjective feelings to decide whether a comment by a professor or a fellow student is unwelcome, and therefore grounds for a harassment claim. Emotional reasoning is now accepted as evidence. If our universities are teaching students that their emotions can be used effectively as weapons—or at least as evidence in administrative proceedings—then they are teaching students to nurture a kind of hypersensitivity that will lead them into countless drawn-out conflicts in college and beyond. Schools may be training students in thinking styles that will damage their careers and friendships, along with their mental health. fortune-telling and trigger warnings Burns defines fortune-telling as “anticipat[ing] that things will turn out badly” and feeling “convinced that your prediction is an already-established fact.” Leahy, Holland, and McGinn define it as “predict[ing] the future negatively” or seeing potential danger in an everyday situation. The recent spread of demands for trigger warnings on reading assignments with provocative content is an example of fortune-telling. The idea that words (or smells or any sensory input) can trigger searing memories of past trauma—and intense fear that it may be repeated—has been around at least since World War I, when psychiatrists began treating soldiers for what is now called post-traumatic stress disorder. But explicit trigger warnings are believed to have originated much more recently, on message boards in the early days of the Internet. Trigger warnings became particularly prevalent in self-help and feminist forums, where they allowed readers who had suffered from traumatic events like sexual assault to avoid graphic content that might trigger flashbacks or panic attacks. Search-engine trends indicate that the phrase broke into mainstream use online around 2011, spiked in 2014, and reached an all-time high in 2015. The use of trigger warnings on campus appears to have followed a similar trajectory; seemingly overnight, students at universities across the country have begun demanding that their professors issue warnings before covering material that might evoke a negative emotional response. In 2013, a task force composed of administrators, students, recent alumni, and one faculty member at Oberlin College, in Ohio, released an online resource guide for faculty (subsequently retracted in the face of faculty pushback) that included a list of topics warranting trigger warnings. These topics included classism and privilege, among many others. The task force recommended that materials that might trigger negative reactions among students be avoided altogether unless they “contribute directly” to course goals, and suggested that works that were “too important to avoid” be made optional. It’s hard to imagine how novels illustrating classism and privilege could provoke or reactivate the kind of terror that is typically implicated in PTSD. Rather, trigger warnings are sometimes demanded for a long list of ideas and attitudes that some students find politically offensive, in the name of preventing other students from being harmed. This is an example of what psychologists call “motivated reasoning”—we spontaneously generate arguments for conclusions we want to support. Once you find something hateful, it is easy to argue that exposure to the hateful thing could traumatize some other people. You believe that you know how others will react, and that their reaction could be devastating. Preventing that devastation becomes a moral obligation for the whole community. Books for which students have called publicly for trigger warnings within the past couple of years include Virginia Woolf’s Mrs. Dalloway (at Rutgers, for “suicidal inclinations”) and Ovid’s Metamorphoses (at Columbia, for sexual assault). Jeannie Suk’s New Yorker essay described the difficulties of teaching rape law in the age of trigger warnings. Some students, she wrote, have pressured their professors to avoid teaching the subject in order to protect themselves and their classmates from potential distress. Suk compares this to trying to teach “a medical student who is training to be a surgeon but who fears that he’ll become distressed if he sees or handles blood.” However, there is a deeper problem with trigger warnings. According to the most-basic tenets of psychology, the very idea of helping people with anxiety disorders avoid the things they fear is misguided. A person who is trapped in an elevator during a power outage may panic and think she is going to die. That frightening experience can change neural connections in her amygdala, leading to an elevator phobia. If you want this woman to retain her fear for life, you should help her avoid elevators. But if you want to help her return to normalcy, you should take your cues from Ivan Pavlov and guide her through a process known as exposure therapy. You might start by asking the woman to merely look at an elevator from a distance—standing in a building lobby, perhaps—until her apprehension begins to subside. If nothing bad happens while she’s standing in the lobby—if the fear is not “reinforced”—then she will begin to learn a new association: elevators are not dangerous. (This reduction in fear during exposure is called habituation.) Then, on subsequent days, you might ask her to get closer, and on later days to push the call button, and eventually to step in and go up one floor. This is how the amygdala can get rewired again to associate a previously feared situation with safety or normalcy. Students who call for trigger warnings may be correct that some of their peers are harboring memories of trauma that could be reactivated by course readings. But they are wrong to try to prevent such reactivations. Students with PTSD should of course get treatment, but they should not try to avoid normal life, with its many opportunities for habituation. Classroom discussions are safe places to be exposed to incidental reminders of trauma (such as the word violate). A discussion of violence is unlikely to be followed by actual violence, so it is a good way to help students change the associations that are causing them discomfort. And they’d better get their habituation done in college, because the world beyond college will be far less willing to accommodate requests for trigger warnings and opt-outs. The expansive use of trigger warnings may also foster unhealthy mental habits in the vastly larger group of students who do not suffer from PTSD or other anxiety disorders. People acquire their fears not just from their own past experiences, but from social learning as well. If everyone around you acts as though something is dangerous—elevators, certain neighborhoods, novels depicting racism—then you are at risk of acquiring that fear too. The psychiatrist Sarah Roff pointed this out last year in an online article for The Chronicle of Higher Education. “One of my biggest concerns about trigger warnings,” Roff wrote, “is that they will apply not just to those who have experienced trauma, but to all students, creating an atmosphere in which they are encouraged to believe that there is something dangerous or damaging about discussing difficult aspects of our history.”

#### Speech codes can be used against minorities—setting free speech precedents is key to social activism.

ACLU 01 American Civil Liberty Union “Hate Speech on Campus” 2001 https://www.aclu.org/other/hate-speech-campus JW

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, laws 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.

#### Empirics prove—speech codes get used to target minorities.

ACLU 01 American Civil Liberty Union “Hate Speech on Campus” 2001 https://www.aclu.org/other/hate-speech-campus JW

A: Historically, defamation laws or codes have proven ineffective at best and counter-productive at worst. For one thing, depending on how they're interpreted and enforced, they can actually work against the interests of the people they were ostensibly created to protect. Why? Because the ultimate power to decide what speech is offensive and to whom rests with the authorities -- the government or a college administration -- not with those who are the alleged victims of hate speech. In Great Britain, for example, a Racial Relations Act was adopted in 1965 to outlaw racist defamation. But throughout its existence, the Act has largely been used to persecute activists of color, trade unionists and anti-nuclear protesters, while the racists -- often white members of Parliament -- have gone unpunished. Similarly, under a speech code in effect at the University of Michigan for 18 months, white students in 20 cases charged black students with offensive speech. One of the cases resulted in the punishment of a black student for using the term "white trash" in conversation with a white student. The code was struck down as unconstitutional in 1989 and, to date, the ACLU has brought successful legal challenges against speech codes at the Universities of Connecticut, Michigan and Wisconsin. These examples demonstrate that speech codes don't really serve the interests of persecuted groups. The First Amendment does. As one African American educator observed: "I have always felt as a minority person that we have to protect the rights of all because if we infringe on the rights of any persons, we'll be next."