## 1

#### The standard is maximizing well-being.

#### Moral substitutability is true and only consequentialism explains it.

Walter Sinnott-Armstrong ’92 Dartmouth College Philosophical Perspectives, 6, Ethics, AN ARGUMENT FOR CONSEQUENTIALISM

Since general substitutability works for other kinds of reasons for action, we would need a strong argument to deny that it holds also for moral reasons. If moral reasons obeyed different principles, it would be hard to understand why moral reasons are also called 'reasons' and how moral reasons interact with other reasons when they apply to the same action. Nonetheless, this extension has been denied, so we have to look at moral reasons carefully. I have a moral reason to feed my child tonight, both because I promised my wife to do so, and also because of my special relation to my child along with the fact that she will go hungry if I don't feed her. I can't feed my child tonight without going home soon, and going home soon will enable me to feed her tonight. Therefore, there is a moral reason for me to go home soon. It need not be imprudent or ugly or sacrilegious or illegal for me not to feed her, but the requirements of morality give me a moral reason to feed her. This argument assumes a special case of substitutability: (MS) If there is a moral reason for A to do X, and if A cannot do X without doing Y, and if doing Y will enable A to do X, then there is a moral reason for A to do Y. I will call this 'the principle of moral substitutability', or just 'moral substitutability'.

He continues:

Of course, there are many other versions of deontology. I cannot discuss them all. Nonetheless, these examples suggest that it is the very nature of deontological reasons that makes deontological theories unable to explain moral substitutability. This comes out clearly if we start from the other side and ask which properties create the moral reasons that are derived by moral substitutability. What gives me a moral reason to start the mower is the consequences of starting the mower. Specifically, it has the consequence that I [can] am able to mow the grass. This reason cannot derive from the same property as my moral reason to mow the lawn unless what gives me a moral reason to mow the lawn is its consequences. Thus, any non-consequentialist moral theory will have to posit two distinct kinds of moral reasons: one for starting the mower and another for mowing the grass. Once these kinds of reasons are separated, we need to understand the connection between them. But this connection cannot be explained by the substantive principles of the theory. That is why all deontological theories must lack the explanatory coherence which is a general test of adequacy for all theories. I conclude that no deontological theory can adequately explain moral substitutability.

He continues:

All other moral reasons are non-consequential. Thus, a moral reason to do an act is non-consequential if and only if the reason depends even partly on some property that the act has independently of its consequences. For example, an act can be a lie regardless of what happens as a result of the lie (since some lies are not believed), and some moral theories claim that that property of being a lie provides a moral reason not to tell a lie regardless of the consequences of this lie. Similarly, the fact that an act fulfills a promise is often seen as a moral reason to do the act, even though the act has that property of fulfilling a promise independently of its consequences. All such moral reasons are non-consequential. In order to avoid so many negations, I will also call them 'deontological'. This distinction would not make sense if we did not restrict the notion of consequences. If I promise to mow the lawn, then one consequence of my mowing might seem to be that my promise is fulfilled. One way to avoid this problem is to specify that the consequences of an act must be distinct from the act itself. My act of fulfilling my promise and my act of mowing are not distinct, because they are done by the same bodily movements.10 Thus, my fulfilling my promise is not a consequence of my mowing. A consequence of an act need not be later in time than the act, since causation can be simultaneous, but the consequence must at least be different from the act. Even with this clarification, it is still hard to classify some moral reasons as consequential or deontological,11 but I will stick to examples that are clear. In accordance with this distinction between kinds of moral reasons, I can now distinguish different kinds of moral theories. I will say that a moral theory is consequentialist if and only if it implies that all basic moral reasons are consequential. A moral theory is then non-consequentialist[s] or deontological if it includes any basic moral reasons which are not consequential. 5. Against Deontology So defined, the class of deontological moral theories is very large and diverse. This makes it hard to say anything in general about it. Nonetheless, I will argue that no deontological moral theory can explain why moral substitutability holds. My argument applies to all deontological theories because it depends only on what is common to them all, namely, the claim that some basic moral reasons are not consequential. Some deontological theories allow very many weighty moral reasons that are consequential, and these theories might be able to explain why moral substitutability holds for some of their moral reasons: the consequential ones. But even these theories cannot explain why moral substitutability holds for all moral reasons, including the non-consequential reasons that make the theory deontological. The failure of deontological moral theories to explain moral substitutability in the very cases that make them deontological is a reason to reject all deontological moral theories. I cannot discuss every deontological moral theory, so I will discuss only a few paradigm examples and show why they cannot explain moral substitut- ability. After this, I will argue that similar problems are bound to arise for all other deontological theories by their very nature. The simplest deontological theory is the pluralistic intuitionism of Prichard and Ross. Ross writes that, when someone promises to do something, 'This we consider obligatory in its own nature, just because it is a fulfillment of a promise, and not because of its consequences.'12 Such deontologists claim in effect that, if I promise to mow the grass, there is a moral reason for me to mow the grass, and this moral reason is constituted by the fact that mowing the grass fulfills my promise. This reason exists regardless of the consequences of mowing the grass, even though it might be overridden by certain bad consequences. However, if this is why I have a moral reason to mow the grass, then, even if I cannot mow the grass without starting my mower, and starting the mower would enable me to mow the grass, it still would not follow that I have any moral reason to start my mower, since I did not promise to start my mower, and starting my mower does not fulfill my promise. Thus, a moral theory cannot explain moral substitutability if it claims that properties like this provide moral reasons.

#### Only naturalism is epistemically accessible

Papinaeu 11 [David Papineau, “Naturalism,” Stanford Encyclopedia of Philosophy, 2007]

Moore took this argument to show that moral facts comprise a distinct species of non-natural fact. However, any such **non-naturalist** view of **morality faces** immediate **difficulties**, deriving ultimately from the kind of causal closure thesis discussed above. If all physical effects are due to a limited range of natural causes, and if moral facts lie outside this range, then it follow that moral facts can never make any difference to what happens in the physical world (Harman, 1986). At first sight this may seem tolerable (perhaps moral facts indeed don't have any physical effects). But it has very awkward epistemological consequences. For Beirne ngs like us, knowledge of the spatiotemporal world is mediated by physical processes involving our sense organs and cognitive systems. If moral facts cannot influence the physical world, then it is hard to see how we can have any knowledge of them**.**

#### Experience is epistemic – it is how we empirically ground our existence. Pain is universally bad and pleasure is universally good.

Nagel ‘86. Thomas [“The View From Nowhere”, 1986]

I shall defend the unsurprising claim that sensory pleasure is good and pain bad, no matter who’s they are. The point of the exercise is to see how the pressures of objectification operate in a simple case. Physical pleasure and pain do not usually depend on activities or desires which themselves raise questions of justification and value. They are just [is a] sensory experiences in relation to which we are fairly passive, but toward which we feel involuntary desire or aversion. Almost everyone takes the avoidance of his own pain and the promotion of his own pleasure as subjective reasons for action in a fairly simple way; they are not back up by any further reasons. On the other hand if someone pursues pain or avoids pleasure, either it as a means to some end or it is backed up by dark reasons like guilt or sexual masochism. What sort of general value, if any, ought to be assigned to pleasure and pain when we consider these facts from an objective standpoint? What kind of judgment can we reasonably make about these things when we view them in abstraction from who we are? We can begin by asking why there is no plausibility in the zero position, that pleasure and pain have no value of any kind that can be objectively recognized. That would mean that I have no reason to take aspirin for a severe headache, however I may in fact be motivated; and that looking at it from outside, you couldn't even say that someone had a reason not to put his hand on a hot stove, just because of the pain… Without some positive reason to think there is nothing in itself good or bad about having an experience you intensely like or dislike, we can't seriously regard the common impression to the contrary as a collective illusion. Such things are at least good or bad for us, if anything is. What seems to be going on here is that we cannot from an objective standpoint withhold a certain kind of endorsement of the most direct and immediate subjective value judgments we make concerning the contents of our own consciousness. We regard ourselves as too close to those things to be mistaken in our immediate, nonideological evaluative impressions. No objective view we can attain could possibly overrule our subjective authority in such cases. There can be no reason to reject the appearances here.

#### To let die is to intend death, means side-constrains devolve into aggregation.

Robert Luhdvig Muhlnickel, Ph.D, Thesis for University of Rochester 2008 - “Consequentialism and doing and allowing” [urresearch.rochester.edu/institutionalPublicationPublicView.action?institutionalItemId=4681](https://urresearch.rochester.edu/institutionalPublicationPublicView.action?institutionalItemId=4681)

“Quinn intends both to justify (1) and to show **that [In the trolley dilemma] ‘not to switch’ is an instance of doing**, despite the appearance that ‘not to switch’ is an instance of allowing. Quinn thinks **there are only two acceptable** **reasons that [not switching]** (1) **is morally permissible:** (i) **the agent’s motive of** keeping clean hands (that is**, avoiding doing what is morally wrong); or** (ii) **preventing the death of the one on the sidetrack.** The driver’s **keeping morally clean hands** is not an “acceptable reason” for not switching because it **presupposes that it is morally wrong not to switch**. We are trying to determine whether not switching is morally wrong, so we should avoid assuming[.] that not switching is morally wrong. Reason (ii) for (1), that it is morally permissible not to switch because **[If] the driver intends to prevent the one’s death**, entails that **the driver intends that the train move [to]** in such a way that it **prevents the one’s death. If the driver intends** that the train move in a way that **it [to] prevents the one’s death, the driver intends the train to move in a way that [it]** the train’s movement **kills the five since moving in a way that kills the five is causally necessary for preventing the death of the one.”**

#### Psychological evidence proves we don’t identify with our future selves. Continuous personal identity doesn’t exist.

Alisa Opar (articles editor at Audubon magazine; cites Hal Hershfield, an assistant professor at New York University’s Stern School of Business; and Emily Pronin, a psychologist at Princeton) “Why We Procrastinate” Nautilus January 2014

“The British philosopher Derek Parfit espoused a severely reductionist view of personal identity in his seminal book, Reasons and Persons: It does not exist, at least not in the way we usually consider it. We humans, Parfit argued, are not a consistent identity moving through time, but a chain of successive selves, each tangentially linked to, and yet distinct from, the previous and subsequent ones. The boy who begins to smoke despite knowing that he may suffer from the habit decades later should not be judged harshly: “This boy does not identify with his future self,” Parfit wrote. “His attitude towards this future self is in some ways like his attitude to other people.” Parfit’s view was controversial even among philosophers. But psychologists are beginning to understand that it may accurately describe our attitudes towards our own decision-making: It turns out that **we see our future selves as strangers.** Though we will inevitably share their fates, **the people we** will **become** in a decade, quarter century, or more, **are unknown to us.** This impedes our ability to make good choices on their—which of course is our own—behalf. That bright, shiny New Year’s resolution? If you feel perfectly justified in breaking it, it may be because it feels like it was a promise someone else made. “It’s kind of a weird notion,” says Hal Hershfield, an assistant professor at New York University’s Stern School of Business. **“On a psychological** and emotional **level we** really **consider that future self as** if it’s **another person.” Using MRI, Hershfield** and colleagues **studied brain activity changes when people imagine their future** and consider their present. **They homed in on** two **areas of the brain** called the medial prefrontal cortex and the rostral anterior cingulate cortex, which are **more active when a subject thinks about [themselves]** himself **than when [they]** he **think**s **of someone else.** They found **these** same **areas were more** strongly **activ**at**e**d **when subjects thought of themselves today, than** of themselves **in the future. Their future self “felt” like somebody else.** In fact, **their** neural **activity when they described themselves in a decade was similar to that when they described Matt Damon** or Natalie Portman. And subjects whose brain activity changed the most when they spoke about their future selves were the least likely to favor large long-term financial gains over small immediate ones. Emily Pronin, a psychologist at Princeton, has come to similar conclusions in her research. In a 2008 study, **Pronin and her team told** college **students that they were** taking part **in an experiment on disgust that required drinking a concoction** made of ketchup and soy sauce. **The more they**, their future selves, or other students **consumed**, they were told, **the greater the benefit to science. Students who** were told they’d have **to down the** distasteful **quaff that day committed to consuming two tablespoons. But those that were committing their future selves** (the following semester) or other students to participate **agreed to guzzle** an average of **half a cup. We think of our future selves**, says Pronin, like we think of others: **in the third person.** The disconnect between our present and time-shifted selves has real implications for how we make decisions. We might choose to procrastinate, and let some other version of our self deal with problems or chores. Or, as in the case of Parfit’s smoking boy, we can focus on that version of our self that derives pleasure, and ignore the one that pays the price. But if procrastination or irresponsibility can derive from a poor connection to your future self, strengthening this connection may prove to be an effective remedy. This is exactly the tactic that some researchers are taking. Anne Wilson, a psychologist at Wilfrid Laurier University in Canada, has manipulated people’s perception of time by presenting participants with timelines scaled to make an upcoming event, such as a paper due date, seem either very close or far off. “Using a longer timeline makes people feel more connected to their future selves,” says Wilson. That, in turn, spurred students to finish their assignment earlier, saving their end-of-semester self the stress of banging it out at the last minute. We think of our future selves, says Pronin, like we think of others: in the third person. Hershfield has taken a more high-tech approach. Inspired by the use of images to spur charitable donations, he and colleagues took subjects into a virtual reality room and asked them to look into a mirror. The subjects saw either their current self, or a digitally aged image of themselves (see the figure, Digital Old Age). When they exited the room, they were asked how they’d spend $1,000. Those exposed to the aged photo said they’d put twice as much into a retirement account as those who saw themselves unaged. This might be important news for parts of the finance industry. Insurance giant Allianz is funding a pilot project in the midwest in which Hershfield’s team will show state employees their aged faces when they make pension allocations. Merrill Edge, the online discount unit of Bank of America Merrill Lynch, has taken this approach online, with a service called Face Retirement. Each decade-jumping image is accompanied by startling cost-of-living projections and suggestions to invest in your golden years. Hershfield is currently investigating whether morphed images can help people lose weight. Of course, the way we treat our future self is not necessarily negative: Since we think of our future self as someone else, our own decision making reflects how we treat other people. Where Parfit’s smoking boy endangers the health of his future self with nary a thought, others might act differently. “The thing is, we make sacrifices for people all the time,” says Hershfield. “In relationships, in marriages.” The silver lining of our dissociation from our future self, then, is that it is another reason to practice being good to others. One of them might be you.”

#### This means util is the only coherent moral theory.

#### A. Since a there is not continuous persons, distribution of goods among people is irrelevant, so we just maximize benefits among people.

#### B. It is impossible to violate a constraint since identity is in constant flux. Anything such as a promise a made a year ago is no long *my* promise, etc.

#### Theory – every framework must be theoretically legitimate, since they are all functionally interpretations of the word ought. My framework defines ‘ought’. Prefer my definition:

#### Ground. (a) gives best turn ground since debaters are able read link and impact turns since the standard concerns itself with maximizing things like pleasure, where as things like deont can’t be impact turned since it already outlines what is absolutely good. (b) gives best weighing ground and clash—debater are encourages to weigh between the impacts of their argument since any policy will have some benefits and some harms. In contrast, constraint based theories just encourage debaters to collapse to thing like permissibility and presumption.

#### Topic lit: Util forces debates about what actually happens in the real world because we have to use empirics and analyze the consequences of the plan versus neg advocacy. This increases topic education because it forces research on the effects of the resolution and thus learn more about the topic. Topic education is key to education because we use it in the real-world to talk about current topics.

## 2

#### CP Text: Public colleges and universities in the United States ought not restrict any constitutionally protected speech except in the case of the nonconsensual distribution of sexually explicit images.

#### The nonconsensual distribution of sexually explicit images is constitutionally protected speech – aff allows it on college campuses.

Goldberg 16 – Bracketed for potentially offensive language Erica Goldberg Columbia Law Review Volume 116, No. 3 April 2016 "FREE SPEECH CONSEQUENTIALISM"

States have begun to criminalize the publication of nude photos if the person publishing the photos knows or should have known that the subject of the image did not consent to the disclosure.296 Virginia law- makers introduced legislation, for example, that would criminalize pub- lishing sexually explicit pictures of someone without permission and with "the intent to cause them substantial emotional distress."297 A California defendant was convicted of felony charges of identity theft and extortion, for running a revenge porn website where he made aggrieved ex-lovers pay to have their photos removed from his site.298 His lawyer argued that although his behavior was immoral and offensive, he did not break any laws by allowing others to post sexually explicit photographs.299 **The regulation of [non-consensual sexually explicit image distribution]** revenge porn **presents thorny First Amendment issues**, even though the speech is considered both highly injurious and of low value.300 **Some argue that [non-consensual sexually explicit image distribution]** revenge porn **can be regulated as obscenity**,301 but, like much pornography, **sexually explicit speech that does not rise to the level of obscenity is still protected speech**.302 **Criminal statutes and torts based on the invasion of privacy and emotional distress caused by of [non-consensual sexually explicit image distribution]** revenge porn **compromise the freedom to distribute protected speech lawfully obtained**. Indeed, **the Supreme Court has recognized a right for the media to publish even unlawfully obtained content**, so long as the publisher was not involved in the illegal so long as the publisher was not involved in the illegal conduct that produced the content.303 **And in United States v. Stevens , the Supreme Court held that individuals cannot be held criminally liable for distributing speech depicting illegal acts**, so long as the individuals did not perpetrate the underlying act.304 **of [non-consensual sexually explicit image distribution]** Revenge porn, as defined here, **is both legally obtained and depicts a legal act**. In the ultimate articulation of free speech consequentialism, Mary Anne Franks argues for criminalization of revenge porn because "**some expressions [of free speech] are just considered so socially harmful and don't contribute any benefits to society**."305 **Yet this does not separate [non-consensual sexually explicit image distribution]** revenge porn f**rom any number of categories of protected speech that may cause others emotional distress and are considered by some to pos- sess little value**; this is nothing more than a call for judges to make whole- sale and retail judgments about the value and harms that flow from particular forms of speech. If revenge porn can be regulated, legislators should not target the victim's emotional distress or the invasion of pri- vacy, as these focal points threaten to undermine strong free speech pro- tections exceptional to America's free speech regime.

#### CP solves – deters perpetrators and creates a cultural shift.

Citron and Franks 14 Danielle Keats Citron, Mary Anne Franks. "CRIMINALIZING REVENGE PORN" 4/21/2014 <https://www.law.yale.edu/system/files/area/center/isp/documents/danielle_citron_-_criminalizing_revenge_porn_-_fesc.pdf> Danielle Keats Citron is a Lois K. Macht Research Professor & Professor of Law, University of Maryland Francis King Carey School of Law; Affiliate Scholar, Stanford Center on Internet and Society; Affiliate Fellow, Yale Information Society Project. Mary Anne Franks is an Associate Professor of Law, University of Miami School of Law.

As this discussion shows, civil law cannot meaningfully deter and redress revenge porn. We now turn to the potential for a criminal law response. III. CRIMINAL LAW’S POTENTIAL TO COMBAT REVENGE PORN **A** criminal **law solution is essential to deter** judgment-proof **perpetrators**. As attorney and revenge porn expert Erica Johnstone puts it, “[e]ven if **people** aren’t afraid of being sued because they have nothing to lose, they **are afraid** of being convicted of a crime **because that shows up on their record forever**.”68 **Nonconsensual [image distribution’s]** pornography’s **rise is** surely **related to the fact that malicious actors have little incentive to refrain from such behavior**. While some critics believe that existing criminal law adequately addresses nonconsensual pornography, this Part highlights how existing criminal law fails to address most cases of revenge porn. A. The Importance of Criminal Law Criminal law has long prohibited privacy invasions and certain violations of autonomy. Criminal **law is essential to send the clear message to potential perpetrators that nonconsensual [image distribution]** pornography **inflicts grave privacy and autonomy harms that have real consequences and penalties**.69 While we share general concerns about over-incarceration, rejecting the criminalization of serious harms is not the way to address those concerns. We are also sensitive to objections that criminalizing revenge porn might reinforce the harmful and erroneous perception that women should be ashamed of their bodies or their sexual activities, but maintain that recognizing and protecting sexual autonomy does exactly the opposite.70 **A criminal law solution would send the message that individuals’ bodies** (mostly female bodies) **are their own and that society recognizes the grave harms** that flow from turning individuals into objects of pornography without their consent. In this way, **a criminal law approach will help us conceptualize the involuntary publication of someone’s sexually explicit images as a form of sexual assault**. When sexual abuse is inflicted on an individual’s physical body, it is considered rape or sexual assault. The fact that nonconsensual pornography does not involve physical contact does not change the fact that it is a form of sexual abuse. Federal and state criminal laws regarding voyeurism demonstrate that physical contact is not necessary to cause great harm and suffering. Video voyeurism laws punish the nonconsensual recording of a person in a state of undress in places where individuals enjoy a reasonable expectation of privacy. 71 Criminal laws prohibiting voyeurism rest on the commonly accepted assumption that observing a person in a state of undress or engaged in sexual activity without that person’s consent not only inflicts dignitary harms upon the individual observed, but also inflicts a social harm serious enough to warrant criminal prohibition and punishment. International criminal law provides precedent and perspective on this issue. Both the International Criminal Tribunal for Rwanda (“ICTR”) and the International Criminal Tribunal for the former Yugoslavia (“ICTY”) have employed a definition of sexual violence that does not require physical contact. In both tribunals, forced nudity was found to be a form of sexual violence.72 In the Akayesu case, the ICTR found that “[s]exual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.” 73 In the Furundzija case, the ICTY similarly found that international criminal law punishes not only rape, but also “all serious abuses of a sexual nature inflicted upon the physical and moral integrity of a person by means of coercion, threat of force or intimidation in a way that is degrading and humiliating for the victim’s dignity.”74 **The legal and social condemnation of child pornography exemplifies our collective understanding that the production, viewing, and distribution of certain kinds of** sexual **images are harmful**. In New York v. Ferber,75 the United States Supreme Court recognized that the distribution of child pornography is distinct from the underlying crime of the sexual abuse of children.76 The Court observed that “[t]he distribution of photographs and films depicting sexual activity by juveniles . . . [is] a permanent record of the children’s participation and the harm to the child is exacerbated by their circulation.”77 When images and videos of sexual assaults and surreptitious observation are distributed and consumed, they inflict further harms on the victims and on society connected to, but distinct from, the criminal acts to which the victims were originally subjected.78 The trafficking of this material increases the demand for images and videos that exploit the individuals portrayed. This is why the Court in Ferber held that it is necessary to shut down the “distribution network” of child pornography to reduce the sexual exploitation of children: “The most expeditious if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product.”79 Nonconsensual pornography raises similar concerns. **Disclosing sexually explicit images without permission can have lasting and destructive consequences**. Victims often feel shame and humiliation every time they see them and every time they think that others are viewing them. Consider the experience of sports reporter Erin Andrews. After a stalker secretly taped her while she undressed in her hotel room, he posted as many as ten videos of her online.80 Google Trends data suggested that just after the release of the videos, much of the nation began looking for some variation of “Erin Andrews peephole video.”81 Nearly nine months later, Andrews explained: “I haven’t stopped being victimized—I’m going to have to live with this forever . . . . When I have kids and they have kids, I’ll have to explain to them why this is on the Internet.”82 She further lamented that when she walks into football stadiums to report on a game, she faces the taunts of fans who have seen her naked online.83 She explained that she “felt like [she] was continuing to be victimized” each time she talked about it.84 Andrews’s experience is echoed by that of Lena Chen, who allowed her ex-boyfriend to take pictures of them having sex. 85 After he betrayed her trust and posted the pictures online, the pictures went viral.86 As Chen explained, feeling ashamed of her sexuality was not something that came naturally to her, but it is now something she knows inside and out. 87 Victims of nonconsensual pornography are harmed each time a person views or shares their intimate images. B. Current Criminal Law’s Limits Existing federal and state criminal laws have limited application to the initial posters of nonconsensual pornography and the laws have even less force with regard to site operators. This Subpart first explores the potential of criminal harassment statutes in pursuing the original discloser. Then, it turns to the possibility of extortion and child pornography charges against revenge porn site operators.

#### Non-consensual image distribution causes chilling effect for survivors who are afraid to speak out and are silenced. Causes psychological violence.

Citron and Franks 14 Bracketed for potentially offensive language Danielle Keats Citron, Mary Anne Franks. "CRIMINALIZING REVENGE PORN" 4/21/2014 <https://www.law.yale.edu/system/files/area/center/isp/documents/danielle_citron_-_criminalizing_revenge_porn_-_fesc.pdf> Danielle Keats Citron is a Lois K. Macht Research Professor & Professor of Law, University of Maryland Francis King Carey School of Law; Affiliate Scholar, Stanford Center on Internet and Society; Affiliate Fellow, Yale Information Society Project. Mary Anne Franks is an Associate Professor of Law, University of Miami School of Law.

Victims’ fear can be profound. They do not feel safe leaving their homes. Jane, for example, did not go to work for days after she discovered the postings.30 Hollie Toups, a thirty-three-year-old teacher’s aide, explained that she was afraid to leave her home after someone posted her nude photograph, home address, and Facebook profile on a porn site.31 “I don’t want to go out alone,” she explained, “because I don’t know what might happen.” 32 **[Survivors]** victims  **struggle especially with anxiety, and some suffer panic attacks**. **Anorexia nervosa and depression are common ailments for individuals who are harassed online**.33 Researchers have found that cyber harassment victims’ anxiety grows more severe over time.34 Victims have difficulty thinking positive thoughts and doing their work. According to a study conducted by the Cyber Civil Rights Initiative, **over 80% of [non-consensual image distribution]** revenge porn victims **[survivors] experience severe emotional distress and anxiety**.35 Revenge pornis often a form of domestic violence. Frequently, **the** **intimate images are** themselves **the result of an abuser’s coercion** of a reluctant partner.36 In numerous cases, abusers have threatened to disclose intimate images of their partners when victims attempt to leave the relationship.37 **Abusers use the threat of disclosure to keep their partners under their control, making good on the threat once their partners find the courage to leave**. **The professional costs of [non-consensual image distribution]** revenge porn **are steep**. **Because Internet searches** of victims’ **names** prominently **display their naked images** or videos, **many lose their jobs**. **Schools have terminated teachers whose naked pictures appeared online**. **A government agency ended a woman’s employment after a coworker circulated her nude photograph to colleagues**.38 Victims may be unable to find work at all. Most employers rely on candidates’ online reputations as an employment screen. According to a 2009 study commissioned by Microsoft, nearly 80% of employers consult search engines to collect intelligence on job applicants, and, about 70% of the time, they reject applicants due to their findings.39 Common reasons for not interviewing and hiring applicants include concerns about their “lifestyle,” “inappropriate” online comments, and “unsuitable” photographs, videos, and information about them.40 Recruiters do not contact victims to see if they posted the nude photos of themselves or if someone else did in violation of their trust. The “simple but regrettable truth is that after consulting search results, employers don’t call revenge porn victims to schedule” interviews or to extend offers. 41 Employers do not want to hire individuals whose search results might reflect poorly on the employer. 42 **To avoid further abuse, targeted individuals withdraw from online activities, which can be costly in many respects**. **Closing down one’s blog can mean a loss of income and other career opportunities**.43 In some fields, blogging is key to getting a job. According to technology blogger Robert Scoble, people who do not blog are “never going to be included in the [technology] industry.” 44 **When [survivors]** victims **shut down their profiles on social media platforms like Facebook, LinkedIn, and Twitter, they are saddled with low social media influence scores that can impair their ability to obtain employment**.45 Companies like Klout measure people’s online influence by looking at their number of social media followers, updates, likes, retweets, and shares. Not uncommonly, employers refuse to hire individuals with low social media influence scores. 46 Aside from these traditional harms, revenge porn **[non-consensual image distribution] can also amount to a degrading form of sexual harassment. It exposes** victims’ **sexuality in humiliating ways**. Victims’ **naked photos appear on slut-shaming**47 **sites**, such as Cheaterville.com and MyEx.com. Once their naked images are exposed, **anonymous strangers** can **send e-mail messages that threaten rape**. Some have said: “First I will rape you, then I’ll kill you.” 48 **[Survivors]** victims **internalize these frightening and demeaning messages**.49 Women would more likely suffer harm as a result of the posting of their naked images than their male counterparts. Gender stereotypes help explain why—women would be seen as immoral sluts for engaging in sexual activity, whereas men’s sexual activity is generally a point of pride.50 While nonconsensual pornography can affect both men and women, **empirical evidence indicates that nonconsensual pornography primarily affects women** and girls. In a study conducted by the Cyber Civil Rights Initiative, 90% of those victimized by revenge porn were female.51 Nonconsensual pornography, like rape, domestic violence, and sexual harassment, belongs to the category of violence that violates legal and social commitments to equality. **It denies** women and girls **control over their own bodies and lives. Not only does it inflict serious** **and**, in many cases, **irremediable injury on individual [survivors]** victims, **it constitutes a vicious form of sex discrimination.**

#### CP Turns the aff:

#### The PIC does everything that the aff does except allow nonconsensual image distribution. In the world of the PIC, one of three things happen: Either

#### Nonconsensual image distribution is bad under the AC FW and thus you vote negative because there is a unique piece of offense on the CP, or

#### Nonconsensual image distribution doesn’t link to the AC FW in which case both the aff and the neg have equal offense under the FW because they do the same thing, and you presume neg, or

#### Nonconsensual image distribution is a good thing under your framework and there is a performative DA and independent reason to vote against you because you justify things like psychological violence and sexual assault as being good which makes debate dangerously unsafe.

## Case

#### The AFFs prioritization of free speech assumes a liberalist notion of language where people can express themselves freely. The psychoanalytic tradition holds that language is not transparent and is ultimately grounded in lack and desire.

Douglas-Scott 99 PSYCHOANALYSIS, SPEECH ACTS AND THE LANGUAGE OF "FREE SPEECH" SIONAIDH DOUGLAS-SCOTT Res Publica VoI.IV no.1 [1998] // UH-DD

“The focus of this paper is an attack on a prevailing view of what, for want of a better description, I shall call freedom of expression. A traditional liberal justification of freedom of expression holds that not only does **freedom of expression** aid us in our search for truth but it also promotes certain key values such as individual autonomy and democracy (in that people should be able to decide for themselves which political and societal views should prevail). This, it **is suggested**, is **possible only if government does not censor certain viewpoints.** Ronald Dworkin spelled out the practical implications of this view when, attacking current legislation in Germany which makes it an offence to deny, approve of or belittle the crimes of the Holocaust, he wrote that "we must not endorse the principle that opinion may be banned when those in power are persuaded that it is false and that some group would be deeply wounded by its publication".3 A similar view is expressed by Wojciech Sadurski, who, in a recent review of Catherine Mackinnon's Only Words, criticises those, such as Mackinnon, who would seek to regulate hate speech and pornography in order to bring about equality, suggesting that such regulation would deny the "autonomy and individual responsibility of the hearers". The views of Dworkin and Sadurski, paradigmatic of a certain type of liberal position, have themselves not gone without criticism. There is now a growing body of criticism, in particular, of the near absolute strength of freedom of speech in the U.S.A. These critics hold that it is better to allow inroads into freedom of expression than to continue to permit the harm caused by certain verbal utterances. However, it is not the purpose of this paper to focus on a critique of the standard justifications of freedom of speech offered by those such as Dworkin and Sadurski, but rather to suggest an alternative approach. For one surprising feature of the debate over expression and controls on expression is that such debate should take place almost entirely within the terrain of liberal theory. Very little account seems to have been taken of the rich accounts given of speech and language in modern literary and psychoanalytic theory and philosophy of language.6 **The standard liberal approach has been allowed to occupy** virtually **the whole terrain of discussion over the function of speech and language.** Furthermore, **what is taken for granted** by this traditional approach **is that, free from state interference, people are able to express themselves freely, to find their own truth, attain greater self-understanding and so on**; and that, therefore, as much expression as desired should be permitted both in public and in private. **A fuller consideration** of the work done by speech shows that none of this is necessarily so. The views to be considered here **lead us to mistrust speech rather than to prize it as a means to** greater self-understanding or **truth.** They lead us to rebut the traditional presumption in favour of freedom of expression. Two areas of focus illustrate why this is so. First, a brief excursion into **psychoanalytic theory reveals a very different approach to speech and language.** **Initially, the psychoanalytic situation might seem to have something in common with the liberal paradigm of self-expression** and autonomy. For why is free, unconstrained speech ("the talking cure") so important in the context of an analytic session? Well, it is important in order to improve our self- understanding and **to explore our hidden depths and repressions, which will somehow come to light through speech, language and self- expression. But how disturbing then,** **if the very means which should permit this self-understanding - - language - - should not be the transparent** entity, the conduit, that we might suppose it to be. Work in **psychoanalytic** theory presents a very different view of language and speech from the traditional self-congratulatory liberal analyses of speech. The **focus is instead on how language performs, obfuscates, confuses and misleads us.** A strong reason for rebutting the presumption in favour of free speech comes specifically from the theory of language of Jacques **Lacan**, which **stresses the obfuscation of language and its grounding in desire and lack, rather than in its ability to describe the world successfully or in its ability to enable us to attain truth or autonomy.**” (29-31)

#### The act of not limiting free speech is grounded in an abstract conception of democratic unity that fails to recognize how individuals interact and limit their own discourse.

Mouffe 2k [Chantal Mouffe. “The Democratic Paradox”]

Let us examine this model of deliberative democracy closely. In **their attempt to ground legitimacy on rationaIity**. these theorists **have to distinguish between mere agreement and rational consensus**. That is why they assert that the process of public discussion must realize the conditions of ideal discourse. This sets the **values of** the procedure. which are **impartiality** and equality, **openness and lack of coercion**, and unanimity. The combination of those values in the discussion **guarantees that its outcome will be legitimate**, since it wilJ produce generalizable interests on which all participants can agree. Habermasians do not deny that there will, of course, be obstacles to the realization of the ideal discourse, but these obstacles are conceived of as empirical. They are due to the fact that it **is unlikely**. **given the practical and empirical limitations of social life. that we will ever be completely able to leave all our particular interests** aside in order to coincide with our universal rational self This is why the ideal speech situation is presented as a regulative idea. However, **if we** **accept** Schmitt's insight about **the relations of inclusion-exclusion**  which are **necessarily inscribed in** the politi- cal constitution of **'the people' - which is required by the exercise of democracy - we have to acknowledge that the obstacles to the realization of the ideal speech situation -** and to the consensus without exclusion that it would bring about - are inscribed in the democratic logic itself. Indeed. the **free and unconstrained public deliberation of all on matters of common concern goes against the democratic requisite of drawing a frontier between 'us' and 'them'**. We could say - this time using Derridean terminology - that the very conditions of possibility of the exercise of democracy consticute simultaneously the conditions o f impossibility o f democratic legitimacy as envisaged by deliberative democracy. Consensus in a liberal-democratic society is - and will always be - the expression of a hegemony and the crystallization of power relations. The frontier that it establishes between what is and what is not legitimate is a political one. and for that reason it should remain contestable. **To deny the existence of such a moment of closure, or to present the frontier as dictated by rationality or morality, is to naturalize what should be perceived as a contingent and temporary hegemonic articulation of 'the people'** through a panicular regime of inclusion-exclusion. The result of such an operation is to reify the identity of the people by reducing it to one of its many possible forms of identification.