# TOC Resistance AC

### K FW

#### We need to create systems that focuses on strategies to stop oppression and make our ethical categorizing meaningful – otherwise people are arbitrarily excluded. The role of the ballot is to vote for the best advocacy that minimizes structural violence

Winter and Leighton 99 [Deborah DuNann Winter and Dana C. Leighton. Winter: Psychologist that specializes in Social Psych, Counseling Psych, Historical and Contemporary Issues, Peace Psychology. Leighton: PhD graduate student in the Psychology Department at the University of Arkansas. Knowledgable in the fields of social psychology, peace psychology, and ustice and intergroup responses to transgressions of justice] (Peace, conflict, and violence: Peace psychology in the 21st century. Pg 4-5)]

Finally, **to recognize the operation of structural violence forces us to ask questions about how and why we tolerate it**, questions which often have painful answers for the privileged elite who unconsciously support it. A final question of this section ishow and why we allow ourselves to be so oblivious to structural violence. Susan Opotow offers an intriguing set of answers, in her article Social Injustice. She argues that **our normal perceptual/cognitive processes divide people into in-groups and out-groups. Those outside our group lie outside our scope of justice. Injustice that would be instantaneously confronted if it occurred to someone we love or know is barely noticed if it occurs to strangers or those who are invisible or irrelevant. We do not seem to be able to open our minds and our hearts to everyone,** so we draw conceptual lines **between those who are in and out of our moral circle.** Those who fall outside are **morally** excluded, **and become either invisible, or demeaned in some way** so **that** we do not **have to** acknowledge the injustice they suffer. Moral exclusion is a human failing, but Opotow argues convincingly that it is an outcome of everyday social cognition. **To reduce its nefarious effects**, we must be vigilant in **noticing and** listening to oppressed, **invisible**, outsiders. Inclusionary thinking can be fostered **by relationships, communication, and appreciation of diversity**.Like Opotow, all the authors in this section point out that structural violence is not inevitable if we become aware of its operation, and build systematic ways to mitigate its effects. Learning about structural violence may be discouraging, overwhelming, or maddening, but these papers encourage us to step beyond guilt and anger, and begin to think about how to reduce structural violence. All the authors in this section note that the same structures (such as global communication and normal social cognition) which feed structural violence, can also be used to empower citizens to reduce it.

#### Oppression is normatively bad – it excludes people from moral deliberation and makes them victims of violence. Either a) aff impacts matter under your framework or b) It can’t condemn oppression and you should reject it

#### I defend the text of the resolution, Resolved: Public colleges and universities in the United States ought not restrict any constitutionally protected speech. CX clarification solves for any ambiguities in the advocacy or role of the ballot – I’ll grant you stable links if you ask.

### Phil FW

#### The standard is minimizing structural violence

#### 1. Ethical theories that aren’t grounded in the current social context fail to analyze structural inequalities and real world issues.

Mills 9: Mills, C. W. (2009), Rawls on Race/Race in Rawls. The Southern Journal of Philosophy, 47: 161–184

Now **how can this ideal ideal**—a society not merely without a past history of racism but without races themselves—**serve to adjudicate the merits of competing policies aimed at correcting for a long history of white supremacy** manifest in Native American expropriation, African slavery, residential and educational segregation, large differentials in income and huge differentials in wealth, nonwhite underrepresentation in high-prestige occupations and overrepresentation in the prison system, contested national narratives and cultural representations, widespread white evasion and bad faith on issues of their racial privilege, and a corresponding hostile white backlash against (what remains of) those mild corrective measures already implemented? Obviously, **it cannot. As Thomas Nagel concedes: “**Ideal theory **enables you to say when a society is unjust, because it falls short of the ideal. But it** does not tell you what to do **if, as is almost always the case, you find yourself** in an unjust society, **and want to correct that injustice**” (2003a, 82). Ideal theory represents an unattainable target that would require us to roll back the clock and start over. So in a sense **it is an ideal with little or no practical worth**. **What is required is the nonideal** (rectificatory) **ideal that starts from the reality of these injustices and then seeks some fair means of correcting for them, recognizing that in most cases the original prediscrimination situation** (even if it can be intelligibly characterized and stipulated) cannot be restored. Trying to rectify systemic black disadvantage through affirmative action is not the equivalent of not discriminating against blacks, especially when there are no blacks to be discriminated against. Far from being indispensable to the elaboration of non- ideal theory, ideal theory would have been revealed to be largely useless for it. But the situation is worse than that. As the example just given illustrates, it is not merely a matter of an ideal with problems of operationalization and relevance, but of an ideal likely to lend itself more readily to retrograde political agendas. If the ideal ideal rather than the rectificatory ideal is to guide us, then a world without races and any kind of distinction- drawing by race may seem to be an attractive goal. **One takes the ideal to be colorblind nondiscrimination, as appropriate for a society beginning from the state of nature, and then—completely** ignoring **the nonideal** history that has given whites a systemic **illicit** advantage **over people of color**—conflates together as “discrimination” all attempts to draw racial distinctions for public policy goals, no matter what their motivation, on the grounds that this perpetuates race and invidious differential treatment by race. In the magisterial judgment of Chief Justice John Roberts in the June 2007 Supreme Court decision on the Seattle and Louisville cases where schools were using race as a factor to maintain diversity, “The way to stop discrimination on the basis of race is to stop discriminating on the basis of race,”6 a statement achieving the remarkable feat of depicting not merely as true, but as tautologically true, the equating of Jim Crow segregation and the attempt to remedy Jim Crow segregation!What is **ideally** called for under ideal circumstances is not, or at least is not necessarily,what is **ideally** called for under nonideal circumstances. **Claiming that all we need to do is to cease (what is here characterized as) discrimination ignores the differential advantages and privileges that have accumulated in the white population because of the past history of discrimination**. So the defense in terms of ideal theory is doubly problematic. In the first place, ideal theory was never supposed to be an end in itself, but a means to improving our handling of nonideal matters, and the fact that Rawls and his disciples and commen- tators have for the most part stayed in the realm of the ideal represents an evasion of the imperative of dealing with what were supposed to be the really pressing issues. And in the second place, it is questionable in any case how useful the ideal ideal in the Rawlsian sense is or ever would have been in assisting this task. So it is not merely that ideal theory has not come to the aid of those dealing with nonideal injustice but that it was unlikely to have been of much help when and if it ever did arrive.

#### 2. Oppression is normatively bad – it excludes people from moral deliberation and makes them victims of violence. Either a) aff impacts matter under your framework or b) It can’t condemn oppression and you should reject it

#### 3. Collective action results in tradeoffs and conflicts that only consequentialism can resolve.

Woller 97 summarizes: Gary Woller [BYU Professor] “An Overview by Gary Woller” A Forum on the Role of Environmental Ethics. June 1997. p. 10

Moreover, virtually all public policies entail some redistribution of economic or political resources, such that one group's gains must come at another group's ex- pense. Consequently, **public** policies in a democracy must be justified to the public, and especially to those who pay the costs of those policies. **Such** justification cannot **simply** be assumed a prioriby invoking some higher-order moral principle. Appeals to a priori moral principles, such as environmental preservation, also **often** fail to acknowledge that public policies inevitably entail trade-offs among competing values. Thus since policymakers cannot justify inherent value conflicts to the public in any philosophical sense, and since public policies inherently imply winners and losers, the policymakers' duty to the public interest **requires them** to demonstrate that the redistributive effects and value trade-offs implied by their polices are somehow to the overall advantage of society. At the same time, deontologically based ethical systems have severe practical limitations as a basis for public policy. At best, a priori moral principles provide only general guidance to ethical dilemmas in public affairs and do not themselves suggest appropriate public policies, and at worst, they create a regimen of regulatory unreasonableness while failing to adequately address the problem or actually making it worse.

#### 4. No act omission distinction for states since their implicit approvals of actions still entail moral responsibility.

Sunstein and Vermuele: Cass R. Sunstein and Adrian Vermeule. The University of Chicago Law School. “Is Capital Punishment Morally Required? The Relevance of Life‐Life Tradeoffs.” JOHN M. OLIN LAW and ECONOMICS WORKING PAPER NO. 239. The Chicago Working Paper Series. March 2005

In our view, any effort to distinguish between acts and omissions goes wrong by overlooking the distinctive features of government as a moral agent. If correct, this point has broad implications for criminal and civil law. Whatever the general status of the act/omission distinction as a matter of moral philosophy, the distinction is least impressive when applied to government, because the most plausible underlying considerations do not apply to official actors.  The most fundamental point is that unlike individuals, governments always and necessarily face a choice between or among possible policies for regulating third parties. The distinction between acts and omissions may not be intelligible in this context, and even if it is, the distinction does not make a morally relevant difference. Most generally, government is in the business of creating permissions and prohibitions. When it explicitly or implicitly authorizes private action, it is not omitting to do anything or refusing to act. Moreover, the distinction between authorized and unauthorized private action – for example, private killing –becomes obscure when government formally forbids private action but chooses a set of policy instruments that do not adequately or fullydiscourage it. If there is no act-omission distinction, then government is fully complicit with any harm it allows, so decisions are moral if they minimize harm. All means based and side constraint theories collapse because two violations require aggregation.

#### 5. Fission proves personal identity is reductionist – psychological continuity doesn’t exist.

Olson: Olson, Eric T., "Personal Identity", The Stanford Encyclopedia of Philosophy (Spring 2016 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/spr2016/entries/identity-personal/>.

But now **suppose** that **both hemispheres [of your brain] are transplanted, each into a different** empty **head**. (We needn't pretend, as some authors do, that the hemispheres are exactly alike.) The two **[each] recipient**s**—**call them **Lefty and Righty—will** each **be psychologically continuous with you.** The psychological-continuity view as we have stated it implies that any future being who is psychologically continuous with you must be you. **It follows that you are Lefty and** also that you are **Righty. But that cannot be: if you and Lefty are one and you and Righty are one, Lefty and Righty cannot be two**. And yet they are. To put the point another way, **suppose Lefty is hungry at a time when Righty isn't**. If you are Lefty, you are hungry at that time. If you are Righty, you aren't. **If you are [both]** Lefty and Righty**, you are both hungry and not hungry at once: a contradiction**.

That proves util – if persons are not a continuous unit then distribution among them is irrelevant – we just maximize good experiences since only experiences are morally evaluable – other theories err by presuming the person is a separate entity and are thus incoherent if Reductionism is true.

#### 6. The experience requirement is true – an action can only benefit or harm someone insofar as it affects their phenomenology

Bramble 16 [Ben Bramble, Assistant Professor in Philosophy at Trinity College Dublin, “A New Defense of Hedonism about Well-Being”, Ergo Journal: Volume 3, No. 04, http://quod.lib.umich.edu/cgi/p/pod/dod-idx/new-defense-of-hedonism-about-well-being.pdf?c=ergo;idno=12405314.0003.004 //BWSWJ]

I will take it, then, that not only (2), but (1) also, is true. The crucial question now is Why believe the experience requirement? Many people (including myself) feel that something that has no effect on a person’s experiences does not ‘touch’ or ‘get to’ this person in the sort of way required for something to benefit or harm someone.[10] But many others claim not to have this intuition.[11] Is there an argument for the experience requirement that might sway these others? I believe there is. It is this: 1. If something could benefit or harm someone without affecting her experiences (say, fame, success, desire-satisfaction, or whatever it may be), then it could do so even after she is dead. 2. Nothing can benefit or harm us after we are dead (there can be no posthumous benefits or harms). Therefore, 3. Nothing can benefit or harm someone without affecting her experiences. Let me say something in defense of each premise, starting with (2).[12] Consider Vincent Van Gogh, Emily Dickinson, Nick Drake, Emily Brontë, and John Kennedy Toole, each of whose lives were all-things-considered pretty unfortunate (or, at the very least, not especially fortunate)—full of loneliness, illness (physical and mental), fractured family relationships, and perhaps worst of all, a deep despair that came from knowing that their artistic works, to which they had devoted their lives, were almost totally unappreciated by their contemporaries. Each of them, however, went on to achieve tremendous posthumous success, fame, and desire-satisfaction (since each dearly wanted their works to be appreciated). Now, if posthumous events could be good or bad for one, then surely the truly enormous posthumous success, fame, or desire-satisfaction that these individuals achieved would mean that their lives were not so unfortunate after all. But it doesn’t. (Intuitively, this is part of the reason their lives were tragic.) Therefore, there can be no posthumous benefits or harms.[13] Now consider (1). The burden here seems clearly to be on those who would deny (1) to answer the following question: If the contribution to our well-being of success, fame, desire-satisfaction, or whatever it is, does not depend on our experiences being affected, then why should it matter whether we are still alive or not for this contribution to be made? Some have suggested that it is because death removes the subject, and without a subject there is no-one left to be harmed. However, even after death, there remains a subject in one sense: the person who once existed. If it is replied that this is insufficient, that there must continue to be a living, breathing being for there to be a subject of harm, then we are back with the original question: Why must one still exist in order to be harmed by things if their harming one does not require their affecting one’s experiences? The experience requirement, by contrast, provides a very natural explanation of why there can be no posthumous benefits and harms. What, after all, is death? On a plausible conception, it is just the permanent cessation of one’s experiences. Death, then, we can say, ends one’s ability to be benefited and harmed precisely because it is the end of one’s experiences, and benefiting and harming require affecting one’s experiences. I conclude that we have, in the experience requirement, a very powerful reason to believe hedonism.

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### Extra fw warrants

#### Structural violence is a global order that perpetuates all forms of oppression. The system is predicated upon the silencing of dissent – the ability to think critically and question accepted narratives is key to empowering activist intellectuals. The standard is minimizing structural violence.

Farmer 4 (An Anthropology of Structural Violence Author(s): Paul Farmer Source: Current Anthropology, Vol. 45, No. 3 (June 2004), pp. 305-325 Published by: The University of Chicago Press on behalf of Wenner-Gren Foundation for Anthropological Research Stable URL: http://www.jstor.org/stable/10.1086/382250 Accessed: 15-12-2016 07:47 UTC JL)

The distribution of AIDS and tuberculosis—like that of slavery in earlier times—is historically given and economically driven. What common features underpin the afflictions of past and present centuries? Social inequalities are at the heart of structural violence. Racism of one form or another, gender inequality, and above all brute poverty in the face of affluence are linked to social plans and programs ranging from slavery to the current quest for unbridled growth. These conditions are the cause and result of displacements, wars both declared and undeclared, and the seething, submerged hatreds that make the irruption of Schadenfreude a shock to those who can afford to ignore, for the most part, the historical underpinnings of today’s conflicts. Racism and related sentiments—disregard, even hatred, for the poor—underlie the current lack of resolve to address these and other problems squarely. It is not sufficient to change attitudes, but attitudes do make other things happen. Structural violence is the natural expression of a political and economic order that seems as old as slavery. This social web of exploitation, in its many differing historical forms, has long been global, or almost so, in its reach. And this economic order has been crowned with success: more and more people can wear hairdos with frigates in them or the modern equivalent if they so choose. Indeed, one could argue that structural violence now comes with symbolic props far more powerful—indeed, far more convincing—than anything we might serve up to counter them; examples include the discounting of any divergent voice as “unrealistic” or “utopian,” the dismal end of the socialist experiment in some (not all) of its homelands, the increasing centralization of command over finance capital, and what some see as the criminalization of poverty in economically advanced countries. Exploring the anthropology of structural violence is a dour business. Our job is to document, as meticulously and as honestly as we can, the complex workings of a vast machinery rooted in a political economy that only a romantic would term fragile. What is fragile is rather our enterprise of creating a more truthful accounting and fighting amnesia. We will wait for the “glitch in the matrix” **so that more can see clearly just what the cost is**—not for us (for we who read the journals or engage in the social analyses are by definition shielded)—but **for those who still set their backs to the impossible task of living on next to nothing while others wallow in surfeit.**

#### Moral substitutability is true – if I have a moral reason to mow the lawn because I promised to do so, it logically follows that I also have a moral reason to start the mower, since that is a necessary enabler of mowing the law. But only consequentialism can explain substitutability – deont provides no reason to start the mower since I did not promise to start the mower and starting the mower is not intrinsically good. Consequentialism evaluates and unifies action based on the ends, so provides a moral reason to do actions that lead to good outcomes and thus is consistent with substitutability.

## Adv 1 – speech codes are bad

#### Speech codes censor political activism and ingrain institutional racism

Nelson 92 [Hate Speech and Political Correctness, Nelson, Cary (Cary Nelson, is an American professor of English and Jubilee Professor of Liberal Arts and Sciences at the University of Illinois at Urbana-Champaign); University of Illinois Law Review, Vol. 1992, Issue 4 (1992), pp. 1085-1094 https://heinonline.org/HOL/LuceneSearch?terms=Hate+Speech+and+Political+Correctness&collection=all&searchtype=advanced&typea=text&tabfrom=&submit=Go&all=true //BWSWJ]

In order to punish all instances of the behavior Cullen describes- and to cover all such aggressions against women, minorities, religious and ethnic groups, and people of differing sexual orientations-governments must enact broad, vague regulations that make substantial inroads into our constitutional guarantees of free speech. In the end, as in the broad antipornography legislation championed by Catherine MacKinnon and others, 3 the evidence often becomes the effects testified to by victims of hate speech. Someone could claim to be deeply hurt by hearing me read Cullen's poem. Thus, the text of a black poet speaking out against racism could be silenced as well. Again, I am not denying that I would rather have a campus free of racist epithets-I would. I am not willing, however, to stifle freedom of speech to achieve that end. Political life and public debate require some expressions of anger, perhaps something like hate. When I was part of a small group of people nearly thirty years ago who interrupted a Lyndon Johnson speech by chanting "LBJ, LBJ, how many kids did you kill today?" I think I was partly engaged in hate speech. If I call David Duke racist and Pat Buchanan homophobic and Dan Quayle dumb as a brick, I may, I sup- pose, hurt their feelings, but I want the freedom to speak anyway. I use these examples because many Americans are likely to assume the freedom to criticize public figures could never be imperiled. We are always in danger, however, of losing those freedoms. Let us not forget that people largely lost those freedoms in the decade and a half that fol- lowed the Second World War. That was a period when subversive public speech-like support for civil rights or democratic governments-was often punished by termination of employment. Additionally, criticism of public figures on those grounds was considered actionable in loyalty boards throughout the country. In a country with little sense of history, and even less sense of how current actions may impact our future, taking advantage of immediate political opportunities to enact hate speech regulations is very easy. Victims of oppression often are tempted to employ identity politics to demonize advocates of free speech and stifle debate on such issues. That easily could have occurred at the University of Illinois, where I presented an earlier version of this paper. I was, as it happened, the only speaker who came out against hate speech regulation; a number of the other speakers supported such regulations either in their formal papers or in comments during discussion. But everyone was cordial, and there was no effort to block debate. I agreed to participate in part in order to em- power and create a credible space for audience members who reject both racism and speech regulation. I was not happy to be the only speaker taking that position, but I was not terrified either; at least for faculty members, there seems to me to be no excuse other than excessive per- sonal cowardice to claim that speaking out against hate speech regulation at events dominated by Left-oriented audiences is impossible. Some stu- dents and faculty nonetheless confided to me afterwards that they still were unwilling to speak publicly against hate speech regulations at a Left conference on race in America. That suggests that psychological re- straints against taking politically incorrect positions are strong enough that we need to work harder at encouraging debate on difficult issues like this. At the very least, one may point out that an atmosphere of political correctness that demonizes those on the Left who support free speech heralds the very dangers inherent in the future cultural work these regu- lations may do. In punishing racist speech in Minneapolis or Madison, we give the radical Right the tools they can and will use to punish progressive speech everywhere else. I emphasize that this is hardly a matter of speculation. For many of us, the federal judiciary now can be counted on to suppress individual liberties for the rest of our lives. For years, the press has been terrorized successfully and manipulated by the Right. If some of us on the Left now collaborate in the destruction of our basic and vulnerable freedoms, we will pay a price in the end more terrible than the speaker does in Cullen's poem. We will end with a culture that continues to be deeply and institutionally racist. We will have accom- plished nothing but our own destruction.

#### This is not abstract theorization – speech codes on campuses have been disproportionately used against the very people they claim to protect

Strossen 1: Nadine Strossen [the first woman and the youngest person to ever lead the ACLU. A professor at New York Law School, Strossen sits on the Council on Foreign Relations. She has been called one of the most influential business leaders, women, or lawyers in National Law Journal and Vanity Fair] “Incitement to Hatred: Should There Be a Limit” New York Law School. 25 S. Ill. U. L. J. 243 (2000-2001). -- South Africa, Russia, Turkey, Singapore, UK (multiple examples), United States, Germany, Canada (censored a bell hooks book), British Universities, University of Michigan, University of Connecticut, Trinity College

**Consistent with the analysis of the censorship advocates themselves, the government is likely to wield this tool**, along with all others, **to the particular disadvantage of already disempowered groups. Laws censoring hate speech are inevitably enforced disproportionately against speech by and on behalf of groups who lack political power, including government critics, and even members of the very minority groups who are the laws' intended beneficiaries**. As I previously noted, **this was precisely the conclusion reached by the respected international human rights organizations, Human Rights Watch and Article 19, citing examples ranging from South Africa to the former Soviet Union.** Other illustrations abound. For example, the Turkish government has invoked its law against inciting racial hatred to bring thousands of prosecutions against Turkish writers,journalists, academicians, and scientists who have criticized the government's war against Kurdish separatists. In 1995, the Turkish government prosecuted a United States journalist accused of "inciting hatred" by writing an article on that same topic.63 Likewise, Singapore's authoritarian, long-time governing party has sued the main opposition party, the Workers' Party, for inciting racial hatred.64 Just as this article was going to press, on February 19, 2001, Britain launched a prosecution for racist abuse against a longtime anti-nuclear activist because she had dragged a United States flag on the ground during a demonstration against the controversial "Son of Star Wars" missile defense system at the United States military base in North Yorkshire, England. The prosecution charged that this action was motived by "racist hatred" of the American people and caused "harassment, alarm and distress" to United States personnel who drove out of the base during the demonstration. **These examples are consistent with a worldwide pattern throughout history**. That pattern prompted a trenchant comment from former United States Supreme Court Justice Hugo Black, dissenting from a 1952 decision that upheld a hate speech law from right here in Illinois. Fortunately, that ruling since has been implicitly overturned by later Supreme Court decisions,65 thus vindicating Justice Black's prescient dissent. That dissent warned, invoking the concept of a pyrrhic victory: "If there be minority groups who hail this holding as their victory, they might consider the possible relevancy of this ancient remark: Another such victory and I am undone." Recall the episode from Arizona State University that I described earlier, in which the African-American student leader, Rossie Turman, explained why punishing students who engaged in hate speech would have been an ineffective strategy, as well as an unprincipled one. In his words: "It would have been a momentary victory, but we would have lost the war." Consistent with the general historical pattern, **the first individuals prosecuted under the British Race Relations Act of 1965, which criminalized the incitement of racial hatred, were black power leaders.** Their overtly racist messages undoubtedly expressed legitimate anger at real discrimination, yet the statute drew no such fine lines, nor could any similar law possibly do so. **Rather than curbing speech offensive to minorities, this British law instead has been used regularly to curb the speech of blacks, trade unionists, and anti-nuclear activists.** Perhaps the ultimate irony of this law, intended to restrain the National Front, a neo-Nazi group, is that it instead has barred expression by the Anti-Nazi League. The British experience is typical. None of the anti-Semites who were responsible for arousing France against Captain Alfred Dreyfus was ever prosecuted for group libel. But Emile Zola was prosecuted for libeling the French clergy and military in his classic letter "J'Accuse," and he had to flee to England to escape punishment. Similarly, University of Michigan Law School professor Eric Stein has documented that although the German Criminal Code of 1871 punished offenses against personal honor, "The German Supreme Court... consistently refused to apply this article to insults against Jews as a group-although it gave the benefit of its protection to such groups as Germans living in Prussian provinces, large landowners, all Christian clerics, German officers, and Prussian troops who fought in Belgium and Northern France. 6 7 **Canada's recently adopted anti-hate-speech law also has led to the suppression of expression by members of minority groups**. In one of their first enforcement actions under this law, Canadian Customs officials seized 1,500 copies of a book that various Canadian universities had tried to import from the United States. What was this dangerous racist, sexist book? None other than Black Looks: Race and Representation by the African-American feminist scholar, Bell Hooks, who is a professor at Oberlin." And this incident was not an aberration. Other such perverse applications of the law were cited by the dissenting opinion in the Canadian Supreme Court decision upholding this law-by a narrow 5-4 vote-under Canada's Charter of Rights and Freedom. The dissent noted: Although [the law] is of relatively recent origin, it has provoked many questionable actions on the part of the authorities . . . . Intemperate statements about identifiable groups, particularly if they represent an unpopular viewpoint, may attract state involvement or calls for police action. Novels such as Leon Uris' pro-Zionist novel The Ha, face calls for banning. Other works, such as Salman Rushdie's Satanic Verses, are stopped at the border on the ground that they violate the law. Films may be temporarily kept out, as happened to a film entitled Nelson Mandela, ordered as an educational film by Ryerson Polytechnical Institute .... Arrests are even made for distributing pamphlets containing the words "Yankee Go Home. '69 **This general international and historic pattern also holds true in the specific, localized, context** on which you asked me to focus-namely, **on university and college campuses that enforce hate speech codes.** Again, the British experience is instructive. In 1974, in a move aimed at the National Front, the British National Union of Students (NUS) adopted a resolution that representatives of "openly racist and fascist organizations" were to be prevented from speaking on college campuses "by whatever means necessary (including disruption of the meeting)." 0 The rule had been designed in large part to stem an increase in campus anti-Semitism. But following the United Nations' cue, some British students deemed Zionism a form of racism beyond the bounds of permitted discussion, and in 1975 British students invoked the NUS resolution to disrupt speeches by Israelis and Zionists, including the Israeli ambassador to Great Britain. The intended target of the NUS resolution, the National Front, applauded this result. The NUS itself, in contrast, became disenchanted by this and other unintended consequences of its resolution and repealed it in 1977. **The British experience parallels what has happened in the United States, as evidenced by the campus hate speech codes for which enforcement information is available**.7 One such code was in effect at the **University of Michigan** from April 1988 until October 1989. Because the ACLU brought a lawsuit to challenge the code (which resulted in a ruling that the code was unconstitutional),"2 the university was forced to disclose information that otherwise would have been unavailable to the public about how it had been enforced. This **enforcement record**, while not surprising to anyone familiar with the consistent history of censorship measures, **should come as a rude awakening to any who believes that anti-hate-speech laws will protect or benefit racial minorities, women, or any other group that traditionally has suffered discrimination**. Even during the short time that the University of Michigan rule was in effect, **there were more than twenty cases of whites charging blacks with racist speech**. More importantly, there were only two instances in which the rule punished speech on the ground that it was racist-rather than conveying some other type of bias-and both involved the punishment of speech by or onbehalf of black students. Let me underscore that: 100% of **the speech punished as racist was by or on behalf of African-Americans**. Moreover, the only student who was subjected to a full-fledged disciplinary hearing under the Michigan rule was an African-American student accused of homophobic and sexist expression. In seeking clemency from the punishment that was imposed on him after this hearing, the student asserted that he had been singled out because of his race and his political views.73 **Others who were punished** at the University of Michigan **included several Jewish students accused of engaging in anti-Semitic expression** (they wrote graffiti, including a swastika, on a classroom blackboard, saying they intended it as a practical joke) and an Asian-American student accused of making an anti-black comment (his allegedly "hateful" remark was to ask why black people feel discriminated against; he said he raised this question because the black students in his dormitory tended to socialize together, making him feel isolated). Likewise, **the student who in 1989 challenged the University of Connecticut's hate speech policy**, under which she had been penalized for an allegedly homophobic remark, w**as Asian-American. She claimed that other students had engaged in similar expression, but that she had been singled out for punishment because of her ethnic background.** Representing this student, the ACLU persuaded the university to drop the challenged policy.7 " Following the same pattern, **the first complaint filed under Trinity College's then-new policy prohibiting racial harassment, in 1989, was against an African-American speaker who had been sponsored by a black student organization**, Black-Power Serves itself. Again, I stress that these examples are not just aberrational. Rather, **they flow from the very premises of those who advocate hate speech codes**. As they rightly note, **discrimination and prejudice is**, unfortunately, **endemic in United States society-including on campus and in our legal system**. Indeed, **exhaustive studies of state and federal courts throughout our country consistently show entrenched patterns of racial and gender bias**." So, **for those of us who are committed to eradicating discrimination,** the last thing we should want to do is to hand over to discriminatory officials and institutions power to enforce necessarily vague hate speech codes **that inevitably call for subjective, discretionary decisions. This discretionary power predictably will be used in a way that is hardly helpful to disempowered groups.**

#### Speech codes feel good for white liberals but prevent them from actually addressing structural issues that cause racism on campuses in the first place – speech codes deflect valuable resources from integrating schools to settlements with groups like FIRE

Minow 2k [Martha Minow (Professor, Harvard Law School); REGULATING HATRED: WHOSE SPEECH, WHOSE CRIMES, WHOSE POWER?-AN ESSAY FOR KENNETH KARST; <http://heinonline.org/HOL/PDFsearchable?collection=journals&handle=hein.journals/uclalr47&div=36&section=36&print=section&from=dropbox>; 47 UCLA L. Rev. 1253 1999-2000 //BWSWJ]

For me, however, the most powerful defect in the push to regulate hate crime and hate speech is that it deflects from other efforts to address the sources and effects of group hatred. For example, there are limited resources in terms of attention, time, and money to combat the hatred of gays and lesbians that leads some people to assault and even murder individuals simply because they are, have, or are believed to have, a same-sex orientation. Targeting the societal permission to discriminate against gays and lesbians in the workplace, in housing, and in the benefits associated with family status would get more deeply at the practices of dehumanization than would hate crime legislation; it would also kick out the societal supports for the actions of the most violent homophobes. Understandably, gay and lesbian advocacy organizations have rallied around hate crime legislation because it seemed possible to get even people who condemn homosexuality to agree that no one should be tortured or murdered. The memory of Matthew Shepard-tied to a fence, beaten, burned, and left to die in Laramie, Wyoming-helped to animate this as a federal strategy, as did the fact that Wyoming subsequently refused to adopt its own hate crime legislation in response." Doing something is the moral response. But preventing the pervasive social degradations would do more than prosecuting a few extremely violent individuals who act upon the pervasive stigma and dehumanization of targeted groups. The focus on restrictions seems especially a distraction in the case of speech codes on college campuses. Those codes invite challenge, and a wide range of civil libertarians and academic freedom supporters have joined in support of those who have tested the regulations. Rather than devote energy to the disciplinary code debate, I suggest that we address the following two questions: What are the sources of the hate incidents? How can hateful actions be cabined or curtailed? College campuses are more diverse than in the past. In the intense and intimate settings of classrooms and dorms many college students encounter, for the first time, people who differ from themselves. Yet, colleges have not undergone more fundamental changes. Most have not diversified their faculties in any way sufficient to resemble their student bodies, nor have they renovated curricular offerings. Instead, their role models and course content reiterate long-standing assumptions about who and what are marginal and essential. Nonwhite students for decades have spoken powerfully of the burdens they feel when no white students bother to point out racist dimensions of a class discussion or reading. Why must the minority educate the majority, and why is the majority's ignorance so durable? 5 Of course, the very language of "majority" and "minority" is too crude. Prejudices persist beyond specific expressions of hate and across many lines of group affiliation and identity. A Latina told me she was just settling in for a comfortable lunch with other Hispanic students when one made an antigay comment that she wanted to oppose, but she found it hard to voice her opposition. Catholic women in a class found common connections across racial lines and together objected to assumptions others made about abortion politics. A Korean immigrant led the class discussion in opposition to bilingual education; his chief opponent was a Russian immigrant. The palpable differences in security, support, anger, and injury among different students in the same class should remind us not to ignore the influence of perspective on such basic questions as the meaning of free speech and the requisites for learning

#### Speech restrictions don’t work – they make people martyrs, make bad speech more attractive, create resentment towards the oppressed, and give institutional sanction to hate; In our political climate censoring people like Milo just legitimizes their views

Minow 2k [Martha Minow (Professor, Harvard Law School); REGULATING HATRED: WHOSE SPEECH, WHOSE CRIMES, WHOSE POWER?-AN ESSAY FOR KENNETH KARST; <http://heinonline.org/HOL/PDFsearchable?collection=journals&handle=hein.journals/uclalr47&div=36&section=36&print=section&from=dropbox>; 47 UCLA L. Rev. 1253 1999-2000 //BWSWJ]

Nonetheless, those who favor hate crime and hate speech restrictions are also wrong to imagine that these would be the most effective or even very effective measures in curbing group hatred. As discussed earlier, regulating hatred can itself have unintended consequences, such as triggering new and increased resentments against the supposed beneficiaries of the protections. Especially in the context of this country's political culture, people charged under hate speech rules become martyrs and even poster children for those worried about governmental power. Censorship and punishment of ideas can render the ideas forbidden fruit, which are especially attractive to youth engaged in rebellion and others searching for symbols of disobedience. The efforts to use state power to restrict hatred may be so deeply and even inherently ineffective that they result in a form of permission and further terror, demonstrating in their very inefficacy the total. vulnerability of those whom they would protect. To have hate crime legislation on the books with few prosecutions and even fewer convictions can speak volumes to those who regularly face unaddressed harassment and threat. Yet, enforcement is notoriously difficult; proof is difficult to gather except in cases in which the perpetrators have spoken and written their hatred frequently and accessibly. Investigating those very people-before acts of violence-threatens more obvious dangers of violations of freedoms of speech and association. The FBI's own history of suppressing dissenting groups has rightly led to far more selfrestraint today. But the result is that even the most visible and threatening hate groups, such as groups whose web sites and leaflets animate and support the shooters in Columbine, Colorado; Los Angeles, California; Bloomington, Indiana; and elsewhere, retain considerable insulation from investigation. Even more basically, government rules against hate may be inherently doomed. Judith Butler has explored the "paradoxical production of speech by censorship" that "works in implicit and inadvertent ways."62 As she notes, "The regulation that states what it does not want stated thwarts its own desire, conducting a performative contradiction that throws into question the regulation's capacity to mean and do what it says."6

#### Even if they win codes work, punishment for speech codes put minority students on the school to prison pipeline – high school proves – your ballot should answer the question of whether minor speech infractions should lead to the growth of the prison industrial complex

Ross 16 [Ross, Catherine J. (Professor of Law, George Washington; Catherine J. Ross specializes in constitutional law (with particular emphasis on the First Amendment), family law, and legal and policy issues concerning children. Her book, Lessons in Censorship: How Schools and Courts Subvert Students' First Amendment Rights (Harvard University Press, 2015) was named the Best Book on the First Amendment by Concurring Opinions’ First Amendment News, and won the Critics’ Choice Book Award from the American Education Studies Association. Professor Ross has been a co-author of Contemporary Family Law (Thomson/West) since the First Edition; the Fourth Edition was published in 2015.) , 'Bitch,' Go Directly to Jail: Student Speech and Entry into the School-to-Prison Pipeline (2016). 88 TEMPLE L. REV. (2016); GWU Law School Public Law Research Paper No. 2016-11; GWU Legal Studies Research Paper No. 2016-11. Available at SSRN: https://ssrn.com/abstract=2782555 or http://dx.doi.org/10.2139/ssrn.2782555 **All brackets were in original evidence** //BWSWJ]

Responding to these findings in 2012, Chief Justice Wallace B. Jefferson of the Supreme Court of Texas condemned the “criminalization of children for nonviolent offenses that result in a trip not to the principal’s office but to a courtroom.”32 The “single greatest predictor [of involvement in the juvenile justice system],” he warned, “is a history of disciplinary referrals at school.”33 In New York City, too, statistics show that in 2011–2012, the “overwhelming majority of suspensions . . . were for minor . . . offenses, such as insubordination,” which generally refers to verbal challenges or “talking back.”34 Minor offenses, including infractions of school speech codes, often lead to short suspensions, which require only “rudimentary precautions.”35 In Goss v. Lopez, the Supreme Court held that suspensions for no more than ten days require minimal procedural protections.36 Suspensions of more than ten days require more robust procedural protections, including a hearing.37 The distinction makes short suspensions efficient for school districts. Some states also relieve schools of the obligation to report statistics on suspensions that do not last more than ten days. This distinction likely results in underreporting of the total number of students suspended each year.38

Ross continues

Violating a student speech code, by itself, shouldn’t turn a young person into a dropout or a delinquent. But it does, and repeatedly.73 The manner of speech most likely to get kids into trouble does not involve any form of true threat or any real threat of substantial disruption, just threats to hierarchy and civility. As Sections I and II show, many incidents that lead to school exclusion involve cursing or disrespectful speech, especially—though not always—addressed to an authority figure such as a teacher or administrator. In New York City, for example, the use of “profane language” is one of the top ten reasons that schools suspend students.74 Indeed, fully eighty-one percent of suspensions were based on infractions of the school speech code such as “using profane language or lying.”75 Rude or crude speech is unlikely to garner much sympathy from many adults. Students have called teachers a “dick,” “skank,” and “tramp,” all of which fall within Fraser’s domain because they have sexual overtones.76 While on the Third Circuit, Justice Alito offered this clarification: Fraser permits schools to “prohibit words that ‘offend for the same reason that obscenity offends,’” but does not allow regulation of other manners of expression that may be “plainly offensive.”77 Schools, however, assert authority to control and punish words and attitudes far beyond Fraser’s reach—words that have no sexual connotations, but are merely deemed by adults to be in “bad taste.”78 Adults have a constitutional right to curse, even using words that have a sexual meaning, as the seminal case of Cohen v. California held.79 But it has long been accepted that students have no right to wear Cohen’s infamous jacket, which gained its rhetorical power from its “crude” exclamation: “Fuck the Draft.”80 In some states, however, such as Texas or Mississippi, cursing can lead to an arrest in school and adjudication as a delinquent even though a minor could not be arrested for cursing outside of school. Until 2013, Texas had a “ticketing” system that allowed school-based police officers to issue citations to students for misdemeanors, including truancy, chewing gum, disrupting class, “disorderly language,” and talking back to teachers. The ticketed students had to appear in court, were subject to fines, and often did not know that they were entitled to attorneys. When students turned seventeen, any unpaid fines could lead to incarceration.81 In one apparently typical instance, a high school senior in Texas received a ticket with a $340 fine from a police officer posted in the school after she cursed at another student. When she failed to show up for a court hearing because she could not pay, the judge raised the fine to $637. Although she took a waitressing job to raise the money, she had saved only $100 when the court issued a warrant for her arrest.82

## Adv 2 – free speech is better than speech codes

#### Generous free speech protections contribute to rights and pave the way towards equal representation

Strossen 90 [Strossen, Nadine (She was the first woman and the youngest person to ever lead the ACLU. A professor at New York Law School, Strossen sits on the Council on Foreign Relations. She has been called one of the most influential business leaders, women, or lawyers in National Law Journal and Vanity Fair) "Regulating Racist Speech on Campus: A Modest Proposal?." http://www.jstor.org/stable/1372555 , Duke Law Journal 1990.3 (Jun 1990): 484-573. //BWSWJ]

The civil libertarian and judicial defense of racist speech also is based on the knowledge that censors have stifled the voices of oppressed persons and groups far more often than those of their oppressors.422 Censorship traditionally has been the tool of people who seek to subordinate minorities, not those who seek to liberate them. As Professor Kalven has shown, the civil rights movement of the 1960s depended upon free speech principles.4 23 These principles allowed protestors to carry their messages to audiences who found such messages highly offen- sive and threatening to their most deeply cherished views of themselves and their way of life. Equating civil rights activists with Communists, subversives, and criminals, government officials mounted inquisitions against the NAACP, seeking compulsory disclosure of its membership lists and endangering the members' jobs and lives.424 Only strong principles of free speech and association could-and did-protect the drive for desegregation. 425 Martin Luther King, Jr. wrote his historic letter from a Birmingham jail,426 but the Birmingham parade ordinance that King and other demonstrators had violated eventually was declared an unconstitutional invasion of their free speech rights.427 Moreover, the Civil Rights Act of 1964, which these demonstrators championed, did become law.428 The more disruptive forms of protest, which Professor Lawrence credits with having been more effective 29-such as marches, sit-ins, and kneel-ins-were especially dependent on generous judicial constructions of the free speech guarantee.4 30 Notably, many of these protective interpretations initially had been formulated in cases brought on behalf of anti-civil rights demonstrators. Similarly, the insulting and often racist language that more militant black activists hurled at police officers and other government officials also was protected under the same principles 431 and precedents.

#### **Uncensored speech creates awareness and movements against hate speech – counter speech is empirically effective – that’s the consensus of the lit.**

Davidson 16: Alexander Davidson “The Freedom of Speech in Public Forums on College Campuses: A Single-Site Case Study on Pushing the Boundaries of the Freedom of Speech” A Senior Project presented to The Faculty of the Journalism Department. California Polytechnic State University, San Luis Obispo. June 2016. p. 50-51

All experts agreed that negative speech creates awareness that surrounds a certain topic. They all noted that “good speech” surfaces to combat the “bad speech.” Humphrey notes that, “We have seen a lot of students stand up and say that this isn’t welcome in this community. It galvanized a movement that said we need to do better” (Appendix A). Den Otter notes something very similar, stating that, “I think any time that there’s some kind of racist incident on campus, people start talking about it. They’re made more aware of it” (Appendix B). And Loving advocates for people to not just stand idly while hate speech is taking place around them, that, “If racial slurs were met with more conversation, evil councils being remedied by good councils, then how long would that atmosphere remain on campus?” (Appendix C). The research shows that these suggestions and statements are true, if history is used as an indicator. Various incidents that have occurred, such as the California Polytechnic State University College Republicans Free Speech Wall, the Crops House Incident and the Charlie Hebdo Attacks have created movements against the negative speech that took place. Many times when “bad speech” shows its face, there are people who use “good speech” to combat the issue.

#### Counterspeech is empirically preferable to speech codes – critics mischaracterize it and only attack its weakest form – this is directly comparative.

Calleros 95: Paternalism, Counterspeech, and Campus Hate-Speech Codes: A Reply to Delgado and Yun [article] Arizona State Law Journal, Vol. 27, Issue 4 (Winter 1995), pp. 1249-1280 Calleros, Charles R. (Cited 241 times) 27 Ariz. St. L.J. 1249 (1995)

**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. The same would be true of Delgado's and Yun's other examples** of speech conveyed in a manner that defaces another's property or invades the privacy of another’s residence. 56 When offensive or hateful speech is not threatening, damaging, or impermissibly invasive and therefore may constitute protected speech, 57 education and counterspeech often will be an appropriate response. 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, i**t 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.** 58 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**. 59 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. 6° However, campus communities that have creatively used this approach can attest to the surprising power of counterspeech. **Examples of counterspeech to hateful racist and homophobic speech at Arizona State and Stanford Universities are especially illustrative**.61 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 62 benefit greatly from multicultural education. 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** 63 **requirement**. **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**.64 Rossie 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.,65 a student body that numbered approximately 40,000 students, only 66 2.3 percent of them African-American. 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, t**he 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.67 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. 68 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. 69 **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.7° 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.71 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. 72 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 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,73 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.74 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 75 or federal antidiscrimination statutes such as Title V176 or Title IX. 77 Second, **counterspeech even from a minority of members of the campus community might be effective to gradually build support by winning converts from those straddling the fence or from broader regional or national audiences**. Such counterspeech might be particularly effective if coupled with threats from diverse faculty, staff, and students to leave the university for more hospitable environments; even a campus with high levels of hostility likely would feel 78 pressures to maintain its status as a minimally integrated institution. The A.S.U. and Stanford examples illustrating the efficacy of counterspeech also lend support to the argument that **"[f]ree speech has been minorities' best friend ...[as] a principal instrument of social reform**."79 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.8 **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.**

#### Censoring speech makes it more attractive and increases hatred – psychological studies prove

Stevens and Phillips 16 [Sean Stevens and Nick Phillips, 12-5-2016, "Free Speech is the Most Effective Antidote to Hate Speech," Heterodox Academy, <http://heterodoxacademy.org/2016/12/05/free-speech-is-the-most-effective-antidote-to-hate-speech/> //BWSWJ]

When hardcore racists and xenophobes remain consigned to obscure message boards and poorly attended events, it’s fairly easy to believe in freedom of speech and expression. But when organized hatred arrives on campus, such defenses can be perceived as granting unacceptable cover to viewpoints that are widely considered despicable and immoral. To many, such viewpoints don’t deserve the protection of the First Amendment. Unfortunately, the impulse to start limiting speech – either with on-the-books campus speech codes or simply through stepped-up social enforcement of speech taboos – is likely to pour gasoline on the fire and make the problem worse. Research suggests that restrictions perceived to threaten or possibly eliminate behavioral freedoms may trigger “psychological reactance”, and increase one’s desire to engage in the restricted behavior. For instance, Worchel and colleagues (1975) assessed desire to hear censored material among students at the University of North Carolina. The experimenter informed participants that they would soon be hearing a tape recording of a speech and that the study was interested in how personal characteristics impact a speaker’s ability to get their message across. Some participants were then informed that because a student group (either the YM-YWCA or the John Birch Society) on campus was opposed to the content of the speech, the experimenter would not be able to play the taped recording. Consistent with reactance theory, participants who were informed they could not hear the content of the speech, reported a stronger desire to do so. This effect occurred regardless of whether the student group was viewed positively (YM-YWCA) or negatively (the John Birch Society). More recently, Silvia (2005) investigated if interpersonal similarity could override the experience of psychological reactance. In two separate studies, psychological reactance occurred when people felt their attitudinal freedom was threatened when interpersonal similarity was low, but not when interpersonal similarity was high. More broadly, while ingroup favoritism may depend more on positive affect towards the ingroup, perceived discrimination by an outgroup increases ingroup identification, and can increase anger, hostility and aggression towards outgroups. If we incorporate these findings into our thinking about whether to censor a speaker, the following chain of events does not seem to be an implausible reaction: Censoring a speaker may increase some people’s desire to hear that speaker’s message, particularly those who perceive the speaker as similar to them in some way. Censoring a speaker may be perceived as threatening to people who perceive the speaker as similar to them. The perception of threat is likely to increase identification with a salient ingroup. Increased ingroup identification in response to threat may result in anger, hostility, and aggression towards outgroups. In other words, censoring and disinviting a speaker such as Richard Spencer may actually make him and [their] his views more popular. Instead of acting as an antidote to hatred, censorship may pour gasoline onto an already simmering fire. Calls to disinvite, and thus censor, Spencer may produce the unintended consequence of promoting his vile, racist views.

#### The aff doesn’t characterize speech as inherently free – it is simply a term of art. Analysis actually indicates that white institutions implement speech codes against minorities – recognizing that access to speech *is affected by power*. Yes, the aff cannot resolve the inequality in constitutionally protected speech, but giving institutions control over what dissent is ‘too hateful’ is also dangerous.

#### Pics set a precedent for more restrictions in the future – Individual cases key

White 16 [KEN WHITE (Los Angeles criminal defense lawyer, former Assistant United States Attorney), 11-29-2016, "Lawsplainer: Why Flag Burning Matters, And How It Relates To Crush Videos," Popehat, <https://www.popehat.com/2016/11/29/lawsplainer-why-flag-burning-matters-and-how-it-relates-to-crush-videos/> //BWSWJ]

In free speech analysis, how you get to a conclusion often has much more long-lasting impact than the conclusion itself. Our legal system runs on precedent. The significance of the precedent isn't "the Supreme Court said that flag burning is protected by the First Amendment." The significance of the precedent is "someone wants to punish this speech and we have to figure out whether or not it's protected by the First Amendment. Let's look at the logic and methods the Supreme Court used to resolve that question when flag burning was the issue, and then apply it here." But the Supreme Court has decided lots of cases about the First Amendment. This is just one precedent, one example of a method of reaching a conclusion. What makes it particularly important? The Supreme Court's flag burning cases are crucial — not because of how they analyze existing exceptions to the First Amendment, but because they address whether the government can create endless exceptions to the First Amendment.

#### Neg studies are biased – be skeptical

Bennett 16 [John T. Bennett, The Harm in Hate Speech: A Critique of the Empirical and Legal Bases of Hate Speech Regulation, 43 HASTINGS CONST. L.Q. 445 (2016) http://www.hastingsconlawquarterly.org/archives/V43/I3/6\_Bennett\_Final\_445-536.pdf //BWSWJ

Hate speech advocates rely on empirical data for their claims about the social harm of hate speech. This empirical data emerges from the ranks of academic social scientists. Academic social science, however, suffers from deeply rooted and longstanding ideological bias.130 The overwhelming liberal bias within the social sciences has become so evident that even the New York Times has taken notice.131 This ideological bias is equally ingrained in the viewpoints of law school faculty, taken as a whole.132 To a surprising degree, the public sees political bias within academia as a cause of concern.133 Students appear to share the general public’s concerns.134 Concerns about academic bias are justified, because this bias has distorted academic inquiry,135 and restricted the range of policy options permitted in public debate.136 Within the academic community, “sociopolitical biases influence the questions asked, the research methods selected, the interpretation of research results, the peer review process, judgments about research quality, and decisions about whether to use research in policy advocacy.”137 Worst of all, some academics are evidently willing to engage in outright discrimination in order to maintain the preeminence of their liberal doctrines. Based on a sample of 800 social psychologists, Inbar and Lammers found that academics in that field openly admitted they would discriminate against conservatives in hiring, distributing grants, and reviewing papers.138 Academic discourse about social problems can ultimately influence public behavior, especially that of impressionable individuals who are inclined to justify their misconduct.139 Ideological bias fundamentally threatens the First Amendment when calls for hate speech are premised on one-sided research concerning speech-based harm.

# Case Debate

## UQ Trick

#### Speech codes on the decline – disad proves the aff

FIRE 17: Foundation for Individual Rights in Education “SPOTLIGHT ON SPEECH CODES 2017” https://d28htnjz2elwuj.cloudfront.net/wp-content/uploads/2016/12/12115009/SCR\_2017\_Full-Cover\_Revised.pdf

FIRE surveyed 449 schools for this report and found that 39.6 percent maintain severely restrictive, “red light” speech codes that clearly and substantially prohibit constitutionally protected speech. This is the ninth year in a row that the percentage of schools maintaining such policies has declined, and this year’s drop was nearly ten percentage points. (Last year, 49.3 percent of schools earned a red light rating.) In addition, an unprecedented number of schools have eliminated all of their speech codes to earn FIRE’s highest, “green light” rating: As of September 2016, 27 schools received a green light rating from FIRE. This number is up from 22 schools as of last year’s report. In another heartening trend, a growing number of schools are adopting statements in support of free speech modeled after the one adopted by the University of Chicago in January 2015. As of this writing, 20 schools or faculty bodies in FIRE’s Spotlight database had endorsed a version of the “Chicago Statement.”

## Hate speech

#### Colleges can restrict harmful speech constitutionally via anti-harassment policies – speech codes are unnecessary

Majeed 9: Defying the Constitution: The Rise, Persistence, Prevalence Of Campus Speech Codes By Azhar Majeed November 18, 2009 Georgetown Journal of Law & Public Policy, 7 Geo. J.L. & Pub. Pol’y 481 (2009). Azhar Majeed, a native of Grosse Pointe, Michigan, received a B.A. in Political Science with a minor in History from the University of Michigan in 2004. He is also a 2007 graduate of the University of Michigan Law School. As an undergraduate, his academic interests included comparative constitutional law and political philosophy, particularly from the time period of the Enlightenment. During law school, Azhar represented the University of Michigan at the 2006 Tulane International Moot Court competition. Azhar was one of FIRE’s inaugural Robert H. Jackson Legal Fellows and was also a FIRE legal intern in 2005.

Secondly, **speech codes are not necessary to protect historically disadvantaged minorities from harmful speech because existing First Amendment exceptions and true harassment codes address virtually all verbal conduct which is truly injurious to targeted individuals**. **Of the exceptions to the First Amendment,[236] “incitement to imminent lawless action” and “true threats and intimidation” are most relevant here**, in terms of the harm created by prejudicial and hateful messages. **Incitement to imminent lawless action encompasses advocacy of the use of force or of law violation “where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”**[237] **True threats consist of “statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals**.”[238] Within this last exception, **intimidation is “a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death**.”[239] Put together, these exceptions encompass much of the verbal conduct which truly can be considered injurious to the intended targets under the First Amendment, as injured sensibilities and hurt feelings are simply insufficient justifications for censorship under the law. The exception for incitement to imminent lawless action would apply to the type of situation where a speaker urges a crowd of listeners to immediately disperse across campus and commit acts of violence against students of a particular race, ethnicity, or religion. Therefore, **universities, in their efforts to protect minority groups on campus, do not need to draft and enforce speech codes proscribing any and all provocative, uncivil, or antagonistic speech**, even where the speech takes a favorable position toward the use of violence.[240] **Not only are such regulations superfluous, they invite trivialization and administrative abuse. Meanwhile, the exception for true threats and intimidation would apply to those circumstances where an individual attempts to use a threat of violence or bodily harm to coerce a minority student** into withdrawing from an academic program, relinquishing a position within a student organization, or taking some other action which he or she does not wish to take.[241] Consequently, **there is no need for universities to maintain speech codes which construe clearly protected forms of speech as threatening or intimidating in the constitutionally proscribable sense**. Additionally, **true harassment codes address the types of verbal conduct which prevent another student from obtaining the benefits of a university education**. The Supreme Court has held that for student-on-student conduct to constitute actionable harassment in the educational setting, such conduct must be “so severe, pervasive, and objectively offensive, and . . . so undermine[] and detract[] from the victims’ educational experience, that the victim-students are effectively denied equal access to an institution’s resources and opportunities.”[242] University policies tracking the Supreme Court’s narrow harassment standard address that behavior which has the effect of depriving the victim of the right to an education, while at the same time avoiding the infringements upon protected expression which characterize speech codes. In other words, **sexual and racial harassment policies, properly defined and enforced, prevent genuinely harassing patterns of conduct without violating students’ free speech rights. They are therefore, in combination with the First Amendment exceptions discussed above, sufficient to protect minority students from truly injurious speech.**

## Counterspeech

### AT Delgado and Yun (this is in the aff)

#### Counterspeech is empirically preferable to speech codes – Delgado and Yun mischaracterize it and only attack its weakest form – this is directly responsive.

Calleros 95: Paternalism, Counterspeech, and Campus Hate-Speech Codes: A Reply to Delgado and Yun [article] Arizona State Law Journal, Vol. 27, Issue 4 (Winter 1995), pp. 1249-1280 Calleros, Charles R. (Cited 241 times) 27 Ariz. St. L.J. 1249 (1995)

**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. The same would be true of Delgado's and Yun's other examples** of speech conveyed in a manner that defaces another's property or invades the privacy of another’s residence. 56 When offensive or hateful speech is not threatening, damaging, or impermissibly invasive and therefore may constitute protected speech, 57 education and counterspeech often will be an appropriate response. 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, i**t 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.** 58 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**. 59 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. 6° However, campus communities that have creatively used this approach can attest to the surprising power of counterspeech. **Examples of counterspeech to hateful racist and homophobic speech at Arizona State and Stanford Universities are especially illustrative**.61 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 62 benefit greatly from multicultural education. 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** 63 **requirement**. **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**.64 Rossie 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.,65 a student body that numbered approximately 40,000 students, only 66 2.3 percent of them African-American. 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, t**he 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.67 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. 68 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. 69 **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.7° 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.71 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. 72 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 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,73 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.74 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 75 or federal antidiscrimination statutes such as Title V176 or Title IX. 77 Second, **counterspeech even from a minority of members of the campus community might be effective to gradually build support by winning converts from those straddling the fence or from broader regional or national audiences**. Such counterspeech might be particularly effective if coupled with threats from diverse faculty, staff, and students to leave the university for more hospitable environments; even a campus with high levels of hostility likely would feel 78 pressures to maintain its status as a minimally integrated institution. The A.S.U. and Stanford examples illustrating the efficacy of counterspeech also lend support to the argument that **"[f]ree speech has been minorities' best friend ...[as] a principal instrument of social reform**."79 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.8 **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.**

# DAs/PICs

## General Stuff

### Paragraph pics bad

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### Overview to PICs/Das

#### Overview to the offs – they need to prove bans actually work, not that specific types of speech are bad. The Stevens and Phillips evidence indicates banning ideas makes means people are more likely engage in \_\_\_\_\_\_\_\_. Speech codes are racial profiling, instead of solving they punish minorities- that’s strossen. The AC counterspeech evidence from Davidson and strossen proves the aff is best at solving instead of creating massive backlash from fringe groups. They need to prove telling people to shut up is as effective at changing their views and stopping \_\_\_\_\_. It’s a question of competing methodologies, making people feel they’re under attack strengthens their views and masks concrete harms, the neg’s lack of solvency should frame the debate.

## Funding

### Endowments version

#### T/ Endowments flow aff - alumni think protests and safe spaces restrict speech and hold back money until colleges commit to the aff; UChicago proves

Vinokour 12/9 [Maya Vinokour (Maya Vinokour is a translator based in New York City. She holds a PhD in comparative literature from the University of Pennsylvania and a BA in mathematics from the University of Chicago.), 9.12.16, "Money Talks," Jacobin Magazine, https://www.jacobinmag.com/2016/09/chicago-safe-spaces-trigger-warnings-free-speech/ //BWSWJ]

The new academic year has just begun, and with it, a great uproar about trigger warnings and safe spaces. The University of Chicago, self-proclaimed bastion of “free and open inquiry,” has put its foot down against [trigger warnings and safe spaces] these bogeymen of today’s higher education in a widely publicized letter to incoming freshmen. The letter has aroused a predictably wide range of responses, from paeans to the university’s righteousness to outraged condemnations of its insensitivity. Yet these reactions to the August 24 letter fail to assess what the letter is actually about. College dean Jay Ellison’s note is neither an admonishment nor a political statement. Above all, it is a marketing document that targets not its actual addressees, rising first-years, but the two groups whose cash infusions make the university run: alumni donors and prospective students. It’s not hard to see why Chicago would want to ingratiate itself to the former group. Recently, negative alumni opinions of student activism have translated into serious damage to universities’ bottom lines. Appalled at last year’s cascade of student protests, alumni at colleges around the country have begun expressing their displeasure through America’s most honored form of speech: money. Some have cut their alma mater out of their wills; others have reduced normally generous donations to a trickle.

#### T/ A stand for free speech like the aff solves funding

Vinokour 2

So much for Academic Year 2015. But Fiscal Year 2015 continues until September 30, 2016, meaning there is still time to smooth any ruffled feathers before a new round of fundraising drives begins. 2014 was a banner year for alumni donations to Chicago, with pledges and gifts totaling $511 million — all the more reason for the university to avoid the fate of a Princeton (donations down by 6.6 percent since last year) or an Amherst (down by 6.5 percent). A splashy PR move — say, a letter exploiting popular anti-PC, pro-free-speech sentiment — might just help Chicago cash in on donor and parent disgust with the strong leftist bias purportedly afflicting US higher education.

#### T/ Alumni want free speech

Haidt 17: Jonathan Haidt is a social psychologist at New York University and author of The Righteous Mind: Why Good People are Divided by Politics and Religion. Greg Lukianoff is a constitutional lawyer and president and CEO of the Foundation for Individual Rights in Education (FIRE). “On U.S. Campuses, Free Inquiry Is Taking a Beating” Feature from Winter 2017 issue of Philanthropy magazine

**Alumni and donors can be extremely important** in balancing other forces and encouraging colleges to stand up for free inquiry. As far as I can tell, **alumni are strongly against these movements toward “safety culture.” Whether they are on the right or the left, the older generation believes strongly in free speech.** If alumni would mention their concerns about these issues to college presidents, administrators, and development officers, and mention it often, I think it would go a long way toward addressing the problem. University presidents face strong political forces from many constituencies. They have a very difficult job to do. I don’t envy them. But some of them might actually need some counterpressure before they can effectively stand up to the illiberal forces growing stronger on so many campuses. Lukianoff **FIRE** is very happy to help. Some time ago we **were contacted by a hundred-dollar donor to a major university**. We kept his name confidential, but wrote to his university saying, “**One of your donors doesn’t like the fact that you have a red light from FIRE. You should make reforms**.” The university freaked out. It got rid of all of its restrictive speech codes right away. Dumping your codes is not enough by itself, but it’s a crucial step in the right direction. We thought, “They must be assuming this is much more than a hundred-dollar donor we’re talking about!” We weren’t going to tell them that, of course.

#### T/ Status quo thumps and link turn – Trump will strong arm universities into protecting free speech by **removing** their federal funding

Nguyen 17 [(Tina, writer @ Vanity Fair) “TRUMP THREATENS TO DEFUND U.C. BERKELEY AFTER STUDENTS PROTEST BREITBART WRITER” February 2, 2017, http://www.vanityfair.com/news/2017/02/uc-berkeley-protests-milo-yiannopolous]//LADI

President Donald Trump, who has already signaled his interest in defunding public education by nominating Betsy DeVos to lead the Department of Education, found another rationale to withdraw federal funding from state universities when a student protest at the University of California, Berkeley, devolved into rioting Wednesday night over a scheduled speaking appearance by Breitbart editor Milo Yiannopoulos. The event was canceled “out of concern for public safety” after a group of about 150 agitators “came onto campus and interrupted an otherwise non-violent protest,” according to a statement from the university. In a tweet sent shortly after the riot, in which masked protesters tossed barricades through windows, threw rocks, set a police tower on fire, burned flags, and shot fireworks at police, Trump threatened to pull federal funding from the university for its alleged intolerance of free speech.

#### Most schools don’t have endowments.

Rotherham 12: Andrew J. Rotherham “College Endowments: Why Even Harvard Isn’t as Rich as You Think” Time Magazine. Feb. 09, 2012. http://ideas.time.com/2012/02/09/college-endowments-why-even-harvard-isnt-as-rich-as-you-think/

1. Most schools don’t have them. There are 2,719 four-year colleges in the U.S. (and another 1,690 two-year colleges), according to the most recent Department of Education figures. **Most higher-education institutions have no endowment, says William Jarvis, managing director and head of research at the CommonFund Institute, which helps NACUBO with its endowment surveys.** But as with everything else around higher education, **it’s the elite schools** — which tend to be the ones **that have large endowments** — **that drive the conversation. Endowments just aren’t a big factor at most of the institutions of higher education in this country.**

#### Endowments make up a tiny fraction of operating budget

Seltzer 1/31 [Rick Seltzer, Jan 31 2017, ‘Endowments Take a Hit’, https://www.insidehighered.com/news/2017/01/31/endowment-returns-fell-2016]

Large institutions drew even more of their operating budgets from endowment spending. Among institutions with endowment assets of more than $1 billion, endowment spending funded an average of 15.9 percent of operating budgets. Institutions with assets of $25 million or less drew just 4.6 percent of their operating budgets from endowments, on average.

#### Most endowments are incredibly small

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2. **Many endowments are not that big**. The endowments at schools like Harvard or Yale (No. 2, with $19.3 billion) or even public universities like the University of Texas (No. 3, at $17.1 billion) get the attention. But **of the 823 U.S. colleges and universities that responded to a NACUBO survey** (which also included Canadian schools), **only 73 had endowments that topped $1 billion; 137 had less than $25 million. Of the U.S. schools** in the NACUBO survey, **the median endowment size is $90 million**. Not too shabby, but **at the standard expenditure rate, an endowment that size generates only about $4.5 million in spendable dollars per year. That’s** a decent chunk of change, but **hardly enough to eliminate student debt and rely on investment returns instead.** Even Cooper Union, the famously no-tuition college in New York City (No. 126, at $607 million), is struggling financially, and indicated this past fall that it is considering charging tuition for the first time in a century.

### Generic funding version

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#### T/ Neg leads to an influx of lawsuits – FIRE will keep suing and deplete millions.

New 15[Jake New, "Settling Over Speech", https://www.insidehighered.com/news/2015/01/23/colleges-settle-free-speech-lawsuits-fire-promises-more-litigation, January 23, 2015]

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

## Title IX

### Case

#### No link - OCR clarified Title IX doesn’t restrict constitutionally protected speech

The Washington Times 3 [(The Washington Times, News Organization) “Campus speech code warning,” 2003, http://www.washingtontimes.com/news/2003/aug/17/20030817-105447-5679r/]

On Aug. 8, Gerald A. Reynolds, assistant secretary of the Office for Civil Rights of the U.S. Department of Education, issued the most important statement on freedom of speech at American universities since the 1950s McCarthy era. Mr. **Reynolds sent a letter to universities nationwide, clarifying that “OCR’s regulations and policies do not require or prescribe speech, conduct or harassment codes that impair the exercise of rights protected under the First Amendment.**” In other words, **the federal government does not support speech codes that** violate free speech. **Public colleges with Orwellian speech codes can no longer justify them by hiding behind federal rules**. The game is up. **Court after court has held that public university speech codes infringing the First Amendment are unconstitutional**. **Nevertheless, public university officials have argued** for years **that their obligation to protect freedom of speech** under the First Amendment must be subordinated to a broad interpretation of Education Department banning sexual or racial harassment on campus. Oddly enough, to support their view that speech rules intended to stifle offensive speech take precedence over the First Amendment, they relied on a Clinton administration ruling by the OCR itself. That ruling was made after male students at Santa Rosa Community College posted explicit and sexually derogatory remarks about two female students on a discussion group hosted by the college’s computer network. Several aggrieved students filed a complaint against the college with the OCR. It found the messages probably created a hostile educational environment on the basis of sex for one of the students. The college’s toleration of such offensive speech, the government said, would violate Title IX, the law banning discrimination against women by educational institutions that receive federal funding. To avoid losing federal funds, universities across the board were required to proactively ban offensive speech by students and diligently punish any violations of that ban. The OCR failed to explain how its rule complied with the First Amendment. Speech codes enacted by public universities clearly violate the First Amendment, even if the codes are enacted in response to the demands of the OCR. So, requiring public universities to enact speech codes or forfeit public funds is obviously unconstitutional. Nevertheless, public university officials ignored the First Amendment and enacted (or retained) speech codes in compliance with the OCR guidelines. While a few schools may have been truly concerned about the potential loss of federal funding, the prevailing attitude among university officials seemed to be that the OCR’s Santa Rosa decision provided a ready excuse to indulge their preference for speech codes. Indeed, some universities enacted speech codes so broad that, when taken literally, they are absurd. The University of Maryland’s sexual-harassment policy, for example (which can be found at http://www.inform.umd.edu/EdRes/Topic/WomensStudies/GenderIssues/SexualHarassment/UMDManual/handout1), bans “idle chatter of a sexual nature, sexual innuendoes, comments about a person’s clothing, body, and/or sexual activities, comments of a sexual nature about weight, body shape, size or figure, and comments or questions about the sensuality of a person.” So, at the University of Maryland, saying “I like your shirt, Brenda” has been a punishable instance of sexual harassment. Further, under Maryland’s code, the prohibited speech need not address an individual to constitute harassment — saying “I really like men who wear bow ties” is out of bounds, at least if a man who wears bow ties hears about it. Moreover, public university censorship has extended well beyond sex-discrimination issues. Federal law also bans discrimination in education based on race, religion, veteran status and other criteria. And universities argued they needed to censor speech to prevent a hostile environment for groups protected by those laws. The Santa Rosa case affected private universities, too. Unlike public universities, private universities have the right to enact and enforce voluntary speech codes. However, the First Amendment prohibits the government from requiring private universities to administer speech codes. Nevertheless, based on the Santa Rosa ruling, the government threatened to strip private universities of federal funding if they didn’t enforce speech restrictions to ensure their students are not exposed to a “hostile environment.” Mr. Reynolds’ letter, however, clarifies that OCR regulations must not “be interpreted in ways that would lead to the suppression of protected speech on public or private campuses.” He writes: “Any private postsecondary institution that chooses to limit free speech in ways that are more restrictive than at public educational institutions does so on its own accord and not based on requirements imposed by OCR.” In short, a private university such as Harvard that seeks to suppress offensive speech will now have to justify its policies on their merits and not hide behind purported OCR rules. And any public university that seeks to do the same will find itself on the losing end of a First Amendment lawsuit.

#### Expansion of Title IX to protected speech causes reverse enforcement

Carle 16 bracketed [Robert Carle (Dr. Robert Carle is a professor at The King's College); The Strange Career of Title IX; https://www.nas.org/articles/the\_strange\_career\_of\_title\_ix; Nov 30, 2016; National association of Scholars //BWSWJ]

The ordeal that Laura Kipnis, a Northwestern University film professor and feminist, suffered at the hands of Title IX investigators dramatized for many faculty members how stifling this new regime can be. In February 2015, Kipnis [who] wrote a Chronicle of Higher Education article criticiz[ed]ing the OCR’s expansive new definition of sexual harassment. The OCR, she wrote, is infantilizing women by encouraging them to “regard themselves as such exquisitely sensitive creatures that an errant classroom remark could impede their education.”[22] Instead of preventing a hostile environment, such rules instead have created an atmosphere of “sexual paranoia.” Kipnis wrote that students’ expanding sense of vulnerability was impeding their education as well as harming their chances of succeeding in the workplace, where a certain amount of resilience will be required of them. For expressing these opinions, Kipnis was hit with a Title IX investigation. Two Northwestern students charged that Kipnis’s article created a hostile environment for women on campus. One student said that she had a “visceral reaction” to Kipnis’s essay; another student called it “terrifying.”[23] Northwestern subjected Kipnis to hours of grilling about her essay and the ideas underlying it. Kipnis was not permitted to have a lawyer present during her hearings, but she was allowed to have a colleague present. Kipnis chose Stephen Eisenman, the head of the Northwestern faculty senate. When Eisenman told the faculty senate that he believed Kipnis’s investigation was a threat to academic freedom, Eisenman was brought up on charges of violating Title IX as well. Kipnis’s ordeal is not an isolated incident. At the University of Colorado Boulder, Patti Adler, a sociology professor, was charged with violating Title IX for enacting a role-playing exercise in her popular “Deviance in U.S. Society” course.[24] The role-play was directly relevant to the course material involving the global sex trade, and it had been a feature of the class for twenty years. No one had ever raised any objections to it. But in fall 2013, a student brought charges against Adler for making her feel uncomfortable during the role-play. The administration deemed Adler a risk to the university and offered her a buyout. Adler was afraid that if she didn’t accept this offer, she would lose her retirement benefits and her medical insurance. Adler said that had the administration simply asked her to end the role-play, she would have “dropped it like a hot potato.”[25] “It is astounding how aggressive…assertions of vulnerability have gotten in the past few years,” Kipnis wrote. “Most academics I know—feminists, progressives, minorities, gays—live in fear of some classroom incident spiraling into professional disaster

#### Expansion to protected speech link turns and thumps funding – massive payouts and enforcement deplete funds

Carle 16 bracketed [Robert Carle (Dr. Robert Carle is a professor at The King's College); The Strange Career of Title IX; https://www.nas.org/articles/the\_strange\_career\_of\_title\_ix; Nov 30, 2016; National association of Scholars //BWSWJ]

On March 29, 2016, the New York Times ran an article describing the financial costs of this regime.[27] Colleges are spending millions of dollars in order to hire layers of bureaucrats, law firms, and consultants in order to comply with federal Title IX mandates. “There’s so much more litigation on all sides of the issue,” Brent Sokolow, executive director of the Association of Title IX Administrators, said. “This has very much created a cottage industry.”[28] A university can expect to spend $500,000 a year on Title IX compliance, and settlements from lawsuits can run into the millions. To satisfy OCR demands, colleges and universities have been expelling students for unsubstantiated charges of harassment only to have courts later order them to pay settlements to these students.[29] There are two hundred schools currently under OCR investigation for Title IX violations. Yale has thirty faculty and staff members who work part-time or full-time in Title IX efforts. Harvard has fifty. At the University of California, Berkeley, Title IX spending has risen at least $2 million since 2013.[30]

#### Title IX doesn’t get enforced – no one has ever lost funding.

Taylor no date: Kelley Taylor “Evaluating the Varied Impacts of Title IX” no date. http://www.insightintodiversity.com/evaluating-the-varied-impacts-of-title-ix/

Title IX explicitly requires every educational institution to designate “at least one employee to serve as its Title IX compliance coordinator.” Title IX officers, as they are sometimes called, coordinate Title IX investigations and complaints and implement Title IX guidance and regulations. Despite the presence of these coordinators on many campuses — an increasing number of whom have law degrees — **more than 100 colleges and universities are currently under investigation by the U.S. Department of Education’s Office for Civil Rights** (OCR) **for violations of Title IX.** Richard Baker, PhD, JD — assistant vice chancellor, vice president, and Title IX coordinator at the University of Houston’s main campus — says that **adherence to Title IX is complicated by a lack of concrete Information.** “Most institutions of higher education are trying to comply in good faith with federal guidance. The uncertainty is that **there is no proven institutional model of compliance**,” he says. “We are all implementing programs based on our best effort to deliver what is expected of us, hoping that our compliance strategies will not only pass legal muster, but also the scrutiny of a closely watching public.” Under Title IX, a person harmed by an educational institution’s failure to comply with the law may sue the school. The New York Times reports that costs associated with Title IX litigation can range from the thousands to millions of dollars, depending upon the circumstances of the case. **Title IX also provides that the federal government may withhold federal funding to schools that are not in compliance.** However, since Title IX was passed, no school has lost federal funds due to a violation of the statute. Instead, federal funding has reportedly been made conditional on institutions remedying identified problems through resolution agreements with the OCR.

### AT – Santa clara

OCR (Enforcers of Title IX); 1997, "Sexual Harassment Guidance 1997," <https://www2.ed.gov/about/offices/list/ocr/docs/sexhar01.html> //BWSWJ

Consistent with Supreme Court decisions, see Franklin, 503 U.S. at 75 (expressly ruling that the sexual harassment of a student by a teacher violates Title IX), the Department has interpreted Title IX as prohibiting sexual harassment for over a decade. Kinman, 94 F.3d at 469 (Title IX prohibits hostile environment sexual harassment of student by teacher). Moreover, it has been OCR's longstanding practice to apply Title IX to peer harassment. See also Bosley v. Kearney R-1 School Dist., 904 F.Supp. 1006, 1023 (W.D. Mo. 1995); Doe v. Petaluma City School Dist., Plaintiff's Motion for Reconsideration Granted, 1996 WL 432298 (N.D. Cal. July 22, 1996) (reaffirming Title IX liability for peer harassment if the school knows of the hostile environment but fails to take remedial action); Burrow v. Postville Community School District, 929 F.Supp. 1193, 1205 (N.D. Iowa 1996) (student may bring Title IX cause of action against a school for its knowing failure to take appropriate remedial action in response to the hostile environment created by students at the school); Oona R.-S. v. Santa Rosa City Schools, 890 F.Supp. 1452 (N.D. Cal. 1995); Davis v. Monroe County Bd. of Education, 74 F.3d 1186, 1193 (11th Cir. 1996) (as Title VII is violated if a sexually hostile working environment is created by co-workers and tolerated by the employer, Title IX is violated if a sexually hostile educational environment is created by a fellow student or students and the supervising authorities knowingly failed to act to eliminate the harassment), vacated, reh'g granted, 91 F.3d 1418 (11th Cir. 1996); cf. Murray, 57 F.3d at 249 (while court finds no notice to school, assumes a Title IX cause of action for sexual harassment of a medical student by a patient visiting school clinic). But see note 27. Of course, OCR has interpreted Title IX as prohibiting quid pro quo harassment of students for many years. See Alexander v. Yale University, 459 F.Supp. 1, 4 (D.Conn. 1977), aff'd, 631 F.2d 178 (2nd Cir. 1980).

## Revenge Porn

#### Perm do the aff and all non-competitive parts of the CP - Circuit courts have repeatedly found non-consensual image distribution is not protected

Brady 17 [Katlyn Brady is a Attorney in Nevada; 2017; “Revenge in Modern Times: The Necessity of a Federal Law Criminalizing Revenge Porn.”; <http://heinonline.org/HOL/Page?handle=hein.journals/haswo28&div=6&g_sent=1&collection=journals>; Hastings Womens Law Journal volume 28 issue 1; HeinOnline //BWSWJ]

Opponents of a federal revenge porn law argue that any legislation would necessarily run afoul of the First Amendment.43 In United States v. Stevens, the Supreme Court invalidated federal legislation that sought to ban "crush videos" depicting animal abuse. 44 As the Supreme Court found that depictions of animal abuse do not fall into any category outside the protection of the First Amendment, opponents of federal legislation argue that a revenge porn law would be treated similarly. The ACLU challenged an Arizona law criminalizing revenge porn as unconstitutionally overbroad in violation of the First Amendment.45 The ACLU argued, among other things, that to ensure constitutionality a state must require that the photograph must be shared without consent, with the intent to harass, and that the victim had a reasonable expectation of privacy in the photograph.46 However, the following cases demonstrate that a federal law can avoid constitutional issues. Although requiring the defendant disseminate the image with the intent to harass may prevent some victims from receiving justice, it may be necessary to avoid a constitutional challenge. In Stevens, the Court found that the law did not fall into the "speech integral to the commission of a crime" exception.47 The following cases demonstrate by requiring the government to prove the defendant intended to harass the victim, a federal law may fall into this exception. Although there is no federal law criminalizing revenge porn, some victims have been able to convince federal prosecutors to pursue other federal criminal violations connected to revenge porn. In at least one instance the federal government prosecuted a defendant under the federal cyberstalking statute, 18 U.S.C. 2261A(2), for behavior that is similar to revenge porn.48 Although the defendant claimed that it was unconstitutionally overbroad to apply cyberstalking to her conduct, the court rejected that argument holding "it would be difficult to conceive of a legitimate purpose behind the speech in question. '49 However, in this case the defendant was not charged with posting the explicit images usually associated with revenge porn. The holding is important because it can be used to turn away First Amendment and overbreadth challenges that a federal revenge porn law would face. Further, the United States Court of Appeals, Eighth Circuit, upheld a conviction for interstate stalking and interstate extortionate threat in a case involving revenge porn.50 In Petrovic, the victim allowed the defendant to take photographs of her nude or performing sex acts and also sent him various messages about sexual abuse she suffered as a child.51 After the victim attempted to end the relationship the defendant informed her he had saved all the messages and photographs and would post the information online if she ended the relationship.52 In addition to posting the photographs online the defendant printed the photographs and mailed them to the victim's friends and family.53 In addition, the defendant posted the victim's contact information. 54 Ultimately, the defendant was arrested by the United States Postal Inspectors and charged with stalking in violation of 18 U.S.C. 2261(A)(2)(A) Similar to the defendant in Matusiewicz, the defendant attempted to have the charges dismissed claiming they violated the First Amendment.56 The court rejected this argument noting that the information he posted was private and had never been in the public domain, and the victim was a private individual.57 Further, the court expressly found that his behavior was not protected speech because his harassing communication was "integral to the criminal conduct of extortion. '58 Based on this ruling, it appears in cases where the perpetrator requires the victim to pay to remove the photographs federal extortion law can apply. But, this would not apply in situations where the offender posted the photographs only to obtain "revenge" and does not seek any sort of financial incentive or seek to keep the victim in the relationship. Further, the stalking charge here seemed to refer more to the physical acts of mailing the photographs and physically following the victim, not to the fact that a photograph was posted online. The United States Court of Appeals, First Circuit, rejected a first amendment challenge brought by a defendant who pled guilty to cyberstalking.59 In Sayer, the defendant posted videos of the victim and himself engaged in consensual sexual acts to pornographic websites, setup classified advertisements claiming the victim would provide "sexual entertainment," and impersonated the victim to encourage men to visit her home. 60 The defendant was indicted for cyberstalking and claimed that the statute violated his First Amendment right to free speech. 61 The court noted that the defendant could point to no legitimate or lawful purpose and the First Amendment did not protect the speech involved.62 Further, the government was required to prove that the defendant intended to harass the victim and that the defendant engage in conduct that actually caused substantial emotional distress.63 Therefore, to the extent that the defendant's conduct could be considered speech, it was not protected because it fell into the "speech integral to criminal conduct" exception.64 Thus the First Amendment did not shield the defendant's conduct. Finally, the United States Court of Appeals, Ninth Circuit upheld a defendant's conviction for cyberstalking, for behavior involving revenge porn.65 In Osinger, the defendant sent threatening emails to the victim, created a fake Facebook profile in the victim's name, and posted sexually explicit photographs of the victim. 66 The defendant also sent emails with sexually explicit photographs to the victim's coworkers.67 The court stated in the limited context of cyberstalking, "Osinger's speech is not afforded First Amendment protection for the additional reason that it involved sexually explicit publications concerning a private individual. '6

#### Prefer our evidence on recency, the issue is fast-moving and changing due to the nature of the internet, as well as circuit court rulings which should outweigh lower courts, we have multiple rulings proving no competition. They should have a high burden of proof that their CP is competitive enough that the perm doesn’t solve most of their offense - Their world forces us to impact turn revenge porn good which causes horrible and offensive debates

#### Perm do the aff and restrict revenge porn through contract law – that solves constitutionality and makes cases easier to win

Goldberg 16 [Goldberg, Erica Rachel, Free Speech Consequentialism Columbia Law Review, Vol. 116, 2016 [https://ssrn.com/abstract=2645869](https://ssrn.com/abstract%3D2645869) //BWSWJ]

The best way to regulate revenge porn is likely through (noncriminal) law, as it is the breach of implied contract that should be regulable, not the content of the expression or the emotionally effects of the expression. Using contract principles, courts could award injunctions for specific performance, given that the pictures at issue are unique, the harms at issue do not translate well into market-value damages calculations, and the plaintiff will suffer irreparable injury.314 Treating revenge porn as a private law issue accords with Solomon and Oman's reasoning that private law concerns should sometimes trump the public law approach of First Amendment jurisprudence better than Solomon and Oman's actual target, IIED315—in the case of revenge porn, contract or tort law could allow individuals to set default rules about the speech they produce together in an intimate relationship. This stands in stark contrast to the IIED tort, especially the one at issue in Snyder v. Phelps, where the speech is not produced together, and there is no understanding between the two parties that leads to the production or the dissemination of the speech.316 Further, juries would not decide how "outrageous" the speech was, a content-based judgment about speech, but whether the parties manifested an understanding about the material exchanged between them. Burden-of-proof issues would become important, but evidence of the "revenge" element, or posting after a breakup and with contact information, can be prima facie evidence that one partner knew the pictures produced should remain private. Generally, images that are produced together, or where a partner gives permission to take photographs conditioned on a promise of confidentiality,317 should be more susceptible to the claim that the revenge porn publisher breached an implied or express promise of confidentiality than "selfies," taken by the subject of the revenge porn and sent to her partner.

#### Revenge porn bans are nearly impossible to enforce

Alex Uberlis 16 [Alex Urbelis is a lawyer and hacker with over 20 years of experience with information security. He has worked for the U.S. Army, the Institute for Security Technology Studies at Dartmouth, the CIA, the U.S. Court of Appeals for the Armed Forces, Steptoe & Johnson, and as information security counsel and CCO of Compagnie Financière Richemont SA (Richemont). Alex holds a BA, summa cum laude, in Philosophy from Stony Brook University, a JD, magna cum laude, from Vermont Law School, and the BCL from New College, University of Oxford.], "The (Il)legalities and Practicalities of Revenge Porn," No Publication, http://www.blackstone-law.com/bs/index.php/90-blog/155-the-il-legalities-and-practicalities-of-revenge-porn

Another practical reason prosecutions fail is for a lack of resources. Revenge porn is a fast-moving, cross-border offense that occurs on several different technological platforms: cameras, smart phones, and web servers. Most local law enforcement and prosecutors do not have the financial, technical, or human resources to track and collect transient forensic evidence across several jurisdictions. Disappearing Evidence and False Flags A clear-cut case would look like this: a victim is notified of offending material that can be traced back to an image sent to an ex-boyfriend. The mobile device of that ex-boyfriend contains the image distributed with- out consent, and distribution can be traced to his IP address and his mobile device. Prosecutions, however, are rarely so straightforward. The first stumbling block is the image itself. If neither the victim nor the ex-boyfriend have a record or copy of the image (perhaps both upgraded their devices or deleted old messages), then only their mobile carrier(s) will have a record of the initial transmission**. Acquiring that data is time-consuming and resource-intensive**. But assuming no problem with the above, the next evidentiary hurdle is proof of distribution. Some exes may be so incensed as to throw caution to the wind, but a thoughtful offender would use a new device and public wi-fi for distribution. Technically astute offenders would use a throwaway device and a virtual private network (VPN), to make it seem as if the distribution originated from China or Russia. Acquiring logs and connection data from a foreign VPN provider (if such records are even kept) is both a crapshoot and a herculean task.12 But in the prosecutorial context, if you combine this type of anti-forensic behavior with the fact that mobile devices are often lost or stolen, and add to that the prevalence of data breaches and malware, you have something that begins to look very much like reasonable doubt. With evidence difficult to collect and resources scarce, failed prosecutions may have serious unintentional consequences: discouraging victims from coming forward, deterring further prosecutions, and emboldening potential offenders.

#### Laws have only been struck down because they are badly worded – government can easily prevent it constitutionally.

**Humbach 14** (John A. Humbach, Pace University School of Law, jhumbach@law.pace.edu, "The Constitution and Revenge Porn", September 2014, Volume 35 Issue 1 Fall 2014, http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1881&context=plr)

It appears that most of the revenge-porn laws recently proposed and enacted, which simply punish sexually-themed images disseminated without consent of persons depicted, are unconstitutional as content-based regulations of speech that cannot pass strict scrutiny or fit within a categorical exception to the First Amendment. However, by framing a law in such a way that it establishes an otherwise valid non-speech crime whose burden on speech is only incidental to that crime, a legislature should be able to address the primary harms of revenge porn without its law being subject to strict scrutiny as content discrimination, viewpoint discrimination or speaker discrimination—in the exactly same way that Title VII presumably does not illicitly rely on any of these discriminations to achieve its statutory goals. However, even though there is reason to believe that a statute along these lines could survive constitutional scrutiny as an incidental burden on speech, one cannot be sure.191 After all, such a law would still represent, in the final analysis, an initiative by government to suppress speech that it does not favor, and the basic meaning of the First Amendment is to prohibit exactly that sort of thing.

#### Revenge porn is definitively not protected.

**Citron 14** (Danielle Citron [law professor teaching at the University of Maryland Carey School of Law], "Debunking the First Amendment Myths Surrounding Revenge Porn Laws", http://www.forbes.com/sites/daniellecitron/2014/04/18/debunking-the-first-amendment-myths-surrounding-revenge-porn-laws/#699f99d74b89, APR 18, 2014)

Disclosing someone’s nude image in violation of trust and confidence (often known as nonconsensual pornography or revenge porn) is a destructive invasion of privacy that can cause irreversible harm to a person’s physical and emotional well-being, professional reputation, and financial security. Lawmakers are rightfully paying attention. Seven states have criminalized the practice; 18 states have pending bills; Representative Jackie Speier has expressed interest in making it a federal crime. Some object to criminalizing invasions of sexual privacy because free speech will be chilled. That’s why it is crucial to craft narrow statutes that only punish individuals who knowingly and maliciously invade another’s privacy and trust. Other features of anti-revenge porn laws can ensure that defendants have clear notice about what constitutes criminal activity and exclude innocent behavior and images related to matters of public interest. Even so, some argue that revenge porn laws are doomed to fail because nonconsensual pornography does not fall within a category of unprotected speech. To criminalize revenge porn, they say, the Court would have to recognize it as new category of unprotected speech, which it would not do**.** Another argument is that even if law could secure civil remedies for revenge porn, it could not impose criminal penalties because the First Amendment treats criminal and civil laws differently. These objections are unfounded and deserve serious attention lest they be taken seriously. Myth #1 Let’s first address the argument that revenge porn laws are unconstitutional because they do not involve categorically unprotected speech like true threats. Advocates rely **United States v. Stevens**, which **struck down a statute punishing depictions of animal cruelty distributed for commercial gain**. In Stevens, the Court rejected the government’s argument that depictions of animal cruelty amounted to a new category of unprotected speech. As the Court explained, the First Amendment does not permit the government to prohibit speech just because it lacks value or because the “ad hoc calculus of costs and benefits tilts in a statute’s favor.” The Court explained that it lacks “freewheeling authority to declare new categories of speech outside the scope of the First Amendment.” The Court did not say that only speech falling within explicitly recognized categories (such as defamation, true threats, obscenity, imminent incitement of violence, and crime-facilitating speech) are proscribable. To the contrary, the Court specifically recognized that other forms of speech have “enjoyed less rigorous protection as a historical matter, even though they have not been recognized as such explicitly**.”** Disclosing private communications about purely private matters is just the sort of speech referred to in Stevens that has enjoyed less rigorous protection as a historical matter. We do not need a new category of unprotected speech to square anti-revenge porn criminal laws with the First Amendment. Now for the cases establishing that precedent. Smith v. Daily Mail, decided in 1979, addressed the constitutionality of a newspaper’s criminal conviction for publishing the name of a juvenile accused of murder. The Court laid down the now well-established rule[d] that “if a newspaper lawfully obtains truthful information about a matter of public significance then state officials may not constitutionally punish the publication of the information, absent a need to further a state interest of the highest order**.”** Ever since the Court has refused to adopt a bright-line rule precluding civil or criminal liability for truthful publications “invading ‘an area of privacy’ defined by the State.” Rather the Court has issued narrow decisions that specifically acknowledge that press freedom and privacy rights are both “plainly rooted in the traditions and significant concerns of the society.’” Consider Bartnicki v. Vopper. There, an unidentified person intercepted and recorded a cell phone call between the president of a local teacher’s union and the union’s chief negotiator. During the call, one of the parties talked about “go[ing] to the homes” of school board members to “blow off their front porches.” A radio commentator, who received a copy of the intercepted call in his mailbox, broadcast the tape. The radio personality incurred civil penalties for publishing the cell phone conversation in violation of the Wiretap Act. The Court characterized the wiretapping penalty as presenting a “conflict between interests of the highest order—on the one hand, the interest in the full and free dissemination of information concerning public issues, and, on the other hand, the interest in individual privacy and, more specifically, in fostering private speech.” For the Court, free speech interests appeared on both sides of the calculus. The Court recognized that “the disclosure of the contents of a private conversation can be an even greater intrusion on privacy than the interception itself.” The penalties were struck down because the private cell phone conversation about the union negotiations “unquestionably” involved a “matter of public concern.” Because the private call did not involve “trade secrets or domestic gossip or other information of purely private concern,” the privacy concerns vindicated by the Wiretap Act had to “give way” to “the interest in publishing matters of public importance.” The state interest in protecting the privacy of communications is strong enough to justify regulation if the communications involve “purely private” matters, like nude images. Neil Richards has persuasively argued, and **lower courts have ruled, a lower level of First Amendment scrutiny applies to the nonconsensual publication of “domestic gossip or other information of purely private concern.” Appellate courts have affirmed the constitutionality of civil penalties under the wiretapping statute for the unwanted disclosures of private communications involving “purely private matters.”** Along similar lines, lower courts have upheld claims for public disclosure of private fact in cases involving the nonconsensual publication of sex videos. In Michaels v. Internet Entertainment Group, Inc., an adult entertainment company obtained a copy of a sex video made by a celebrity couple, Bret Michaels and Pamela Anderson Lee. The court enjoined the publication of the sex tape because the public had no legitimate interest in graphic depictions of the “most intimate aspects of” a celebrity couple’s relationship. As the court explained, a video recording of two individuals engaged in sexual relations “represents the deepest possible intrusion into private affairs.” These decisions support the constitutionality of efforts to criminalize revenge porn. Nude photos and sex tapes are among the most private and intimate facts; **the public has no legitimate interest in seeing someone’s nude images without that person’s consent**. A prurient interest in viewing someone’s private sexual activity does not change the nature of the public’s interest. On the other hand, the nonconsensual disclosure of a person’s nude images would assuredly chill private expression. Without any expectation of privacy, victims would not share their naked images. With an expectation of privacy, victims would be more inclined to engage in communications of a sexual nature. Such sharing may enhance intimacy among couples and the willingness to be forthright in other aspects of relationships. The fear of public disclosure of private intimate communications would have a “chilling effect on private speech.” When would victims’ privacy concerns have to cede to society’s interest in learning about matters of public importance? Recall that women revealed to the press that former Congressman Anthony Weiner had sent them sexually explicit photographs of himself via Twitter messages. His decision to send such messages sheds light on the soundness of his judgment. Unlike the typical revenge porn scenario involving private individuals whose affairs are not of broad public interest, the photos of Weiner are a matter of public import, and so their publication would be constitutionally protected. Another way to understand the constitutionality of revenge porn statutes is through the lens of confidentiality law. Woodrow Hartzog persuasively contends that revenge porn is a “legally actionable breach of confidence.” As Neil Richards and Daniel Solove have argued, confidentiality regulations are less troubling from a First Amendment perspective because they penalize the breach of an assumed or implied duty rather than the injury caused by the publication of words. Instead of prohibiting a certain kind of speech, confidentiality law enforces express or implied promises and shared expectations. Myth #2 Now for the view that civil revenge porn remedies might stand but that criminal penalties cannot because the First Amendment has different rules for them. **Generally speaking,** the First Amendment rules for tort remedies and criminal prosecutions are the same. On the point, Eugene Volokh has said that the Court has “refused invitations to treat civil liability differently from criminal liability for First Amendment purposes.” In an e-mail exchange, he pointed to "New York Times Co. v. Sullivan, Garrison v. Louisiana, and the Court’s rejection of Justice Stevens’ proposal in the late 1970s to bar criminal prosecutions for obscenity.” In New York Times v. Sullivan, the Court explained, “What a State may not constitutionally bring about by means of a criminal statute is likewise beyond the reach of its civil law.” As the Court recognized, the treatment is the same though the threat of civil damage awards can be more inhibiting than the fear of criminal prosecution and civil defendants do not enjoy special protections that are available to criminal defendants, such as the requirement of proof beyond a reasonable doubt.

#### 34 states have laws banning revenge porn – none of which have been struck down on free speech grounds

Mary Anne Franks, 7-18-2016, "It's Time For Congress To Protect Intimate Privacy," Huffington Post, http://www.huffingtonpost.com/mary-anne-franks/revenge-porn-intimate-privacy-protection-act\_b\_11034998.html

Much progress has been made in the United States with regard to nonconsensual pornography since CCRI began its work in 2013. We at CCRI have advised legislators in more than 30 states in their efforts to draft legislation to protect sexual privacy, and **the number of states with laws addressing nonconsensual pornography has increased from 3 to 34** in that time. Unfortunately, a number of these state laws are flawed. Many fail to recognize nonconsensual pornography as a privacy violation, some fail to provide adequate constitutional safeguards, and none can be a complete response to this borderless phenomenon. A federal law is necessary to provide clarity, deterrence, and efficiency in addressing this crime. The Intimate Privacy Protection Act does exactly what its title suggests: it recognizes that the right to privacy extends to sexual information. Numerous privacy laws protect the confidentiality of medical records, financial information, and many other forms of sensitive information. But existing laws offer much less protection for our most sensitive information: private photographs and videos of nudity or sexual activity. IPPA seeks to change that. A handful of civil liberties groups, most notably the ACLU, have attempted to discredit and even defeat laws that would protect thousands of individuals from sexual exploitation. They have often attempted to do so in the name of the First Amendment. Their claims that IPPA, and state laws that resemble it, are overly broad or chill free speech have been unequivocally rejected by constitutional law experts. These include Professor Erwin Chemerinsky, Dean of UC Irvine School of Law, who, in addition to being one of the most influential legal scholars in the country, has argued several cases in front of the Supreme Court. According to Professor Chemerinsky, “There is no First Amendment problem with this bill. The First Amendment does not protect a right to invade a person’s privacy by publicizing, without consent, nude photographs or videos of sexual activity.” Eugene Volokh, a First Amendment expert and professor at UCLA School of Law who is well known for his skepticism of “most privacy-based speech restrictions,” stated that the Intimate Privacy Protection Act is “quite narrow, and pretty clearly defined.” Neil Richards, a First Amendment and privacy scholar and professor at Washington University School of Law, called IPPA “a very well-drafted law.”

## Ptx

#### No link – we defend action by colleges which are overwhelmingly liberal, not Trump or republicans – at worst the wins get attributed to the left. Not a single piece of NC evidence actually claims the aff action helps trump, just that people like free speech on campuses.

#### The neg gets causality wrong – Allowing censorship to continue plays right into his hands and lets him grandstand for support

Brown 2/3 [Sarah Brown and Katherine Mangan, “Trump Can’t Cut Off Berkeley’s Funds by Himself. His Threat Still Raised Alarm,” The Chronicle of Higher Education, Feb. 3, 2017, <http://www.chronicle.com/article/Trump-Can-t-Cut-Off/239100?cid=trend_right>.]

Back in October, when President Trump vowed to "end" political correctness on college campuses, it was unclear how the then-presidential candidate planned to go about doing that. On Thursday, he dropped a hint: He threatened to cut off federal funding to the University of California at Berkeley after violent protests there prompted campus leaders to call off a talk by a far-right provocateur. Milo Yiannopoulos is a Breitbart News editor and Trump supporter who has for months traveled to campuses to give talks that often draw protests and have sometimes resulted in violence. He was once permanently banned from Twitter for his role in a harassment campaign against the actress Leslie Jones, and he has drawn heavy fire for his insulting comments about feminists, Black Lives Matters protesters, Islam, and topics he considers part of leftist ideology. Mr. Yiannopoulos was scheduled to speak on Berkeley’s campus late Wednesday, as part of his "Dangerous Faggot" tour, and more than 1,500 students gathered outside the venue to peacefully protest. Then about 100 additional protesters — mostly nonstudents, Berkeley officials said — joined the fray and hurled smoke bombs, broke windows, and started fires. The violence forced the campus police to put Berkeley on lockdown and led university leaders to cancel the event. The following morning, a political commentator suggested on Fox & Friends First that President Trump should take away Berkeley’s federal funding. Shortly thereafter, Mr. Trump decided to weigh in. Not surprisingly, Mr. Yiannopoulos liked that idea. On Facebook Thursday, he linked to a Breitbart article about the federal money Berkeley receives, adding, "Cut the whole lot, Donald J. Trump." Others were quick to condemn the president’s threat. U.S. Rep. Barbara Lee, a California Democrat whose district includes the Berkeley campus, tweeted back: "President Trump doesn’t have a license to blackmail universities. He’s the president, not a dictator, and his empty threats are an abuse of power." Later, in a statement, Ms. Lee said Mr. Yiannopoulos "has made a career of inflaming racist, sexist and nativist sentiments." Meanwhile, she wrote, "Berkeley has a proud history of dissent and students were fully within their rights to protest peacefully." Could Mr. Trump take away a university’s federal funding for what he sees as a violation of the First Amendment? Not on his own, and not entirely, some scholars say, though there are ways he could advocate for cutting some of it. Regardless, Mr. Trump’s singling out of Berkeley is worth paying attention to, they say, because it serves as a message to other campus officials that they may soon be put in the position of responding to the president’s social-media whims. How Berkeley Prepared Berkeley’s chancellor, Nicholas B. Dirks, went to great lengths last week to explain why the university would not give in to demands to cancel Mr. Yiannopoulos’s appearance. The First Amendment, the chancellor wrote, does not allow the university to censor or prohibit such events. "In our view, Mr. Yiannopoulos is a troll and provocateur who uses odious behavior in part to ‘entertain,’ but also to deflect any serious engagement with ideas," Mr. Dirks wrote. But, he added, "we are defending the right to free expression at an historic moment for our nation, when this right is once again of paramount importance." Mr. Dirks went on to warn that the university "will not stand idly by" if anyone tries to violate university policies by disrupting the talk. Still, the furor over the protests delighted many activists who have been arguing for years that pressure to be politically correct on campuses has stifled those with conservative views. Among them were members of the "alt-right" movement, a loosely affiliated group characterized by its white nationalist, sexist, and anti-Semitic views. The group clearly felt vindicated by the president’s assertion that Berkeley doesn’t allow free speech, which came on the heels of the online discussion group Reddit banning an alt-right community for publishing personally identifiable information about people it is criticizing. The Left is trying to shut us down because they are losing. We’re the real opposition on the Right. We’re... https://t.co/Q9HayfRhSD — AltRight.com (@AltRight\_com) February 2, 2017 On Thursday, Mr. Dirks released a statement doubling down on his earlier comments about the campus’s commitment to free speech. The violence, he said, was perpetrated by "more than 100 armed individuals clad all in black who utilized paramilitary tactics to engage in violent, destructive behavior" designed to shut the event down. "We deeply regret that the violence unleashed by this group undermined the First Amendment rights of the speaker as well as those who came to lawfully assemble and protest his presence." The university had anticipated a large crowd of protesters at Mr. Yiannopoulos’s talk on Wednesday night and had brought in dozens of police officers from across the university system to help maintain order. But "we could not plan for the unprecedented," Mr. Dirks wrote. The event was called off only after the campus police concluded that the speaker had to be evacuated for his own safety, he added. “We could not plan for the unprecedented.” Mr. Trump’s threat was also criticized by a group that is known for condemning campuses that it sees as violating free speech rights. The Foundation for Individual Rights in Education, known as FIRE, released a statement Thursday objecting to "both violence and attempts to silence protected expression." The group said, however, that it had seen no evidence that Berkeley, as an institution, had made any effort to silence Mr. Yiannopoulos, and that the university had, in fact, resisted calls to cancel his visit until the situation got out of hand. FIRE added a caution that seemed to be directed at President Trump’s threat to strip funding from Berkeley. "To punish an educational institution for the criminal behavior of those not under its control and in contravention of its policies, whether through the loss of federal funds or through any other means, would be deeply inappropriate and most likely unlawful," its statement said. Withholding Federal Funds The idea of punishing colleges for free-speech controversies was originally Ben Carson’s idea, said Jonathan Zimmerman, a professor of the history of education at the University of Pennsylvania. Mr. Carson, a neurosurgeon and former Republican presidential candidate, said in October 2015 that he would have the U.S. Department of Education "monitor our institutions of higher education for extreme political bias and deny federal funding if it exists." Terry W. Hartle, a senior vice president at the American Council on Education, took the question mark on the end of Mr. Trump’s tweet literally. The president might have been asking, Could I withhold federal funds from Berkeley? Mr. Hartle said. Yes, the federal government has the authority to withhold federal funds like financial aid from colleges that engage in certain activities, Mr. Hartle said. And it has the authority to attach conditions to the money it gives out. The Solomon Amendment, for instance, requires colleges to admit ROTC or military recruiters to their campus or risk losing money. But Congress would have to act to give the government the ability to take away federal funds for controversies involving the First Amendment, Mr. Hartle said. The government also couldn’t pull funding from Berkeley by retroactively saying the institution’s federal money is contingent on protecting free speech, said Alexander (Sasha) Volokh, an associate professor of law at Emory University. "If the funding comes explicitly with strings attached, which is that you must adequately protect free speech on your campus if you want these funds, and if the university takes these funds knowing the condition, that’s one thing," he said. The U.S. Supreme Court has weighed in several times on strings attached to federal funding, Mr. Volokh said, and has determined that such conditions must be clearly stated in advance and related to the matter being funded. For instance, he said, the court said it was OK for the government to tie federal highway funds to a requirement for states to adopt a drinking age of 21, because highway safety could be affected by the drinking age. But the National Institutes of Health probably couldn’t attach a requirement for free-speech protection to a grant for researching Ebola, he said. Moving forward, Mr. Trump could tell federal research agencies that some of their contracts with colleges and researchers should now include stipulations about free speech, Mr. Volokh said. "I have the feeling that Trump had something much blunter in mind," he said. ‘Uncharted Territory’ Mr. Trump’s social-media attack on Berkeley raises another question for colleges: how to respond to such tweets. "This is uncharted territory for all organizations," not just colleges, Mr. Hartle said, citing Mr. Trump’s criticism of Boeing for what he considered to be an overpriced contract for constructing two Air Force One planes that future presidents will use. (Boeing subsequently promised to keep the cost below $4 billion.) “You can't just ignore it if the president of the United States tweets about you.” It might not be wise to pick a fight with someone who has millions of Twitter followers, Mr. Hartle said, but "you can’t just ignore it if the president of the United States tweets about you." Berkeley is in a particularly difficult situation, Mr. Hartle said, because in his view the university did everything right when Mr. Yiannopoulos came to the campus. "Berkeley tried to allow him to speak and to allow protesters to protest," he said. "Everything was fine until the protests turned violent." One challenge for colleges, he said, will probably involve dealing with people, particularly nonstudents, who want to disrupt speakers and who "now see resorting to violence as simply another tactic in an effort to accomplish their purpose." If Mr. Trump were to push Congress to pass a law giving him the authority to take away federal funds from colleges for free-speech controversies, Mr. Hartle said, "they should carve out some sort of exception when it involved violence or a police request." “Trump is not wrong when he says a lot of people on these campuses want to squelch free speech.” While the president might not make such legislation a priority, college officials shouldn’t dismiss his criticism of Berkeley, said Mr. Zimmerman, of Penn. "It’s ridiculous and frightening for the president to be threatening to withhold money based on his perception of what’s happening with free speech on campus," he said. On the other hand, he said, "Trump is not wrong when he says a lot of people on these campuses want to squelch free speech." When institutions disinvite speakers or try to quash a right-wing group’s event or demonstration, Mr. Zimmerman said, "they’re playing right into Trump’s hands." Given the violence, Mr. Zimmerman doesn’t begrudge Berkeley’s administration for canceling the speech. But he described as problematic a letter signed by dozens of professors saying that Mr. Yiannopoulos shouldn’t be allowed to speak on campus. Ultimately, Mr. Volokh is more concerned about the way in which Mr. Trump made his point, versus the content of the tweet. "It wasn’t enough for him to say that free speech is important," Mr. Volokh said. "He had to do it in a way that was threatening."

#### Winning people like free speech isn’t sufficient – make them prove the aff action is enough to overcome failure of health care, Russia, and record low approval ratings.

#### Political correctness ensures Trump’s success – when conservative ideas are censored they feel under attack

O’Neil 11/11 [Tyler O'Neil November 11, 2016, 11-11-2016, "Quit Whining, Liberals. You Brought Trump on Yourselves," Election, <https://pjmedia.com/election/2016/11/11/quit-whining-liberals-you-brought-trump-on-yourselves/> //BWSWJ]

Readers of PJ Media are likely familiar with the explosion of political correctness on college campuses. While the trend traces much further back, the recent fracas reached a fever pitch in the fall of last year: students complained that Halloween costumes constituted "cultural appropriation" and "microaggressions." The very idea of a microaggression — where speech or actions not intended to be insulting can be interpreted that way anyway — is arguably anti-free speech. But students took the idea and ran with it, demanding censorship. From then on, things just started getting worse. A state university had a "stop white people" event for RA training. Racially segregated housing is making a comeback — only now it's black dorms ruled off limits to white people. Last month, University of California-Berkeley students formed a blockade to keep white people from using a bridge. Oh, and if you even disagree with "safe spaces," you're a white supremacist. Students are being taught the ills of Western culture and history, but not its many positive contributions. Most college students now even think Americans invented slavery, an institution as old as history and universal in all developed cultures until Christians abolished it, twice, and starting in the West. Given these recent events, is it any wonder that a group of young white males — constantly preached to about their "privilege" and the evils of their ancestors — are asserting themselves? The alt-right is racist and evil, but it is a backlash against the racial slant of today's political correctness. Donald Trump's greatest strength — and his greatest sin in the eyes of liberals — was his much-vaunted ability to "tell it like it is." He was not afraid to say the politically incorrect thing, launching his campaign by calling many Mexican illegal immigrants rapists. Following the death of Kate Steinle two weeks beforehand, his immigration declarations struck a nerve. If the Republican electorate wanted an anti-establishment candidate, they had a few to choose from. They did not have to vote for a man who had donated to Hillary Clinton's campaign in 2008 and who recently supported universal healthcare. They could have supported Ted Cruz, who was a true conservative, anti-establishment, and didn't have Trump's baggage. Of course, he didn't have Trump's name recognition either... But the liberals were most scared of Donald Trump. Not only did he say unacceptable things, he was already a household name. Ted Cruz scared them, but Trump disgusted them, and Republicans loved that. There was another reason political correctness helped Trump win. After Obergefell v. Hodges legalized gay marriage, conservatives became terrified that the Supreme Court would further enshrine liberal ideas into American law. The sudden emphasis on "transgender rights" further reminded conservatives that they had to fight back. Even those who would not have supported Trump normally voted for him to ensure a conservative Supreme Court, and political correctness convinced them it was now or never.

#### Restrictions on speech empower Trump

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

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

#### Trump will be president for at least 4 years and anything could trigger the link in that time – aff is unlikely to be the make or break issue

## Guns

#### Perm do both - Gun bans on state property don’t violate the first amendment or symbolic speech – that’s the ONLY court ruling and relies on supreme court precedent.

Judge O’Scannlain 3: [RUSSELL ALLEN NORDYKE; ANN SALLIE NORDYKE, dba TS Trade Shows; JESS B. GUY; DUANE DARR; WILLIAM J. JONES; DARYL DAVID; TASIANA WERTYSCHYN; JEAN LEE; TODD BALTES; DENNIS BLAIR; R.A ADAMS; ROGER BAKER; MIKE FOURNIER; VIRGIL MCVICKER, Plaintiffs-Appellants, v. MARY V. KING; GAIL STEELE; WILMA CHAN; KEITH CARSON; SCOTT HAGGERTY, COUNTY OF ALAMEDA; THE COUNTY OF ALAMEDA BOARD OF SUPERVISORS, Defendants-Appellees. Appeal from the United States District Court for the Northern District of California Martin J. Jenkins, District Judge, Presiding Argued and Submitted August 10, 2000 Submission Vacated, Certified to California Supreme Court September 12, 2000 Certified Question Decided by California Supreme Court June 26, 2002 Supplemental Briefing Ordered September 6, 2002 Resubmitted February 11, 2003 San Francisco, California Filed February 18, 2003 Before: Arthur L. Alarcón, Diarmuid F. O’Scannlain and Ronald M. Gould, Circuit Judges. Opinion by Judge O’Scannlain; Concurrence by Judge Gould //BWSWJ]

We consider first Nordyke's challenge to the Ordinance on the grounds that it infringes his First Amendment right to free speech.   The district court squarely rejected Nordyke's argument that gun possession is expressive conduct protected by the First Amendment and that the ban on the possession of firearms unconstitutionally interferes with commercial speech.2 A As to Nordyke's expressive conduct claim, the Supreme Court has “rejected the view that an apparently limitless variety of conduct can be labeled ‘speech’ whenever the person engaging in the conduct intends thereby to express an idea.”  Texas v. Johnson, 491 U.S. 397, 404, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989) (citation and internal quotation marks omitted).   However, the Court has “acknowledged that conduct may be sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments.”  Id. (citation and internal quotation marks omitted).  In the case at hand, Nordyke argues that possession of guns is, or more accurately, can be speech.   In evaluating his claim, we must ask whether “[a]n intent to convey a particularized message [is] present, and [whether] the likelihood [is] great that the message would be understood by those who viewed it.”  Spence v. Washington, 418 U.S. 405, 410-11, 94 S.Ct. 2727, 41 L.Ed.2d 842 (1974).   If the possession of firearms is expressive conduct, the question becomes whether the County's “regulation is related to the suppression of free expression.”  Johnson, 491 U.S. at 403, 109 S.Ct. 2533.   If so, strict scrutiny applies.   If not, we must apply the less stringent standard announced in United States v. O'Brien, 391 U.S. 367, 377, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968).  The first step of this inquiry-whether the action is protected expressive conduct-is best suited to an as applied challenge to the Ordinance.   However, in this case, Nordyke challenged the law before it went into effect.   Accordingly, he mounts a facial challenge, relying on hypotheticals and examples to illustrate his contention that gun possession can be speech.  In evaluating Nordyke's claim, we conclude that a gun itself is not speech.   The question in Johnson was whether flag burning was speech, not whether a flag was speech.  491 U.S. at 404-06, 109 S.Ct. 2533.   Here too, the correct question is whether gun possession is speech, not whether a gun is speech.   Someone has to do something with the symbol before it can be speech.   Until the symbol is brought onto County property, the Ordinance is not implicated.   See also Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969) (analyzing whether the wearing of armbands is speech, not whether armbands themselves are speech);  O'Brien, 391 U.S. at 376, 88 S.Ct. 1673 (analyzing whether burning of draft cards is speech).  In the context of a facial challenge, Nordyke's contentions are unpersuasive.   Gun possession can be speech where there is “an intent to convey a particularized message, and the likelihood [is] great that the message would be understood by those who viewed it.”  Spence, 418 U.S. at 410-11, 94 S.Ct. 2727.   As the district court noted, a gun protestor burning a gun may be engaged in expressive conduct.   So might a gun supporter waving a gun at an anti-gun control rally.   Flag waving and flag burning are both protected expressive conduct.   See Johnson, 491 U.S. at 404-06, 109 S.Ct. 2533.   Typically a person possessing a gun has no intent to convey a particular message, nor is any particular message likely to be understood by those who view it.   The law itself applies broadly to ban the possession of all guns for whatever reason on County property.   The law includes exceptions, primarily for those otherwise allowed to carry guns under state law, but these exceptions do not narrow the law so that it “has the inevitable effect of singling out those engaged in expressive activity.”  Arcara v. Cloud Books, Inc., 478 U.S. 697, 706-07, 106 S.Ct. 3172, 92 L.Ed.2d 568 (1986). As Nordyke's “facial freedom of speech attack” does not involve a statute “directed narrowly and specifically at expression or conduct commonly associated with expression,” his challenge fails.   See Roulette v. City of Seattle, 97 F.3d 300, 305 (9th Cir.1996) (quoting City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, 760, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988)).   In Roulette, we turned back a facial First Amendment challenge to a city ordinance prohibiting sitting or lying on the sidewalk.   The plaintiffs argued that the law infringed their free speech rights because sitting and lying can sometimes communicate a message.   See id. at 303.   We “reject[ed] plaintiffs' facial attack on the ordinance” because this conduct is not “integral to, or commonly associated with, expression.”  Id. at 305.   Likewise, Nordyke's challenge fails because possession of a gun is not “commonly associated with expression.”  Nordyke points out that several of the rifles for sale are decorated with political messages, most prominently the National Rifle Association Tribute Rifle, which depicts the NRA banner, a militia member and an inscription quoting the Second Amendment:  “The Right of the People to Keep and Bear Arms.” Where the symbols on the gun (not the gun itself) convey a political message, the gun likely represents a form of political speech itself.   See Gaudiya Vaishnava Soc'y v. City and County of San Francisco, 952 F.2d 1059, 1063 (9th Cir.1991) (holding that merchandise displaying political messages are entitled to First Amendment protection).   Here, Nordyke is mounting a facial challenge.   In this context, the presence of a handful of NRA Tribute Rifles at a show at which the vast majority of the prohibited guns bear no message whatsoever does not impugn the facial constitutionality of the Ordinance.   See Roulette, 97 F.3d at 305;  cf.  Gaudiya, 952 F.2d at 1064-65 (upholding First Amendment challenge where case involved only merchandise bearing political messages).   Thus, we agree with the district court's conclusion that the Ordinance does not unconstitutionally infringe expressive conduct.3

#### Err aff a:

#### A. Tons of states ban concealed carry on campus – those would’ve been struck down if it was protected.

NCSL 17: National Conference of State Legislatures 3/31/17 GUNS ON CAMPUS: OVERVIEW http://www.ncsl.org/research/education/guns-on-campus-overview.aspx //Alpha]

All 50 states allow citizens to carry concealed weapons if they meet certain state requirements. **Currently, there are 17 states that ban carrying a concealed weapon on a college campus**: California, Florida, Georgia, Illinois, Louisiana, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, South Carolina and Wyoming. **In 23 states the decision to ban or allow concealed carry weapons on campuses is made by each college or university individually**: Alabama, Alaska, Arizona, Connecticut, Delaware, Hawaii, Indiana, Iowa, Kentucky, Maine, Maryland, Minnesota, Montana, New Hampshire, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington and West Virginia.

#### B. Even if extremely tiny instances of gun possession are protected, that means perm do the aff and all non-competitive parts of the alt solves 99.99% of the net benefit and any risk of aff offense should mean you vote aff

#### C. Their evidence is in the context of carrying guns at Second Amendment protests and colleges can force guns to be unloaded, not concealed carry on campus which means they don’t link to any of their offense.

#### T/ Campus carry is good – saves lives

Wallace 16: “The case for expanding campus gun carry” BY E. GREGORY WALLACE, CONTRIBUTOR - 12/15/16 02:00 PM EST http://origin-nyi.thehill.com/blogs/pundits-blog/civil-rights/310565-the-case-for-expanding-campus-gun-carry E. Gregory Wallace is a constitutional law professor at Campbell University School of Law in Raleigh, N.C.

The recent car and knife attack at Ohio State University once again raises the question of whether faculty and adult students should be allowed to defend themselves and others on college campuses like they can in most public places by carrying firearms. The heroic campus police officer at Ohio State was in the right place at just the right time to shoot the attacker and save lives. But **violent assaults usually are over before police arrive. Most mass shootings last less than five minutes and two-thirds end before police get there**. As someone once said, “When seconds count, the police are only minutes away.” The most common objection to campus carry is the increased danger of allowing firearms on campus. Opponents of campus carry present a gruesome parade of horribles if individuals can carry guns on campus—heated classroom discussions will break out into gunfights, students will shoot professors who give them bad grades, partying will turn dangerous with the mix of alcohol and guns, and unintentional shootings will multiply. It is extremely unlikely that this parade will ever materialize. To begin with, in most states only persons 21 and older can legally obtain a concealed carry permit, so if campus carry is permitted, 18-to-20-year-old college students still will likely not be permitted to carry guns on campus. **Adults with concealed carry permits tend to be highly law-abiding. Studies have shown that concealed carry permit holders are far less likely to commit crimes than the general population** or even law enforcement officers. One study of permit holders in Texas concluded that they “rarely break bad” and are “almost universally a law-abiding population.” **Another study showed that permit holders are convicted of crimes at one-sixth the rate that police officers are convicted. There is no reason to believe that permit holders will behave differently on campus.** As Texas state Attorney General Ken Paxton recently observed, “Adults who are licensed by the State to carry a handgun anywhere in [the state] do not suddenly become a menace to society when they set foot on campus.” **Colleges that have permitted campus carry have confirmed this.** Campus carry has been allowed since 2003 at Colorado State’s two campuses, since 2006 on 30 campuses in Utah, since 2010 at 14 community colleges with 38 different campuses in Colorado, since 2011 on 42 public college campuses in Mississippi, since 2012 on the remaining 21 public college campuses in Colorado, and since 2014 on 30 public college campuses in Idaho. **None of these campuses have** returned to the days of the Wild West, much less **seen any significant increase in gun violence**. Many of the arguments against campus carry simply restate failed arguments against concealed carry in public. Since 2007 the number of concealed handgun permits in the US has soared to over 14.5 million—a 215 percent increase. Concealed firearms regularly are carried in restaurants, grocery stores, office buildings, shopping malls, movie theaters, and churches. If there has been no increase in gun violence caused by permit holders in public, the burden is on opponents of campus carry to show why permitting adults to carry concealed firearms on campus will be different. To be sure, given the unique living arrangements on college campuses, special safety considerations might be appropriate, such as keeping firearms in secure lockers while students are in their living facilities. Consuming alcohol or drugs while carrying on campus would be prohibited, just as it is in public. But these factors alone do not justify a complete ban on faculty and adult students possessing guns on campus. Opponents of campus carry argue that there is no need for firearms because college campuses are much safer than other places. While most crimes against college students occur off campus, **a ban on firearms on campus can have the effect of disarming students off campus. If you can’t carry at your destination, you can’t carry on your way to that destination.** For example, the law school where I teach is located in a downtown area and many students are required to park as many as ten blocks away. Because state law prohibits bringing firearms into our building, these adult students are deprived of their constitutional right to be armed for protection during the walk between their cars and the school. **Campus carry can increase campus safety. Data shows that ordinary violent criminals are significantly deterred by the risk of confronting an armed victim. Even if an attack occurs, resisting with a gun can reduce the possibility being injured or the crime being completed. Evidence also suggests that mass shooters avoid places where somebody might have a gun**. Banning firearms does not guarantee that college campuses will be free from gun violence. Terrorists, criminals, and the mentally-deranged are not deterred by such policies. Real gun-free zones like airplanes and courthouses have metal detectors and armed security—without such protections, you only have pretend gun-free zones. The only guns that pretend gun-free zones prevent are those in the hands of law-abiding citizens. **Mass attacks occur so rapidly that waiting for the police to arrive is sure to lead to more injuries or deaths. The best way to increase the survival rate is to have all defensive options available. Prohibiting adults from having guns on campuses eliminates the possibility that an armed law-abiding citizen might stop or slow down a mass attacker**. Opponents of campus carry say that students or faculty returning fire will harm innocent persons or confuse arriving police. But those objections apply anytime an armed victim is resisting, and such scenarios rarely occur. In multiple cases where concealed carry permit holders have stopped attacks in businesses, malls, college campuses, churches, and other places, no permit holder has ever shot a bystander, nor have the police ever accidentally shot the permit holder. The risk of bystander harm or police mistake is far outweighed by the danger of allowing the attacker to continue to injure or kill. **Armed students can make a difference**. The first modern mass shooting on a college campus occurred in 1966 when Charles Whitman began shooting from the 30-floor clock tower at the University of Texas. He killed 14 and wounded more than 30. Several armed students shot back at him and, while they didn’t hit him, they slowed down his deadly sniping. The police officer who killed Whitman, Ramiro Martinez, wrote in his autobiography, “The sniper did a lot of damage when he could fire freely, but when the armed citizens began to return fire the sniper had to take cover.” There is no doubt that these students saved lives. **Campus carry can be implemented in stages to reduce risks**. Schools first can permit faculty and staff with concealed carry permits to be armed, then students with permits who have military training, then all other students who qualify for permits. But complete bans that disarm faculty and adult students qualified to carry elsewhere unnecessarily sweep too broadly.

#### [only applies if handguns] Here is the substitution turn

Kleck 09 [Kleck, Gary. (Kleck is a criminologist; winner of the Michael J. Hindelang award from the American society of criminology; professor of criminology at Florda State University;) "Mass Shootings in Schools The Worst Possible Case for Gun Control." American Behavioral Scientist. June 2009. Web. 09 Dec. 2015]

Selective bans on less lethal varieties of guns encourage the substitution of more lethal types of guns. The most likely substitute for a small, cheap handgun is a somewhat larger, more expensive one, not a knife or club. Where the availability of small-caliber, less lethal handguns is reduced, offenders who otherwise would have used these guns are motivated to substitute larger caliber, and thus more lethal, varieties of handguns. And if handgun bans succeeded in producing handgun scarcity among violence-prone people, long guns such as sawed-off shotguns would be substituted. Surveys of prison inmates confirm that these are indeed the most likely criminal adaptations to SNS or handgun bans—most offenders who had committed crimes with handguns said that they would substitute a sawed-off long gun if they could not get a handgun and would substitute a larger, better quality handgun if they could not get a small, cheap one (Wright & Rossi, 1986, pp. 215-223). Larger caliber handguns are more lethal than smaller caliber ones, and better quality, more expensive handguns are more reliable and likely to fire when the trigger is pulled than less expensive ones. Likewise, as a class, long guns are more lethal than handguns. Thus, either the substitution of bigger handguns for smaller SNSs, or the substitution of long guns for handguns, is likely to produce an increase in the fraction of gun assaults resulting in death. Most homicides committed with handguns do not require the concealability of handguns; sawed- off long guns would be sufficiently concealable, so crime circumstances would usually permit these substitutions (Kleck, 1997, pp. 130-139). Of course, in the planned armed assaults of mass school shootings, concealability of firearms is even less relevant, as is demonstrated by the frequent use of long guns and larger handguns (Table 1).

#### Here is the racist enforcement turn

Gourevitch 15 [Alex Gourevitch [assistant professor of political science at Brown University] “Gun control’s racist reality: The liberal argument against giving police more power.” 24 June 2015. Salon. http://www.salon.com/2015/06/24/gun\_controls\_racist\_reality\_the\_li]

It is perhaps counterintuitive to say so but gun control responses to mass killings – whether racially motivated or otherwise – are a deep mistake. The standard form of gun control means writing more criminal laws, creating new crimes, and therefore creating more criminals or more reasons for police to suspect people of crimes. More than that, it means creating yet more pretexts for a militarized police, full of racial and class prejudice, to overpolice. As multiple police killings of unarmed black men have reminded us, the police already operate with barely constrained force in poor, minority neighborhoods. From SWAT to stop-and-frisk to mass incarceration to parole monitoring, the police manage a panoply of programs that subject these populations to multiple layers of coercion and control. As a consequence, more than 7 million Americans are subject to some form of correctional control, an extremely disproportionate number of whom are poor and minority. While it is commonly assumed that the drug war is to blame for all this, work by scholars like Benjamin Levin and Jeff Fagan demonstrates that already existing gun control efforts also play an important role. One of the most notorious areas of policing, the NYPD’s stop-and-frisk program, was justified as a gun control rather than a drug war measure. In the name of preventing violence, hundreds of thousands of poor minorities are subject to searches without probable cause each year. Further, a range of Supreme Court-authorized exceptions to standard Fourth Amendment protections against illegal search and seizure derive from a concern with gun violence. This invasiveness is a necessary feature of criminalized gun possession. After all, policing guns is just like policing drugs. Like drugs, there are a vast number of guns. Possession is far more widespread than can possibly be policed so decisions have to be made about where to devote resources. Furthermore, since possession itself is the crime, the only way to police that crime is to shift from actual harm to identifying and preventing risks. As legal scholar Benjamin Levin argues in a forthcoming piece “Searching for guns – like searching for drugs – can easily become pretextual, a proxy for some general prediction of risk, danger, or lawlessness.” In other words, there must be selective enforcement, where enforcement includes invasive searches based on existing prejudices about who is and isn’t dangerous. For example, as research by Jeff Fagan and Garth Davies shows, in the late 1990s, the NYPD used suspected weapons violations to justify numerous stops, even though these stops resulted in fewer arrests than stops for other crimes. And when it comes to individualized assessments of who is dangerous and worthy of punishment, every study shows steep, and unfounded, bias. Michelle Alexander, quotes a former U.S. attorney in her recent sensation, “The New Jim Crow,” saying the following: “I had an [assistant U.S. attorney who] wanted to drop the gun charge against the defendant [in a case which] there were no extenuating circumstances. I asked, ‘Why do you want to drop the gun offense?’ And he said, ‘He’s a rural guy and grew up on a farm. The gun he had with him was a rifle. He’s a good ol’ boy, and all good ol’ boys have rifles, and it’s not like he was a gun-toting drug dealer.’ But he was a gun-toting drug dealer, exactly.” This isn’t just a point about conscious and unconscious biases towards poor minorities – biases that some imagine can be removed with proper training. No matter how neutral the laws are, their enforcement must remain unequal and unfair. That is because the policing involved would never be tolerated if they affected politically influential groups to the same degree. These policing practices persist because they are disproportionately directed against marginal populations. Once individuals find themselves arrested gun control reappears as a reason for increasing punishment. Gun possession can be used to enhance sentences for other crimes and even functions as a kind of double punishment when that possession becomes the reason for also tacking on an extra criminal charge. Gun charges are also a part of the excessive and racially unequal over-charging practices that not only contribute to rising incarceration rates but also ends force numerous individuals away from trial and into plea bargains. Poor Blacks and Latinos are easily intimidated by charge-happy prosecutors into accepting plea deals, meaning they never see their day in court. Some even end up admitting to crimes they did not commit just to avoid the possibility of more severe punishments. More criminal gun laws would only feed this deeply unjust system. There is an unrecognized gap between the justification for gun control and its most likely effect. There is no reason to expect fair enforcement of gun control laws, or even that they will mainly be used to someone prevent these massacres. That is because how our society polices depends not on the laws themselves but on how the police – and prosecutors and courts – decide to enforce the law. Especially given how many guns there are in the U.S., gun law enforcement will be selective. That is to say, they will be unfairly enforced, only deepening the injustices daily committed against poor minorities in the name of law and order. It is hard to imagine any feasible gun control laws doing much to decrease mass shootings. But it is easy to see how they will become part of the system of social control of mostly black, mostly poor people. There are already too many crimes, there is too much criminal law, and there is far too much incarceration — especially of black people. To the degree that all that is part of the “dark chapter in our history,” given the deep injustice of our society, and especially its policing practices, the actual practice of gun control will continue that dark chapter, not resolve it. Of course, a reasonable gun control regime is logically possible. We can imagine one in our heads. But it is not politically possible in the United States right now. And it is a great error to think that gun control is the path to racial justice. More likely, it is the other way around. Racial justice is a precondition for any reasonable gun control regime.

## Ilaw

### AT Cohen 15

#### Your link evidence is literally a piece of SATIRE, it’s funny because the argument is so silly no one would actually believe it

Masnick 15 [Mike Masnick, Jan 7th 2015, "That Crazy Story About Making 'Hate Speech' A Crime? Yeah, That's Satire," Techdirt., https://www.techdirt.com/articles/20150106/17571729615/best-satire-about-attack-free-speech-that-you-could-ever-read.shtml //BWSWJ]

Yesterday morning I came across an article on a site called "ThoughtCatalog" (which I'll admit I'd never heard of) after I saw some people I know discussing it on Twitter. The title is Here Is Why It's Time To Get Tough On Hate Speech In America by someone named "Tanya Cohen." It was ridiculous from the very start -- a poorly thought out attack on free speech, and inside our internal "writer's room" chat, I asked around to see if anyone wanted to write about it, including a few key quotes. But the more I read, the more I realized that it's satire. It has to be satire. Not only that, but it's damn good satire, because it's just stupid enough at the beginning to drag you in and make you believe it, and then, slowly but surely, over the course of a very long writeup, it starts tossing out ever more ridiculous ideas -- drip... drip... drip -- that just, gently, turn up the outrage-o-meter, such that many people don't even realize that it's satire. In fact, we ended up having a long internal debate on it (and others are doing the same on Twitter), with Tim Cushing writing up a Techdirt post ripping it apart as if it were serious. However, I've spiked that version and am inserting my own (because I'm the boss and can do that sort of thing) -- because this absolutely is satire, and it does a brilliant job absolutely mocking those who are attacking free speech at every turn. Again, it starts out subtly, with garden-variety stupidity around free speech: The recent controversy at the University of Iowa – in which an “artist” (supposedly an “anti-racist” one) put up an “art exhibit” which resembles a KKK member covered in newspaper clippings about racial violence – is a perfect example of why we need to implement real legislation against hate speech in the United States. The year is 2015 and all other countries have laws against hate speech along with laws against other forms of speech which violate basic human rights. As a matter of fact, international human rights law MANDATES laws against hate speech. Protecting vulnerable minorities from hate speech is one of the most basic and fundamental of human rights obligations, and all human rights organizations worldwide have emphasized this. But the United States refuses to protect even the most basic of human rights, firmly establishing itself as a pariah state that falls far behind the rest of the world in terms of protecting fundamental human rights and democratic freedoms. Hate speech laws are almost always a slippery slope to censorship, but I can see why some people find them emotionally appealing. But the idea that the US is a pariah state that falls behind the world on this issue seems a bit nutty and ill-informed. There's the usual quoting and misunderstanding of the Universal Declaration on Human Rights. That's to be expected. Then we get the expected (again, misguided) attack on the First Amendment. All pretty standard stuff for the playbook of those looking to chip away at the First Amendment: Even in countries with weak hate speech laws – countries where people freely spread lies and defamation about minorities – you still cannot legally advocate or justify violence against minority groups, and absolutely nobody believes that you should ever be allowed to. But, in the US, you can. The US allows people to advocate violence, murder, terrorism, and genocide – even against minorities – all in the name of “freedom”. How is genocide “freedom”? Where in the First Amendment does it say that genocide is acceptable? How can a supposedly civilized and democratic society possibly justify allowing people to freely incite violence and murder against vulnerable minorities? As an example, there have been several cases of US preachers saying that LGBT people should receive the death penalty. In a civilized country with democracy and human rights, anyone who said something like this would receive at least ten years in prison for inciting hatred, violence, murder, and genocide against a protected minority group. But, in the US, this is allowed in the name of “freedom”. Well, guess what? Homophobes inciting the genocide of LGBT people is most definitely not “freedom” for the highly vulnerable LGBT people who already live their lives in constant fear of homophobic violence. How can the US possibly justify – from any kind of logical standpoint – allowing this sort of thing in the name of “freedom”? Of course, "true threats" are not, in fact, protected under the First Amendment, so this is already misleading. Notice how the piece shifts easily from people saying absolutely loathsome stuff, to automatically assuming that this is incitement. That's a neat trick, and one that's used frequently. But in this paragraph is the first real hint that this is clearly satire: In a civilized country with democracy and human rights, anyone who said something like this would receive at least ten years in prison for inciting hatred, violence, murder, and genocide against a protected minority group. That brings in the idea of criminally charging and putting people in jail for 10 years for saying bad stuff. That's nutty, but not so entirely crazy that it must be satire. But the piece is, as I mentioned, subtle. Whoever wrote it is playing the long game. You need to keep reading. Next up is another popular trope of folks who like to smash the First Amendment: the "I"m a big supporter of free speech, but..." clause. Here's how "Cohen" does it: Like any sensible person, I am a strong believer in the unalienable right to freedom of speech and I understand that defending freedom of speech is the most important when it’s speech that many people do not want to hear (like, for example, pro-LGBT speech in Russia). Freedom of speech is the core of any democratic society, and it’s important that freedom of speech be strongly respected and upheld. Censorship in all of its forms is something that must always be fiercely opposed. But we must never confuse hate speech with freedom of speech. Speech that offends, insults, demeans, threatens, disrespects, incites hatred or violence, and/or violates basic human rights and freedoms has absolutely no place in even the freest society. In fact, it has no place in any free society, as bigotry is fundamentally anti-freedom by its very nature. The human right to freedom of speech must always be balanced against the human rights to dignity, respect, honor, non-discrimination, and freedom from hatred. Speech that "offends" has no place? Well, yes, there are attempts to create and pass laws that say just that, but people who understand the First Amendment and recognize the true meaning of free speech don't support that. Okay, now we get the next "drip" of "this has to be satire" -- claiming that offensive speech is on par with murder, and just to push it over the top, a claim that, when it comes to such speech, we should suspend due process and switch the burden of proof to guilty unless proven innocent: Civilized countries consider hate speech to be among the most serious crimes around, with many countries even placing it on par with murder. In some countries, people are automatically declared guilty of hate speech and other hate crimes unless they can absolutely prove their innocence beyond any reasonable doubt. The principle of guilty until proven innocent may seem a bit harsh to some, but it makes sense when you consider how severe the crime of hate speech is – it is a crime that simply cannot be tolerated in a democracy. Hate speech is not merely speech, but is, in fact, a form of violence and the international community has established hate speech to be a form of violence many times. Hate speech doesn’t merely CAUSE violence. Hate speech IS violence. No serious person could claim this with a straight face and be in support of free speech. The drips here become too much. The satire has taken over. Oh, then just for fun, the article goes political, by declaring a bunch of things fascist -- and claiming that political parties that she disagrees with are undemocratic. But, in the US, fascist political parties like the Republican Party, the Constitution Party, and the Libertarian Party are allowed to freely exist and to spread their hateful ideology, even though these parties oppose fundamental human rights and thus have absolutely no place in a democratic society. What kind of democracy allows the free existence of un-democratic parties? No society that genuinely values democracy and human rights would allow people to oppose democracy and human rights. That simply isn’t how these things work. At this point, if you haven't been keeping track, the drip-drip-dripping of satire is just so thick that I find it impossible to ignore, but others still aren't convinced. Still, I can't see how anyone could directly claim that a bunch of political parties, including mainstream ones, shouldn't be allowed to exist and that allowing such political parties is somehow an affront to democracy. There's no way a person could think that legitimately. There's a lot more of this, including falsely pretending that the Innocence of Muslims video was responsible for middle east violence, which somehow transitions into support for banning Salman Rushdie's The Satanic Verses, which she calls "Islamophobic." I mean, now it's just into laughable satire territory. Figuring out a way to come out in support of Islamic fundamentalism book banning in a piece that supposedly celebrates free speech and democracy is a real trick. Only some brilliant satire can pull it off as capably as this one does. The article then lists out "a way forward," asking for human rights legislation, with a list of types of speech that should be banned. Again, like the great satire that it is, it mixes in a bunch of ideas that some people might have sympathy for along with some absolutely batshit crazy ideas. Okay, inciting violence against people is one thing, but the proposed law here would outlaw anything that "disrespects" someone's "hair color" or "height." Also, "spreading misinformation, including climate change denial" is a punishable offense. Against immigration? Get thrown in jail. Jokes that "disrespect" the "dignity of people" are out as well. Any speech promoting "unacceptable ideas." I mean, that's straight out of authoritarian censorship handbooks. And my favorite: "anyone saying that hate speech shouldn’t be against the law would be prosecuted, since hate speech is universally recognized as an injustice and a human rights violation." Prosecuted how? With very long jail terms -- and the final kicker -- re-education camps: Anyone guilty of hate speech – which should carry criminal penalties of 25 years to life – should be sent to special prisons designed to re-educate them and to instill values of tolerance, freedom, democracy, and human rights in them. I mean, at this point, if you had any shred of belief that the article was still real, the use of re-education camps and the history they conjure should finally and totally tip the scales. But just in case you weren't convinced, one more "drip" along the way: This new human rights law will set up state surveillance of intolerant citizens, including those who voice anti-feminist views and those who voice overt approval of a totalitarian ideology. I love it. The sentence eats itself. Proposing a totalitarian state surveillance system, claiming to track those who approve of totalitarianism. There are a bunch of other bits and pieces that just add some icing on the satire cake. Here are a few: The truthfulness or factual nature of statements should not matter. These laws would not apply to members of vulnerable minority groups. ... anger against police is something that can certainly be justified, while inciting hatred or violence against LGBT people is something that can never be justified in any way and has absolutely no place in a free and civilized democracy. Every single man, woman, and child outside of the US strongly supports laws against hate speech. America’s Orwellian notion of “freedom of speech".... And, of course, it ends in a full Godwin: Otherwise, we are truly no better than Nazi Germany was. There are many other clues. The "author" of the piece, "Tanya Cohen," didn't exist online until the new year. Her Twitter feed is more of the same. And she also has a single post, from January 1st on Daily Kos, attacking Reddit for being "a home for numerous racists, misogynists, homophobes, transphobes, and other bigots." Thought Catalog, meanwhile, is a site that claims, proudly, that it enjoys publishing offensive content. Which would make it an odd place to go to publish a piece saying that publishing offensive content should net you 25 years in jail and re-education camps. I recognize that some people -- including plenty I know and respect -- still aren't convinced that it's satire. But reading through the whole thing, looking for clues has to leave you convinced that it is, without a doubt, a satirical take, from a free speech supporter trying to mock all of the tropes of the "I'm all for free speech, but..." camp, while slowly dropping more and more hints that it's satire, by making it more and more ridiculous and extreme, and including increasingly insane ideas. In the classic tradition of satire, this one sucks you in. It starts with a stupid premise, but one that is plausible because we've seen it being argued. But then it keeps twisting deeper and deeper into the crazy, such that if you're not paying attention, you might actually believe it. If you don't take a second to step back, you might miss just how brilliant a satire it is.

#### “Cohen” isn’t real, they’re a troll who lied to make fun of leftists and got arrested for teaching ISIS how to make bombs

Zavadski 15 [Katie Zavadski, 9-11-2015, "‘Terrorist’ Troll Pretended to Be ISIS, White Supremacist, and Jewish Lawyer," Daily Beast, http://www.thedailybeast.com/articles/2015/09/11/terrorist-troll-pretended-to-be-isis-white-supremacist-and-jewish-lawyer.html]

Goldberg’s trolling turned serious when he was arrested Thursday by the FBI on the grounds that he told a would-be terrorist how to build a bomb meant for a 9/11 attacks anniversary event in Kansas City, Missouri. The 20-year-old, who lived at home with his parents and was described as a recluse by neighbors, was a prolific tweeter through accounts with various permutations of the name @auswitness. Goldberg was so successful at his game that he was even retweeted by one of the pro-ISIS gunmen who attacked a “Draw Muhammad” event in Garland, Texas, last May, according to the FBI. “You might know me for inspiring the attacks in Garland, Texas, where two mujahideen entered an event mocking the Prophet Muhammad (PBUH) with intent to slaughter the kuffar in it,” he boasted as Australi Witness in a post on Justpaste.it. “All who defame the Prophet (PBUH) must be crushed.” “Australi Witness” claimed to have his own alter ego as a “moderate” Muslim who worked for major nonprofit groups like Amnesty International by day. But it was Australi Witness’s role in helping a confidential FBI informant plan an attack on the anniversary of 9/11 that brought Goldberg’s trolling to an end. (The complaint alleges that Goldberg confessed “in substance” to being the voice behind Australi Witness and affiliated accounts. Journalists at the Syndey Morning Herald say they uncovered Golberg's trolling and handed evidence over to police after one of the reporters discovered Goldberg impersonating her.) “Hopefully there will be some jihad on the anniversary of 9/11,” he wrote to the FBI informant through a direct messaging app as AusWitness on August 17, according to a criminal complaint. His wish seemed to come true when the online friend proposed carrying out an attack. The friend said he lived near Kansas City and that a memorial in honor of firefighters who died on 9/11 might be the perfect target. “Where do you think would be best near the firefighters or the crowd?” the informant asked. Goldberg egged him on. “Good thinking, akhi [brother]. Put the backpack near the crowd,” he allegedly wrote, adding that nails in the bomb should be soaked in rat poison to maximize their lethality. Feds say Goldberg didn’t deny pushing the man toward a real-life attack in interviews with them. Goldberg even allegedly confessed to it all, telling the FBI he believed that his instructions would work, that the other person was serious about making a bomb and “would actually attempt to use them to kill and injure persons.” Then Goldberg backtracked, according to the FBI, saying he hoped the wannabe terrorist would blow himself up making the bomb. If not, Goldberg said he would have called police just before the attack took place and then been hailed as a hero. The FBI says in the complaint that it wasn’t aware that Goldberg was not a real ISIS sympathizer when they began the investigation. Goldberg, who comes from a Jewish family, had Australi Witness spout a special kind of rage when discussing Jews. “The Jews are the worst enemies of Allah (SWT). When Islam conquers Australia, every single Jew will be slaughtered like the filthy cockroaches that they are,” he wrote on JustPaste.it. Goldberg as Australi Witness also threatened attacks on synagogues in Melbourne and Los Angeles on JustPaste.it and on 8Chan’s Islamic State page. He also had recurring obsessions with certain people and ideas, attacking them with one persona while praising them with another. Posing as “Michael Slay” on white supremacist site Daily Stormer, he viciously attacked an Australian Muslim activist Mariam Veiszadeh, calling her a “Moslem pig.” Yet Goldberg praised Veiszadeh as Australi Witness, calling her his “biggest inspiration.” Yet another alleged online identity, MoonMetropolis, cheered grotesque caricatures of Veiszadeh. Goldberg also had another alter ego, Tanya Cohen, whom he attacked using Michael Slay on the Daily Stormer. Cohen was evidently a parody of far-left social justice activists. Slay called her "a Jew bitch who specializes in writing about how the US needs to ban 'hate speech' and any other speech that goes against the Jewish cultural Marxist agenda." An email in Tanya Cohen's name was linked to Goldberg's IP address, and articles in her name appeared on Thought Catalog, Daily Kos, and Feministing's community site. On Twitter, Goldberg frequently posted about Gamer Gate, a controversy about sexism in gaming that resulted in personal attacks on feminist activists. While Goldberg doesn't appear to have posted any threats on social media, his tweets used the hashtag #gamergate to mock people he had previously derided as "social justice warriors." In articles published under the Moon Metropolis alias and under Goldberg’s own name on Thought Catalog, he expresses the opinions of a free-speech fundamentalist. “Nothing that anyone could possibly say could ever be worse than a law preventing them from saying it,” he wrote. “If you expressed the opinion that I should be killed, I would still defend your right to say that.” On Thought Catalog, Goldberg wrote “that neo-Nazis tend to look positively civil and rational when compared to SJWs [social justice warriors].” A Facebook account for a Joshua Goldberg used the MoonMetropolis handle in its URL. The profile image matched the one used by MoonMetropolis on Twitter.

### Case

#### Press on UQ

#### Empirically denied

#### The United States isn’t subject to Ilaw hate speech bans

Senate 92 [U.S. reservations, declarations, and understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992)., <http://hrlibrary.umn.edu/usdocs/civilres.html>, UMinn Human Rights Library //BWSWJ]

The Senate's advice and consent is subject to the following reservations: (1) That Article 20 does not authorize or require legislation or other action by the United States that would restrict the right of free speech and association protected by the Constitution and laws of the United States.

#### The UN mandates free speech

Mustafa quoting UN 17 [Hate Speech: International Law v. U.S.A Law, Rania Mustafa January 4, 2017, Palestinian American Community Center, http://www.paccusa.org/hate-speech-international-law-v-u-s-law/ //BWSWJ]

Article 19 (2) of the UDHR states: “everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Similarly does Article 19 of the International Covenant on Civil and Political Rights (ICCPR), adopted by the UN General Assembly in 1966, that states: “everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in printing, in the form of art or through any other media of his choice.”

#### Turn - The constitution is key to US credibility – the neg blatantly flies in the face of it

Ginsburg 6 [Ginsburg (Professor of Law and Political Science, University of Illinois, Urbana-Champaign). “LOCKING IN DEMOCRACY: CONSTITUTIONS, COMMITMENT, AND INTERNATIONAL LAW.” 2006. http://works.bepress.com/tom\_ginsburg/12/]

Why might these issues of constitutional design vary across countries? We draw on the literature that treats constitutions as mechanisms for making political precommitments.52 A precommitment means “becoming committed, bound or obligated to some course of action or inaction or to some constraint on future action . to influence someone else’s choices.”53 Imagine a constitution written by a single political leader, seeking to establish legitimate authority. The politician can promise to behave in particular ways, for example, not to interfere with the rights of his or her citizens. But there is no reason for citizens to believe mere promises from their leader. A promise at Time 1 only has value if the promise believes that it will be obeyed at Time 2. The politician thus faces the problem of making the promise credible. This problem is particularly acute when the politician cannot predict the incentives he or she will face in the future.54 If costs and benefits vary in unpredictable ways, the politician’s promise to behave in the specified way may be less believable. To paraphrase Stephen Holmes, why should people believe their leader when sober, knowing that sometimes leaders can become drunk and behave quite differently?55 Facing this problem, a rational constitutional designer might realize that it makes sense to limit her own power, in order to obtain the consent of those they govern. Democratic constitutions can help to serve this role. As Sunstein says, “Democratic constitutions operate as “precommitment strategies” in which nations, aware of problems that are likely to arise, take steps to ensure that those problems will not arise or that they will produce minimal damage if they do.”56 Constitutions help make the promises credible by imposing costs on those who violate promises.57 By tying their own hands, politicians actually can enhance their own authority.

#### That outweighs Ilaw:

#### a) The UNDHR isn’t binding but the Constitution is

#### b) international law is a joke and not followed by anyone, including the US – drone strikes prove

#### c) We also don’t follow other parts of the UN requirements like the right to housing, which means there’s no uniquely bad impact to trigger the impact

#### d) Citizens don’t have a social contract with the international community, but they do have one with the US – if the US can’t fulfil it’s obligations to the citizens any other obligations are irrelavent

## Trigger Warnings

### Perm

#### Perm – allow trigger warnings but don’t make them mandatory - solves and prevents overreach

Manne 15 [Kate Manne, 9-19-2015, "Why I Use Trigger Warnings," New York Times, https://www.nytimes.com/2015/09/20/opinion/sunday/why-i-use-trigger-warnings.html //BWSWJ]

There are several difficult issues that still need to be hashed out. For example, although I see a willingness to use trigger warnings as part of pedagogical best practices, I don’t believe their use should be mandatory. There is already too much threat to academic freedom at the moment because of top-down interference from overreaching administrators. But when it comes to the bottom-up pressure from students on professors to adopt practices like giving trigger warnings, I am sympathetic. It’s not about coddling anyone. It’s about enabling everyone’s rational engagement.

### Case

#### Trigger warnings dismantle coalitions – you misunderstand trauma

Halberstam 14 [Jack Halberstam (Professor of American Studies and Ethnicity, Gender Studies, and Comparative Literature, as well as serving as the Director of The Center for Feminist Research at University of Southern California) Jul 5, 2014 “You Are Triggering me! The Neo-Liberal Rhetoric of Harm, Danger and Trauma” Bully Bloggers]

At this point, we should recall the “four Yorkshire men” skit from Monty Python where the four old friends reminisce about their deprived childhoods – one says “we used to live in a tiny old tumbledown house…” the next counters with “house!? You were lucky to live in a house. We used to live in a room…” And the third jumps in with: “room? You were lucky to have a room, we used to have to live in a corridor.” The fourth now completes the cycle: “A corridor! We dreamed of living in a corridor!” These hardship competitions, but without the humor, are set pieces among the triggered generation and indeed, I rarely go to a conference, festival or gathering anymore without a protest erupting about a mode of representation that triggered someone somewhere. And as people “call each other out” to a chorus of finger snapping, we seem to be rapidly losing all sense of perspective and instead of building alliances, we are dismantling hard fought for coalitions. Much of the recent discourse of offense and harm has focused on language, slang and naming. For example, controversies erupted in the last few months over the name of a longstanding nightclub in San Francisco: “Trannyshack,” and arguments ensued about whether the word “tranny” should ever be used. These debates led some people to distraction, and legendary queer performer, Justin Vivian Bond, posted an open letter on her Facebook page telling readers and fans in no uncertain terms that she is “angered by this trifling bullshit.” Bond reminded readers that many people are “delighted to be trannies” and not delighted to be shamed into silence by the “word police.” Bond and others have also referred to the queer custom of re-appropriating terms of abuse and turning them into affectionate terms of endearment. When we obliterate terms like “tranny” in the quest for respectability and assimilation, we actually feed back into the very ideologies that produce the homo and trans phobia in the first place! In The Life of Brian, Brian finally refuses to participate in the anti-Semitism that causes his mother to call him a “roman.” In a brave “coming out” speech, he says: “I’m not a roman mum, I’m a kike, a yid, a heebie, a hook-nose, I’m kosher mum, I’m a Red Sea pedestrian, and proud of it! And now for something completely different…The controversy about the term “tranny” is not a singular occurrence; such tussles have become a rather predictable and regular part of all kinds of conferences and meetings. Indeed, it is becoming difficult to speak, to perform, to offer up work nowadays without someone, somewhere claiming to feel hurt, or re-traumatized by a cultural event, a painting, a play, a speech, a casual use of slang, a characterization, a caricature and so on whether or not the “damaging” speech/characterization occurs within a complex aesthetic work. At one conference, a play that foregrounded the mutilation of the female body in the 17th century was cast as trans-phobic and became the occasion for multiple public meetings to discuss the damage it wreaked upon trans people present at the performance. Another piece at this performance conference that featured a “fortune teller” character was accused of orientalist stereotyping. At another event I attended that focused on queer masculinities, the organizers were accused of marginalizing queer femininities. And a class I was teaching recently featured a young person who reported feeling worried about potentially “triggering” a transgender student by using incorrect pronouns in relation to a third student who did not seem bothered by it! Another student told me recently that she had been “triggered” in a class on colonialism by the showing of The Battle of Algiers. In many of these cases offended groups demand apologies, and promises are made that future enactments of this or that theater piece will cut out the offensive parts; or, as in the case of “Trannyshack,” the name of the club was changed. As reductive as such responses to aesthetic and academic material have become, so have definitions of trauma been over-simplified within these contexts. There are complex discourses on trauma readily available as a consequence of decades of work on memory, political violence and abuse. This work has offered us multiple theories of the ways in which a charged memory of pain, abuse, torture or imprisonment can be reignited by situations or associations that cause long buried memories to flood back into the body with unpredictable results. But all of this work, by Shoshana Felman Macarena Gomez-Barris, Saidiya Hartman, Cathy Caruth, Ann Cvetkovich, Marianne Hirsch and others, has been pushed aside in the recent wave of the politics of the aggrieved.

#### Trigger warnings make students dependent on the state – they can’t live in the real world

Vatz 16 [Richard E. Vatz Towson University, Towson, MD, USA (2016) The academically destructive nature of trigger warnings, First Amendment Studies, 50:2, 51-58, DOI: 10.1080/21689725.2016.1230508 //BWSWJ]

The premises of the trigger warning cult (I hope my use of the word “cult” does not cause any adverse psychological reactions among those readers who have been victims of cults or were traumatized by the murderous Manson cult of decades ago. If so, I apologize profoundly and ask anyone discussing this topic to avoid referencing my allusion to the trigger warning c—) are unproved and unworthy: to prevent psychological discomfort for all students all the time. A stifling of free and open debate often goes unchallenged in the indulgent climes of higher education. This is a classically rhetorically correct method of infantilizing students in the way that the welfare state and big government infantilize American citizens, analogously creating a dependent population in colleges and universities and a nation of followers.

#### Claims of trauma and triggers pit activists against each other and obscure focus on broader social change

Halberstam 14 [Jack Halberstam (Professor of American Studies and Ethnicity, Gender Studies, and Comparative Literature, as well as serving as the Director of The Center for Feminist Research at University of Southern California) Jul 5, 2014 “You Are Triggering me! The Neo-Liberal Rhetoric of Harm, Danger and Trauma” Bully Bloggers]

Claims about being triggered work off literalist notions of emotional pain and cast traumatic events as barely buried hurt that can easily resurface in relation to any kind of representation or association that resembles or even merely represents the theme of the original painful experience. And so, while in the past, we turned to Freud’s mystic writing pad to think of memory as a palimpsest, burying material under layers of inscription, now we see a memory as a live wire sitting in the psyche waiting for a spark. Where once we saw traumatic recall as a set of enigmatic symptoms moving through the body, now people reduce the resurfacing of a painful memory to the catch all term of “trigger,” imagining that emotional pain is somehow similar to a pulled muscle –as something that hurts whenever it is deployed, and as an injury that requires protection. Fifteen to twenty years ago, books like Wendy Brown’s States of Injury (1995) and Anna Cheng’s The Melancholy of Race: Psychoanalysis, Assimilation and Hidden Grief (2001) asked readers to think about how grievances become grief, how politics comes to demand injury and how a neoliberal rhetoric of individual pain obscures the violent sources of social inequity. But, newer generations of queers seem only to have heard part of this story and instead of recognizing that neoliberalism precisely goes to work by psychologizing political difference, individualizing structural exclusions and mystifying political change, some recent activists seem to have equated social activism with descriptive statements about individual harm and psychic pain. Let me be clear – saying that you feel harmed by another queer person’s use of a reclaimed word like tranny and organizing against the use of that word is NOT social activism. It is censorship. In a post-affirmative action society, where even recent histories of political violence like slavery and lynching are cast as a distant and irrelevant past, all claims to hardship have been cast as equal; and some students, accustomed to trotting out stories of painful events in their childhoods (dead pets/parrots, a bad injury in sports) in college applications and other such venues, have come to think of themselves as communities of naked, shivering, quaking little selves – too vulnerable to take a joke, too damaged to make one. In queer communities, some people are now committed to an “It Gets Better” version of consciousness-raising within which suicidal, depressed and bullied young gays and lesbians struggle like emperor penguins in a blighted arctic landscape to make it through the winter of childhood. With the help of friendly adults, therapy, queer youth groups and national campaigns, these same youth internalize narratives of damage that they themselves may or may not have actually experienced. Queer youth groups in particular install a narrative of trauma and encourage LGBT youth to see themselves as “endangered” and “precarious” whether or not they actually feel that way, whether or not coming out as LGB or T actually resulted in abuse! And then, once they “age out” of their youth groups, those same LGBT youth become hypersensitive to all signs and evidence of the abuse about which they have learned. What does it mean when younger people who are benefitting from several generations now of queer social activism by people in their 40s and 50s (who in their childhoods had no recourse to anti-bullying campaigns or social services or multiple representations of other queer people building lives) feel abused, traumatized, abandoned, misrecognized, beaten, bashed and damaged? These younger folks, with their gay-straight alliances, their supportive parents and their new right to marry regularly issue calls for “safe space.” However, as Christina Hanhardt’s Lambda Literary award winning book, Safe Space: Neighborhood History and the Politics of Violence, shows, the safe space agenda has worked in tandem with urban initiatives to increase the policing of poor neighborhoods and the gentrification of others. Safe Space: Gay Neighborhood History and the Politics of Violence traces the development of LGBT politics in the US from 1965-2005 and explains how LGBT activism was transformed from a multi-racial coalitional grassroots movement with strong ties to anti-poverty groups and anti-racism organizations to a mainstream, anti-violence movement with aspirations for state recognition. And, as LGBT communities make “safety” into a top priority (and that during an era of militaristic investment in security regimes) and ground their quest for safety in competitive narratives about trauma, the fight against aggressive new forms of exploitation, global capitalism and corrupt political systems falls by the way side. Is this the way the world ends? When groups that share common cause, utopian dreams and a joined mission find fault with each other instead of tearing down the banks and the bankers, the politicians and the parliaments, the university presidents and the CEOs? Instead of realizing, as Moten and Hearny put it in The Undercommons, that “we owe each other everything,” we enact punishments on one another and stalk away from projects that should unite us, and huddle in small groups feeling erotically bonded through our self-righteousness. I want to call for a time of accountability and specificity: not all LGBT youth are suicidal, not all LGBT people are subject to violence and bullying, and indeed class and race remain much more vital factors in accounting for vulnerability to violence, police brutality, social baiting and reduced access to education and career opportunities. Let’s call an end to the finger snapping moralism, let’s question contemporary desires for immediately consumable messages of progress, development and access; let’s all take a hard long look at the privileges that often prop up public performances of grief and outrage; let’s acknowledge that being queer no longer automatically means being brutalized and let’s argue for much more situated claims to marginalization, trauma and violence. Let’s not fiddle while Rome (or Paris) burns, trigger while the water rises, weep while trash piles up; let’s recognize these internal wars for the distraction they have become. Once upon a time, the appellation “queer” named an opposition to identity politics, a commitment to coalition, a vision of alternative worlds. Now it has become a weak umbrella term for a confederation of identitarian concerns. It is time to move on, to confuse the enemy, to become illegible, invisible, anonymous (see Preciado’s Bully Bloggers post on anonymity in relation to the Zapatistas). In the words of José Muñoz, “we have never been queer.” In the words of a great knight from Monty Python and the Holy Grail, “we are now no longer the Knights who say Ni, we are now the Knights who say “Ekki-ekki-ekki-ekki-PTANG. Zoom-Boing, z’nourrwringmm.”

#### Avoiding triggers is a symptom not a cure – exposure solves

Flynn 16 [Mariah Flynn is the Education Program Coordinator for the Greater Good Science Center and provides administrative support for GGSC education initiatives like the Summer Institute for Educators. Participants and colleagues alike know her as “the woman who sends all the detailed emails.”; November 1, 2016; http://greatergood.berkeley.edu/article/item/trouble\_with\_trigger\_warnings; Berkeley Greater Good //BWSWJ]

Avoiding triggering topics—a very common strategy for people with PTSD—isn’t the best way to process traumatic events. Avoidance of triggers is a symptom of PTSD, not a cure. In fact, exposure therapy (a specific type of cognitive behavioral therapy where patients are exposed to physical or mental reminders of their trauma) is not only most common method for treating PTSD; it’s also one of the most effective.

#### Mandating warnings fails and punishes teachers – you can’t know everything that’s triggering

Flynn 16 [Mariah Flynn is the Education Program Coordinator for the Greater Good Science Center and provides administrative support for GGSC education initiatives like the Summer Institute for Educators. Participants and colleagues alike know her as “the woman who sends all the detailed emails.”; November 1, 2016; http://greatergood.berkeley.edu/article/item/trouble\_with\_trigger\_warnings; Berkeley Greater Good //BWSWJ]

Trigger warnings are also challenging to implement, because identifying potential triggers isn’t easy. Individuals with past trauma are often triggered by seemingly neutral things that have nothing to do with the content an instructor might present in class—the scent of a certain type of cologne or hearing a song associated with the traumatic event they experienced. Educators won’t always know what might trigger a student who is a victim of trauma and can’t possibly provide a warning for everything that might be a trigger. Dani Behonick, a health science professor at Cañada College, acknowledges the difficulty in determining which material might trigger students. “No matter how mindful I am about stuff that’s likely to trigger my students,” she says, “I can never know the extent of what they have going on, so I must be prepared for them to be triggered by something I never saw coming and be ready to hear and support them when it happens.”

## Holocaust Denial

#### Holocaust denial relies on belief in a government cover-up – banning it fails and spreads it

Lidsky 08 [Lyrissa Barnett Lidsky (Professor of Law, University of Florida Levin College of Law); Where’s the Harm?: Free Speech and the Regulation of Lies; http://law2.wlu.edu/deptimages/Law%20Review/65-3Lidsky.pdf; 2008; //BWSWJ]

More specifically, punishment of Holocaust denial may have the unintended and paradoxical consequence of strengthening the beliefs of Holocaust deniers, rather than weakening them.49 And it may make more people, rather than fewer, prone to believe in the truth of Holocaust denials.50 Holocaust denial is essentially a conspiracy theory: It reflects a belief that "they" want you to believe in the Holocaust to achieve selfish political ends. As Professor Mark Fenster has explained, those who feel politically powerless are more likely than others to be attracted to conspiracy theories.51 Conspiracy theories provide an explanation for the hidden and seemingly mysterious workings of political power, and they represent a populist response to government secrecy.52 Thus, denial of a conspiracy theory can often become proof that it exists, at least for its adherents. The perverse result is that punishment of Holocaust denial is likely to lend it legitimacy, at least for those who are susceptible to its lure in the first place. So what is likely to happen if Holocaust denial is criminalized or otherwise officially proscribed? Those who are attracted to Holocaust denial as a theory are unlikely to simply abandon it just because the State prohibits it. Instead, they are likely to turn away from public discourse within the State to find a community of like-minded individuals who will reinforce their beliefs. The Internet makes that community easy to find. An array of worldwide websites readily supplies "evidence" "confirming" that the Holocaust never happened.53 Not only do private individuals host such websites, but several Middle Eastern countries, including Iran and Syria, officially promote Holocaust denial in all of their state-controlled media, including media accessible via the Internet.54 Given the ready availability of these sources, it is unlikely that a State’s attempt to take Holocaust denial off of the agenda of public conversation will be successful; instead, it will merely free believers from the necessity of having to defend their views. Thus, punishing Holocaust denial may strengthen rather than weaken the convictions of believers. On this basis alone, a State should resist the temptation to punish Holocaust denial.

## Climate Change

#### Perm do the aff and all non-competitive parts of the CP – climate denial can be censored

Jamarillo 16 [Ricardo Jaramillo, 11-7-2016, "Why Free Speech Does Not Include Denying Climate Change: A Legal Explanation – Columbia Undergraduate Law Review," <http://blogs.cuit.columbia.edu/culr/2016/11/07/why-free-speech-does-not-include-denying-climate-change-a-legal-explanation/> //BWSWJ]

The right to free and protected speech is one of the cornerstones of a democratic society that stresses tolerance towards disagreements. Nonetheless, the imperative for free speech can frequently come in contact with differing public policy priorities. Notably, in the United States, courts have generally ruled on the side of free speech compared to their European counterparts.[1] Nonetheless, there still have been plenty of times when the courts have ruled that the government has a legitimate interest in censoring certain kinds of speech – and, crucially, one of those instances is the efforts on behalf of oil and gas companies to mislead the public on climate change. The policy choices that are made in the next few years will have strong implications of life on the planet earth for millennia, according to a group of esteemed climate scientists from around the world. [2] There is an overwhelming scientific consensus that climate change is not only real but that it is anthropogenic.[3] The consequences of unchecked climate change are profound: mass migrations, widespread starvation and drought, devastating sea level rise, and global economic and political instability.[4] Although over one hundred countries came together last year in Paris to make commitments to address climate change, a coalition of groups with environmental concerns including the National Resource Defense Council and the Union of Concerned Scientists believe that the US is moving too slowly and have helped launched a legal offensive against fossil fuel companies led by several state attorneys general. [5] The attorneys general of several states – notably, California, New York, and Massachusetts – have filed lawsuits against ExxonMobil on charges of civil racketeering.[6] The attorneys general allege that Exxon Mobil knew about climate change and its risks for years, funded climate change denial research, and engaged in efforts to deliberately mislead the public. Independent journalism investigations suggest that Exxon researchers were warning the company about climate change since the 1980s.[7] And although the company in the early days denied that such warming was happening, ExxonMobil quietly made adjustments to their operations accounting for production cost increases due to rises in sea level as well as planned drilling in areas that would be more accessible with the melting of Arctic ice.[8] Exxon has not stood idly by in the face of this new legal offensive. Exxon filed two lawsuits in 2016 against the Virgin Islands and Massachusetts Attorneys General, two of the people involved in the initial group of AGs who had prosecuted Exxon.[9] Exxon argued that the efforts on behalf of these AGs to subpoena decades’ worth of internal company documents is a thinly veiled political exercise that violates the company’s right to disagree with the climate change consensus. Moreover, Exxon claims that it does indeed recognize the consensus behind climate change and that it supports a carbon tax. [10] As evidenced by this legal offensive against Exxon, the intersection between free speech and climate change is currently the ground zero site of conflict between the state AGs and Exxon. But what are the broader legal concepts at play here? The question comes down to whether Exxon’s disagreements with the consensus on climate change is an exercise in free speech or a fraudulent attempt to mislead the public. An examination of a similar landmark lawsuit against the tobacco industry provides a legal foundation by which to examine the Exxon lawsuits. The key law that opponents of Exxon are using to charge them with fraud is the same one that was used against the tobacco industry: the 1970 Racketeer Influenced and Corrupt Organization Act, also known as RICO.[11] Although the law was originally used to tackle organized crime, the Department of Justice successfully used RICO to prosecute the tobacco industry in the 1990s.[12]The probes that resulted as a result of the investigation revealed that tobacco companies were purposefully lying to the public about the harmful effects of cigarette smoking. Similarly, climate advocates are encouraging an investigation under RICO not only to hold Exxon accountable, but also to learn more about the extent to which ExxonMobil knew about the harmful effects of climate change. Critics contend that investigations into Exxon, however, are shamefully politically motivated and an assault on freedom of speech.[13] Supporters of Exxon argue that such lawsuits are intended to stifle well-merited scientific debate about the effects of climate change. Moreover, they argue that even if Exxon had fully acknowledged the harmful effects of the climate change, they still would have received financial support from the public and investors simply given how reliant society is on fossil fuels. [14] These claims, however, largely miss the point that climate advocates make. There is very much a difference between a controversial expression of free speech and a deliberate attempt to mislead the public on a matter that is of vast importance to the livelihood of every individual. As the previous landmark lawsuits against the tobacco industry prove, there is legal precedent for prosecuting this kind of malicious corporate behavior. The Exxon lawsuit is not about stifling honest scientific debate; the evidence is clear that the debate about the reality of climate change has been over for a while now. Although it is unfortunate that climate change has been very much politicized in the United States, this lawsuit is not and should not be about scoring political points, but rather about fostering responsible corporate behavior and paving the way for bold action on climate change. Ultimately, it remains to be seen if the politics of the moment can be overcome to encourage more a more responsible discourse on climate change.

#### Legislating climate denial is contrary to the scientific method and creates reverse enforcement – counterspeech is the best solution

Goldwater Institute et al 14 [Aug 11, 2014; “BRIEF AMICI CURIAE OF THE CATO INSTITUTE, REASON FOUNDATION, INDIVIDUAL RIGHTS FOUNDATION, AND GOLDWATER INSTITUTE SUPPORTING APPELLANTS AND REVERSAL”; COMPETITIVE ENTERPRISE INSTITUTE v MICHAEL E. MANN, PH.D; https://cei.org/sites/default/files/AMICUS%20BRIEF%20of%20Cato%20Institute%20et%20al.%20in%20CEI%20v.%20Mann%208-11-14\_0.pdf; //BWSWJ]

These cases also highlight another fundamental prudential reason for courts to be cautious when asked to weigh the “truth” of competing scientific claims: “Scientific truth is elusive.” Underwager, 22 F.3d at 735. Indeed, the Supreme Court’s observation that “[s]cientific conclusions are subject to perpetual revision,” Daubert, 509 U.S. at 597, underscores the peril associated with any notion that a judge or jury can dispense justice by determining scientific “truth.” It should be telling in this regard that the previously-routine label of “global warming” has now been nearly expunged from one side of the political (if not scientific) lexicon in favor of the more general term “climate change.”10 Everyday experience demonstrates the uncertainty and malleability of scientific conclusions. One palatable example close to home is the ever-changing frontier of nutrition, and the government’s role in prescribing and institutionalizing dietary norms. There is a familiar struggle for the dieter who seeks the best way to shed a few pounds and get healthy. Should I adopt a strict, low-fat diet?11 Would the Paleo Diet be better?12 Maybe I need to eat fewer eggs?13 Or I could give one of Dr. Oz’s miracle products a shot.14 And if none of that works, there’s always fasting.15 Even the USDA’s familiar food pyramid—which was originally a wheel—was retired in 2011, replaced by a plate. 16 And just this summer, butter is making a resurgence: A Time magazine cover story promises to exonerate it after three decades in the wilderness. 17 Judicial humility must be the rule when a court is asked to referee a scientific debate—whether the dispute is over climate change or the efficacy of an all-Twinkie diet.18 The steady advance of modern medicine teaches a similar lesson. Take a few examples: Physicians prescribed pipe-smoking to treat President Andrew Jackson’s wife’s phthisis—a respiratory condition similar to tuberculosis.19 In 1881, President James Garfield died of an infection because his treating physicians did not yet accept the principles of antiseptic surgery.20 Before the advent of antipsychotic drugs, the lobotomy and other methods of invasive psychosurgery were used to treat mental disorders in the 1930s and ’40s, peaking with Egas Moniz’s receipt of the 1940 Nobel Prize in Medicine or Phys iology.21 The American Psychiatric Association listed homosexuality as a mental disorder in its Diagnostic and Statistical Manual of Mental Disorders (DSM-II) until 1973.22 The point is not simply to note that science has been wrong before, but rather to emphasize that scientific theories are best left to evolve and advance organically, without interference. Science is a long game; it is trial, error, and public scrutiny that separate modern medicine from phrenology. We have seen the often-pernicious result of courts imbuing prevailing socio-scientific views with the force of law. In the most notorious instance of scientific debate invading the courtroom, John Thomas Scopes was convicted of teaching the theory of evolution. Two years later, relying on the “science” of eugenics, Justice Holmes told us that “[t]hree generations of imbeciles are enough.” Buck v. Bell, 274 U.S. 200, 207 (1927). And that’s not all. See, e.g., Muller v. Oregon, 208 U.S. 412, 421 (1908) (“[H]istory discloses the fact that woman has always been dependent upon man.”); People v. Hall, 4 Cal. 399, 404-05 (Cal. 1854) (upholding prohibition on Chinese testifying against white people because the Chinese were “a race of people whom nature has marked as inferior” and who are “incapable of progress or intellectual development beyond a certain point”); Scott v. State, 39 Ga. 321, 323 (Ga. 1869) (interracial marriage is “unnatural” and “always productive of deplorable results”; “the offspring of these unnatural connections are generally sickly and effeminate”); see also Dred Scott v. Sandford, 60 U.S. 393, 407 (1857). These decisions counsel against meddling in scientific debate. As the second Justice Harlan observed: In many areas which are at the center of public debate ‘truth’ is not a readily identifiable concept, and putting to the pre-existing prejudices of a jury the determination of what is ‘true’ may effectively institute a system of censorship. Any nation which counts the Scopes trial as part of its heritage cannot so readily expose ideas to sanctions on a jury finding of falsity. The marketplace of ideas where it functions still remains the best testing ground for truth. Time Inc. v. Hill, 385 U.S. 374, 406 (1967) (Harlan, J., concurring in part and dissenting in part).

#### Conspiracy theories like climate denial rely on belief in a government cover-up – censorship spreads them

Lidsky 08 [Lyrissa Barnett Lidsky (Professor of Law, University of Florida Levin College of Law); Where’s the Harm?: Free Speech and the Regulation of Lies; http://law2.wlu.edu/deptimages/Law%20Review/65-3Lidsky.pdf; 2008; **This card is in the context of holocaust denial, we highlight the warrants for conspiracy theories in general**; //BWSWJ]

More specifically, punishment of Holocaust denial may have the unintended and paradoxical consequence of strengthening the beliefs of Holocaust deniers, rather than weakening them.49 And it may make more people, rather than fewer, prone to believe in the truth of Holocaust denials.50 Holocaust denial is essentially a conspiracy theory: It reflects a belief that "they" want you to believe in the Holocaust to achieve selfish political ends. As Professor Mark Fenster has explained, those who feel politically powerless are more likely than others to be attracted to conspiracy theories.51 Conspiracy theories provide an explanation for the hidden and seemingly mysterious workings of political power, and they represent a populist response to government secrecy.52 Thus, denial of a conspiracy theory can often become proof that it exists, at least for its adherents. The perverse result is that punishment of Holocaust denial is likely to lend it legitimacy, at least for those who are susceptible to its lure in the first place. So what is likely to happen if Holocaust denial is criminalized or otherwise officially proscribed? Those who are attracted to Holocaust denial as a theory are unlikely to simply abandon it just because the State prohibits it. Instead, they are likely to turn away from public discourse within the State to find a community of like-minded individuals who will reinforce their beliefs. The Internet makes that community easy to find. An array of worldwide websites readily supplies "evidence" "confirming" that the Holocaust never happened.53 Not only do private individuals host such websites, but several Middle Eastern countries, including Iran and Syria, officially promote Holocaust denial in all of their state-controlled media, including media accessible via the Internet.54 Given the ready availability of these sources, it is unlikely that a State’s attempt to take Holocaust denial off of the agenda of public conversation will be successful; instead, it will merely free believers from the necessity of having to defend their views. Thus, punishing Holocaust denial may strengthen rather than weaken the convictions of believers. On this basis alone, a State should resist the temptation to punish Holocaust denial.

#### Censoring any science damages the institution’s ability to engage the public – scientific community agrees

Leahy 12 [2012/02/22, Stephen Leahy (Inter Press Service), "Scientists Denounce Climate Change Denial, Censorship," United Nations University, <https://ourworld.unu.edu/en/scientists-denounce-climate-change-denial-censorship> //BWSWJ]

When the science community starts having “panels about the muzzling of scientists, you know the situation is pretty desperate”, Weaver said. Media provides the public with information so they can make informed decisions. But without timely access, the media cannot perform its role, he said. “When government muzzles scientists for political reasons, it cuts at the fundamental principals of good science,” said Stephen Hwang, professor of general internal medicine at the University of Toronto. “The open discussion of ideas is essential to science, just as a free press is essential to democracy,” Hwang said in a statement.

#### Climate change is past the point of no return

Goldenberg 2015 – citing 2014 UN Report
Suzanne, "Warming of oceans due to climate change is unstoppable, say US scientists," Jul 16, https://www.theguardian.com/environment/2015/jul/16/warming-of-oceans-due-to-climate-change-is-unstoppable-say-us-scientists

The warming of the oceans due to climate change is now unstoppable after record temperatures last year, bringing additional sea-level rise, and raising the risks of severe storms, US government climate scientists said on Thursday. The annual State of the Climate in 2014 report, based on research from 413 scientists from 58 countries, found record warming on the surface and upper levels of the oceans, especially in the North Pacific, in line with earlier findings of 2014 as the hottest year on record. Global sea-level also reached a record high, with the expansion of those warming waters, keeping pace with the 3.2 ± 0.4 mm per year trend in sea level growth over the past two decades, the report said. Scientists said the consequences of those warmer ocean temperatures would be felt for centuries to come – even if there were immediate efforts to cut the carbon emissions fuelling changes in the oceans.

#### Warming inevitable – impossible to sufficiently reduce emissions

HNGN 16 (Headlines & Global News; Global Warming of More Than 2 Degrees May Be Inevitable, Even With Changes, Study Says; March 24; http://www.hngn.com/articles/191930/20160324/global-warming-of-more-than-2-degrees-may-be-inevitable-even-with-changes.htm)//AJ

We may not be able to curtail rising temperatures. The goals set a few months ago in Paris to prevent further temperature rises around the world are almost sure to fail, according to a new study. During the "Paris Agreement" at the United Nations Climate Conference last December, each country agreed to reduce greenhouse gas emissions to limit global warming to less than two degrees Celsius. However, researchers have now shown that these goals may be unrealistic. The researchers modeled the projected growth in global population and per capita energy consumption. They also modeled the size of known reserves of oil, coal and natural gas, and greenhouse gas emissions. This allowed them to see just how difficult it will be for nations to achieve the warming goal set in Paris. "Just considering wind power, we found that it would take an annual installation of 485,000 5-megawatt wind turbines by 2028," said Glenn Jones, one of the researchers. "The equivalent of about 13,000 were installed in 2015. That's a 37-fold increase in the annual installation rate in only 13 years to achieve just the wind power goal." In fact, the researchers found that there would have to be a massive overhaul in energy infrastructure and energy mix in order to come close to climate goals. This particular overhaul would require rates of change that have never happened in human history. In addition, more people are being born every day. This means that there will have to be more of an effort in order to change energy usage since there will be more demand in the future. "There will be about 11 billion people on Earth by 2100 (compared to 7.2 billion today)," Jones said. "So the question becomes, how will they be fed and housed and what will be their energy source? Currently 1.2 billion people in the world do not have access to electricity, and there are plans to try to get them on the grid. The numbers you start dealing with become so large that they are difficult to comprehend. To even come close to achieving the goals of the Paris Agreement, 50 percent of our energy will need to come from renewable sources by 2028, and today it is only 9 percent, including hydropower. For a world that wants to fight climate change, the numbers just don't add up to do it." The findings show that current goals will need a significant shift to renewable resources. This particular shift may be difficult to attain in time in order to prevent further warming. While the findings may be grim, they do show what needs to be done in order to achieve the goals. The findings were published in the March 2016 issue of the journal Energy Policy.

#### Even if warming can be combatted – that requires infrastructural and institutional reform, Trumps president and universities won’t change that

## Tobacco Ads

### Sponsorship Perm (Nina’s Version)

#### Perm do both – Rigotti’s conclusion is to ban free samples and event sponsorship; both were ruled constitutional

Langvardt 14 [Arlen W. Langvardt (Professor of Business Law and Graf Family Professor, Kelley School of Business, Indiana University), Tobacco Advertising and the First Amendment: Striking the Right Balance, 5 Wm. & Mary Bus. L. Rev. 331 (2014), http://scholarship.law.wm.edu/wmblr/vol5/iss2/2 //BWSWJ]

The Discount Tobacco plaintiffs also failed in their challenges to the TCA’s previously discussed restrictions on tobacco companies’ distribution of free samples of their products, on their use of tobacco product names, logos, or symbols on non-tobacco merchandise, and on their use of tobacco product names in event sponsorship.330 The Sixth Circuit noted that those restrictions dealt with forms of advertising and either restricted speech directly or targeted an activity’s communicative impact.331 But they were constitutionally permissible restrictions on commercial speech because they would directly advance the government’s interests in curtailing minors’ use of tobacco products and lessening inducements to engage in that unhealthy practice, and would do so in narrowly tailored ways.3322

### Ads Perm (Raffi’s Version)

#### Perm do the aff and all non-competitive parts of the CP - Schools can ban advertisements of items that are illegal for minors to purchase

Eighth Circuit 86 bracketed [United States Court of Appeals, Eighth Circuit; Decision in 822 F. 2d 747 - Bystrom Bystrom v. Fridley; http://openjurist.org/822/f2d/747; //BWSWJ]

4. Plaintiffs next object to guideline D, which refers to written [prohibition of] material which "advertises any product or service not permitted to minors by law...." J.A. 24. We see nothing vague or [is not] objectionable about this prohibition. To be sure, commercial speech enjoys a degree of First Amendment protection, but this protection does not extend to advertisement of products that are themselves illegal. We think almost every high school student would recognize that this guideline refers, for example, to tobacco, liquor, and material that is obscene to minors. We note that the District Court did not specifically hold this guideline invalid.

### On the CP

#### T/ Ad bans increase consumption – multiple warrants

Koop summarizes Hamilton et al [C. Everett Koop, M.D. (Charles Everett Koop, MD (October 14, 1916 – February 25, 2013) was an American pediatric surgeon and public health administrator. He was a vice admiral in the Public Health Service Commissioned Corps,[1] and served as the 13th Surgeon General of the United States); \* Koop is giving a summary of multiple viewpoints in the lit, not making a claim of his own \*; https://books.google.com/books?id=SLqoF-MZxUMC&pg=PA660&lpg=PA660; "Reducing the Health Consequences of Smoking: 25 Years of Progress”; 1988; //BWSWJ][

The U.S. broadcast ban on cigarette ads is the event for which there is least agreement in the literature about consumption implications. As discussed in Chapter 7, some analysts have concluded that the U.S. ban was counterproductive, actually contributing to increased cigarette consumption. Hamilton (1972) predicated this judgment on his evaluation of the relative effectiveness of pro- and antismoking advertisements. He estimated that prosmoking advertising increased per capita consumption by 95 cigarettes per year, while the Fairness Doctrine ads decreased it by 531. Consequently, prohibiting cigarette advertising, which also eliminated the need for broadcasters to donate time to the smoking-and-health cause, resulted in a net gain in cigarette sales. Schneider, Klein, and Murphy (1981) also concluded that the ban increased consumption, but primarily because it reduced a major cost of business for the tobacco companies—broadcast advertising—which, according to these authors, did not affect the aggregate level of consumption. They argued that decreased cost permitted price reductions, which, other things being equal, would increase consumption.

#### T/ Bans on cigarette advertising will increase sales and make people use more dangerous cigarettes – turns your impacts

Calfee and Ringold 90 [John E. Calfee and Debra Jones Ringold (University of Maryland and University of Baltimore); 1990 ,"What Would Happen If Cigarette Advertising and Promotion Were Banned?", in NA - Advances in Consumer Research Volume 17, eds. Marvin E. Goldberg, Gerald Gorn, and Richard W. Pollay, Provo, UT : Association for Consumer Research, Pages: 474-479. http://acrwebsite.org/volumes/7052/volumes/v17/NA-17 //BWSWJ]

All this strongly suggests that a cessation of cigarette advertising would have little effect on sales. Indeed, it is entirely possible that present-day cigarette advertising, with its plethora of health warnings and incessant reminders that tar and nicotine should be avoided, dampens rather than increases overall sales (Schelling 1978). Moreover, there are reasons to believe that advertising supports a mix of cigarette types substantially lower in tar and nicotine than would be the case without advertising. The history of tar and nicotine advertising in this country is punctuated with both prohibitions of, and governmental support for such advertising. This record strongly indicates that advertising hastens and helps maintain acceptance of lower yield cigarettes (Calfee 1985, 1986). The health benefits of lower tar cigarettes are clear in the case of lung cancer, in the sense that epidemiological evidence linking smoking and lung cancer also manifests a progressively weaker link for lower yield cigarettes (Stellman and Garfinkel 1986; Peto 1985 and references therein). Correlational evidence on smoking and heart disease does not display a similarly strong link between cigarette yield and heart disease (Kaufman, et al., 1983), but this finding is inconclusive in view of the fact that controlled intervention studies have thus far generally failed to support correlation-based predictions linking smoking and heart ailments (Rose, et al. 1982; Hjermann, et al. 1981; Multiple Risk Factor 1982). Leading experts on smoking and health continue to recommend world-wide use of lower yield cigarettes (Peto 1985; Participants 1985). We believe it likely that an end to advertising would bring a regression in the market toward the much higher yield cigarettes of former years, just as happened when tar and nicotine advertising was temporarily halted during 1955-57 and in the early 1960s (Miller and Monahan 1966; Calfee 1985).

#### Comprehensive analysis of the lit finds no causal link between ads and consumption.

Nelson 10: What is Learned from Longitudinal Studies of Advertising and Youth Drinking and Smoking? A Critical Assessment Jon P Nelson Department of Economics, Pennsylvania State University, University Park, PA 16802, USA; Tel.: +1-814-237-0157; Fax: +1-814-863-4775 Received: 29 December 2009; in revised form: 20 February 2010 / Accepted: 28 February 2010 / Published: 8 March 2010 Int. J. Environ. Res. Public Health 2010, 7(3), 870-926; doi:10.3390/ijerph7030870

**A critical assessment of longitudinal studies of youth** drinking and **smoking reveals a number of shortcomings and omissions in the study methodologies**. These problems mean that the **studies do not demonstrate causality between advertising-marketing exposure and youth** drinking and **smoking** behaviors. First, specification errors arise when an empirical model omits a relevant covariate or explanatory variable. **Many model specifications are ad hoc and not guided by a well-defined theoretical model**. Greater use of classifications for the explanatory variables would help, but **virtually all studies omit market-area variables such as product prices and regulations.** A simple approach is the inclusion of fixed-effects binary indicator variables, but this may not help if there is interest in the effect of specific regulations. Some econometric studies reviewed below have included policy indexes as an alternative to indicator variables. Formal methods for model selection are available, such as Hendry’s general-to-specific procedure [69,96]. Sensitivity analysis is required to test the robustness of empirical results, with particular attention to the range of results for the advertising and marketing variables. O**f special importance is the lack of attention to models with several advertising and marketing variables. Rather than test a general model, investigators have reported separate regressions for individual marketing variables, either in the same paper or in separate papers using the same data. This biases the results and overstates any possible effect of advertising on the outcomes.**

#### No link ev overcomes the null hypothesis – vote aff on presumption

Calvert 98 [Clay Calvert (Clay Calvert is Brechner Eminent Scholar of Mass Communication and Director of the Marion B. Brechner First Amendment Project in the University of Florida College of Journalism and Communications, specializing in First Amendment Law.) “EXCISING MEDIA IMAGES TO SOLVE SOCIETAL ILLS: COMMUNICATION, MEDIA EFFECTS, SOCIAL SCIENCE, AND THE REGULATION OF TOBACCO ADVERTISING” 27 Sw. U. L. Rev. 401 1997-1998 //BWSWJ]

This Part of the Article initially identifies a multitude of variables and factors that research suggests are associated with smoking initiation. It then addresses two questions. First, whether cigarette advertising causes smoking initiation. Second, even if such proof does not exist, whether there is an association between cigarette advertising and smoking uptake. This Part suggests that we are focusing on the wrong question when we look solely to the issue of causation, given the limitations of survey and econometric research. Instead, we should ask whether there is an accumulation of consistent findings from sound social science that demonstrate a positive relationship between cigarette advertising and smoking initiation. At present, such a consistent relationship is absent.

#### **Smoking doesn’t kill – impacts are overstated**

Mike Pence 1: Mike Pence [US VP] “The Great American Smoke Out ” http://web.archive.org/web/20010415085348/http://mikepence.com/smoke.html April 15, 2001

In the coming weeks, Americans are going to be treated with the worst kind of Washington-speak regarding the tobacco legislation currently being considered by the Congress and Attorney Generals from forty different states. We will hear about the scourge of tobacco and the resultant premature deaths. We will hear about how this phalanx of government elates has suddenly grown a conscience after decades of subsidizing the product which, we are now told, "kills millions of Americans each year". **Time for a quick reality check. Despite the hysteria from the political class and the media, smoking doesn't kill**. In fact, **2 out of every three smokers does not die from a smoking related illness and 9 out of ten smokers do not contract lung cancer**. This is not to say that smoking is good for you.... news flash: smoking is not good for you. If you are reading this article through the blue haze of cigarette smoke you should quit. **The relevant question is, what is more harmful to the nation, second hand smoke or back handed big government disguised in do-gooder healthcare rhetoric**. The tobacco settlement is not only about big taxes it's about big government. Under the current Senate version, the deal would require the creation of 17 new government bureaucracies to manage the tax windfall described above. But it is also about big government on a much more profound scale, namely, government big enough to protect us from ourselves. Even a conservative like me would support government big enough to protect us from foreign threats and threats to our domestic tranquility but the tobacco deal goes to the next level. Government big enough to protect us from our own stubborn wills. And a government of such plenary power, once conceived will hardly stop at tobacco. Surely the scourge of fatty foods and their attendant cost to the health care economy bears some consideration. How about the role of caffeine in fomenting greater stress in the lives of working Americans? Don't get me started about the dangers of sports utility vehicles! Those of you who find the tobacco deal acceptable should be warned as you sit, reading this magazine, sipping a cup of hot coffee with a hamburger on your mind for lunch. A government big enough to go after smokers is big enough to go after you.

#### Their studies are incomplete and poorly conducted

Nelson 10: What is Learned from Longitudinal Studies of Advertising and Youth Drinking and Smoking? A Critical Assessment Jon P Nelson Department of Economics, Pennsylvania State University, University Park, PA 16802, USA; Tel.: +1-814-237-0157; Fax: +1-814-863-4775 Received: 29 December 2009; in revised form: 20 February 2010 / Accepted: 28 February 2010 / Published: 8 March 2010 Int. J. Environ. Res. Public Health 2010, 7(3), 870-926; doi:10.3390/ijerph7030870

\*have the study on desktop to pull up, indicts like 30 articles

Several **recent articles** provide reviews of longitudinal studies of advertising and youth alcohol or tobacco behaviors [31,32,42,48–50]. These reviews **conclude that advertising and marketing influence youth to use** alcohol and **tobacco**, although the magnitude is sometimes labeled “modest”. However, **the reviews provide simple narratives that focus on basic methodology and empirical results, especially results that conform to social learning theories. Assessments of the empirical model specification and statistical testing are frequently brief or absent. Assessments of the overall significance and magnitude are not reported in a summary fashion. Publication bias is ignored** [51]. Despite the weaknesses in the studies and reviews, strong policy recommendations often are presented, such as calls for bans of all alcohol and tobacco advertising including passive advertising at sponsored sports events and similar venues. Given these past recommendations, the objective of this review is to provide a critical assessment of the modeling framework employed in longitudinal studies, the statistical procedures utilized, and empirical results achieved in such studies. In particular, I demonstrate that **many longitudinal studies are seriously incomplete or ignore statistical problems and solutions that are well-known in econometrics, including issues of specification bias, measurement error, endogeneity, and sample selection bias**. My conclusion is that the emphasis on advertising bans and similar regulations in the public health literature is misplaced. More effective policies need to be sought to deal with issues of youthful risk-taking associated with alcohol and tobacco.

## Campaign Finance

#### No link - It’s constitutional to restrict student spending on campaigns – even FIRE acknowledges this. Clark 07 ("Free Speech and Student Government Elections", By Sean Clark August 15, 2007, https://www.thefire.org/free-speech-and-student-government-elections/)

Every student, especially at large colleges and universities, knows when it is student government election season. Every bulletin board is cluttered with countless campaign flyers, student election workers clad in brightly colored t-shirts loudly proclaim their support for their favorite candidate, and sidewalks everywhere are chalked with campaign slogans. At my alma mater, Penn State, student elections had a tendency to be the most active time of year for student expression, and the same is true at many other universities and colleges. In most observers’ eyes, student elections are resolved without major complications. But what happens when there is a major controversy during an election, especially one involving free speech? What free speech rights do students at public universities enjoy, especially when the controversy is entwined with an election? Up until recently, there have been only a handful of federal cases directly addressing this issue. But one recent case may provide some more insight into the free speech rights of student government candidates. In Flint v. Dennison, 488 F.3d 816 (9th Cir. 2007), a student at the University of Montana was campaigning for a student senator position. During the course of his campaign he exceeded the school’s spending limit of $100 for campaign costs. Although the student won the election, he was later denied the position because of the campaign violation. In response, the student filed a federal lawsuit seeking to invalidate the denial claiming it violated his free speech rights. Ultimately, the case made it to the 9th Circuit Court of Appeals. The court held that student elections at the University of Montana were a limited public forum, meaning that student candidates could constitutionally be subjected to reasonable time, place, and manner restrictions as long as those regulations were viewpoint neutral. The court went on to rule that the spending cap was constitutional because it was viewpoint neutral and a reasonable restriction. Flint at 836.

#### Campaign spending increase political discussion and prevents the majority from consolidating power. Dorfman 14 (Jeffrey Dorfman, OCT 16, 2014 , "Campaign Spending Freedom Is Great For Speech and The Advertising-Media Sector", http://www.forbes.com/sites/jeffreydorfman/2014/10/16/campaign-spending-freedom-is-great-for-speech-and-the-advertising-media-sector/#4e975b991df0)

Many voices on the left complained vociferously each time in the past few years that the Supreme Court rolled back unconstitutional campaign finance restrictions. Yet the loosening of the rules on campaign donations and campaign spending are showing positive signs in both the political arena and in an economic one: the advertising sector. In terms of politics, it should be self-evident that more speech is better than less. The first amendment really only had two points as the Founding Fathers saw it: protect the press so they could expose any government wrongdoing and ensure freedom of speech for political arguments. Nude dancing was not on their minds. Read the history of the revolutionary period and the early presidential campaigns and you will realize that the campaigns were wild, often dirty, free-wheeling affairs. Today’s negative campaigners have nothing on their forefathers of two centuries ago Yet, beginning with a perhaps natural reaction to Watergate, a few incumbent politicians who wanted to protect their own reelections by making it harder for non-incumbents to raise money pushed through a series of restrictions on campaign financing, effectively reducing freedom of speech. We should all be glad that we are moving back in the direction of freedom of political speech. And no one has more to be glad about than the political operatives who design and buy advertising time and the corporations who sell the media slots to them.

#### The negative impacts are far overstated and disproven by studies – we need spending for challengers to have a fighting chance. Basham (Campaign Spending Limits Put Cap on Democracy By Patrick Basham August 17, 2002, https://www.cato.org/publications/commentary/campaign-spending-limits-put-cap-democracy)

Political corruption. According to Circuit Judge Chester J. Straub’s majority opinion, the “corrupting influence of excessive fundraising and campaign spending” justifies spending limits. After all, says Straub, “Absent expenditure limitations, fundraising practices…will continue to impair the accessibility which is essential to any democratic political system.” But the conventional wisdom regarding the extent of political corruption is plain wrong. Studies confirm that campaign finance regulators wildly overestimate the amount of actual corruption taking place in legislative offices and corridors. The importance accorded access to legislators is far too high. In practice, various points of public pressure on any given issue create a kind of political equilibrium. These competing interests are a good thing. As James Madison stressed, “Liberty is to faction what air is to fire.” Political contributors follow legislators’ votes far more than votes follow campaign dollars. The unexciting reality is that most voting reflects the legislator’s ideology, his partisanship, and his perception of his constituents’ interests. Political competition. Our government suffers from the handicap of a largely uncompetitive political system. The advantages of incumbency are not only important, their importance has risen over time, especially since the passage of the first package of comprehensive campaign finance regulations in 1974. In the most recent congressional elections, the reelection rate for House incumbents was 98 percent. Extensive political science scholarship reveals what politicians recognize at first glance: It is difficult for a challenger to oust an incumbent unless the former spends at least as much as, and probably more than, the latter during the campaign period. Only by spending large sums on television advertising, direct mail solicitations, and grassroots organization can a challenger develop the levels of name recognition, issue identification, and voter mobilization to catch up with the years (frequently decades) of subsidized campaigning and pork barrel spending that characterize an incumbent’s terms in office. Therefore, spending limits will minimize the opportunity for challengers to defeat incumbents thereby further diminishing political competition. The role of government. The campaign finance regulatory cure, as commonly prescribed, is far worse than the disease. As the disease is misdiagnosed, the cure could be fatal. Contrary to conventional wisdom, the most important factor driving campaign spending upward is Big Government. Taxes and regulations have increased the size and scope of government at all levels. Increasing government activity leads to more efforts - including spending on campaigns - by private individuals, businesses, and organizations to avoid the negative fallout from political decision-making. As such, efforts to restrict campaign spending will be futile. The only sure way to lower campaign spending would be to restrict government to its constitutionally mandated role. Although writing laws that constrain the government behemoth are beyond the power of the judiciary, they are the mandate of the legislative branch in a country dedicated to both economic and political freedom. Sadly, the chances of our political class recognizing and accepting this challenge remain slender.

## Harrassment

### General Perms

#### 1. Perm do the aff and the alt – The counterplan is constitutional

HG No Date [HG Legal Resources (HG.org was one of the very first online law and government information sites. It was founded in January of 1995 by Lex Mundi, a large network of independent law firms. The objective of HG.org is to make law, government and related professional information easily and freely accessible to the legal profession, businesses, and consumers.); No Date; “What Type of Speech Is Not Protected by the First Amendment?”; https://www.hg.org/article.asp?id=34258 //BWSWJ]

The First Amendment also does not provide protection for forms of speech that are used to commit a crime, such as perjury, extortion or harassment.

#### 2. Harassment not protected

Strossen 92 [Villanova Law Review, Vol. 37, Issue 4 (1992), pp. 757-786 Strossen, Nadine (Cited 1225 times) 37 Vill. L. Rev. 757 (1992) Regulating Workplace Sexual Harassment and Upholding the First Amendment - Avoiding a Collision [article] //BWSWJ]

In both settings, the prohibited harassment may consist of words or expressive conduct.2 8 Yet, this expression may be prohibited, consistent with the First Amendment, for several reasons. First, the mere fact that harassing conduct consists in part of expression never has been viewed as sufficient to immunize it from regulation. Even the ACLU, which takes a broad view of the First Amendment, never has argued that the First Amendment protects targeted individual harassment just because it uses the vehicle of expression.29 Second, as previously indicated, those to whom harassing expression is directed on campus and in the workplace may well constitute "captive audience" members, entitled to protection from unwanted verbal assaults. Finally, conduct that violates the right to equal educational or employment opportunities should not be condoned simply because it includes expressive elements.

#### If we prove the the CP is constitutional or that the constitutionally of the counterplan is not established I should win the perm debate - it should be their burden to prove the counterplan is unconstitutional, if they can’t prove that then they aren’t provably competitive

### Harvard Westlake specific perm stuff

#### Err heavily neg – both of their CP authors conclude that the counterplan is either constitutional or not established without a Supreme Court ruling

#### 1) Dower concludes it’s possibly constitutional and unclear without a ruling

Dower [Benjamin. [Assistant Attorney General at Texas Attorney General] "Scylla of Sexual Harassment and the Charybdis of Free Speech: How Public Universities Can Craft Policies to Avoid Liability, The." Rev. Litig. 31 (2012): 703. //BWSWJ]

The First Amendment has an uneasy relationship with sexual harassment law and institutional policies. Because hostile work environment provisions could be applied to punish speech as well as conduct, it is unclear at what point speech becomes unprotected. Universities must carefully navigate between the Scylla of sexual harassment and the Charybdis of free speech. If a public university's sexual harassment policy is not crafted with both potential liabilities in mind, the university risks liability by straying too close to either extreme. The Supreme Court has never specifically addressed the proper trade-off between impermissibly preventing offensive speech and preventing discrimination by prohibiting speech that creates a hostile work or learning environment. As a result, lower courts have been forced to address the issue with minimal guidance. In analyzing speech codes, the courts have generally looked to categories of per se unprotected speech and the Tinker material disruption exemption. By writing a policy that follows those exceptions, a public university is more likely to have its sexual harassment policy upheld. Also helpful is crafting a separate policy for university employees, who have been treated separately by the courts and present some additional issues. Nevertheless, until the Supreme Court issues a definitive ruling about how to address this issue, it will remain difficult to predict what language courts will find permissible.

#### 2) Marcus concludes it’s not grey at all – the first amendment is inapplicable to harassment and claiming otherwise is missuse

Kenneth L Marcus [Lillie and Nathan Ackerman Chair in Equality and Justice in America, Baruch College¶ School of Public Affairs]. "Higher Education, Harassment, and First Amendment Opportunism." Wm. & Mary Bill Rts. J. 16 (2007): 1025.

Much of the rhetoric, and some of the legal argument, surrounding campus harassment-and especially campus anti-Semitism---consists of First Amendment opportunism. That is to say, it consists of agenda-driven efforts, varying in degree of success, to change the topic from harassment to free speech in a context in which the First Amendment is at least arguably inapplicable. These efforts are fraught with social, legal, and political significance, as they mark a struggle to shift the boundaries of constitutional discourse in a way that could increase some protections while decreasing others. The danger in this form of opportunism is generally two-fold. On one hand, opportunistic use of the First Amendment can lead to distortion or dilution of the protections afforded under that constitutional provision. This is a reflection of the observation that "[tlhe First Amendment has always derived much of its strength from its narrowness";'99 in other words, it is able to provide strong protections to those areas within its coverage precisely because its boundaries are relatively modestly circumscribed. On the other hand, this form of opportunism infringes rather aggressively on a core interest of contemporary constitutional and civil rights law: protecting equal educational opportunities from hostile environment harassment. In the case of campus anti-Semitism, we have seen that the First Amendment narrative does not fully capture the range of issues which the problem generates. In Professor Schauer's metaphor, this narrative is a pipe wrench, rather than a hammer, swinging at a nail.2�� Worse, the argument has a questionable pedigree, in that it is resonant with stereotypes of Jewish conspiratorial power, and it has been used in a manner that can itself suppress efforts to promote equal educational opportunity. The opportunistic use of First Amendment doctrine and rhetoric cannot be fully addressed within the scope of existing doctrine, and its success or failure will ultimately turn more on political or sociological factors than on jurisprudential considerations. For these reasons, the danger of misusing the First Amendment in this context is not only that it can distort First Amendment doctrine, weaken speech protections by overextending them, and threaten equal educational opportunity. It is also that our constitutional discourse is degraded by defenses of hate and bias incidents which are both questionable in their moral genealogy and dangerous in their impact on educational equality.

#### Even if it is grey, they haven’t met their burden – they need to prove it’s clearly unconstitutional

#### No new competition evidence in the NR, my 1AR strat for responding to the CP is predicated on the NC evidence

### Perm

#### Doesn’t matter if it’s constitutional for society. Supreme Court ruled that harassment of women is unconstitutional on colleges.

Title 9 ’16 Title IX.info ’16. Supreme Court Stories. http://www.titleix.info/Faces-of-Title-IX/Meet-the-Faces-of-Title-IX/Supreme-Court-Stories.aspx. //Alpha

Supreme Court Stories North Haven Board of Ed v. Bell, 456 U.S. 512 (1982). A teacher filed a complaint of sexual discrimination when she was not rehired after her pregnancy leave. The Department of Education asked the school to submit its hiring, security and tenure practices. Feeling the government was overstepping its bounds, the school refused. The U.S. Supreme court upheld Title IX regulations that prohibited sex discrimination in employment. http://supreme.justia.COM/US/456/512employment Grove City College v. Bell, 465 U.S. 512 (1984) Grove City College sought to preserve its institutional autonomy by refusing federal financial assistance, but its students did receive federal financial aid that they then used to attend the college. Title IX prohibits sex discrimination in any education program or activity that receives federal funds. In this case, the U.S. Supreme Court held that the student financial aid constituted indirect federal funds received by the college, but since those funds went only the financial aid program, that was the only part of the college covered by Title IX. The impact of this decision was to exclude athletics programs from Title IX coverage since they don’t ordinarily receive federal funds. http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=465&invol=555 The Civil Rights Restoration Act of 1987, 102. Stat. 28 (1988) Overturned Grove City College v. Bell and held that once any part of an institution receives federal funds, the entire institution is covered by Title IX. The Act, which became law after Congress overrode a veto by President Ronald Reagan, restored Title IX’s coverage to athletics programs. Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992) Franklin, a high school student, filed an action for damages alleging that she had been subjected to continual sexual harassment and abuse by a teacher. The teacher resigned on the condition that all matters pending against him be dropped, and the school closed its investigation. The U.S. Supreme Court ruled unanimously that plaintiffs filing Title IX lawsuits are entitled to receive money damages in cases of intentional discrimination. http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=503&invol=60 Davis v. Monroe County Board of Education, 526 U.S. 629 (1999) Fifth grader La Shonda Davis’s family filed a suit after she was sexually harassed by a fellow student, creating an intimidating, hostile, offensive and abusive school environment. The Davis family notified the school and repeatedly requested that the school remedy the situation, but the school did nothing. The U.S. Supreme Court ruled that a school is liable under Title IX for student-to-student harassment that deprives the harassed student of access to educational opportunities, if the school has notice of the harassment and is deliberately indifferent to it. http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=97-843 Jackson v, Birmingham Board of Education, 544 U.S. 167 (2005). Roderick Jackson, a teacher and high school basketball coach, filed a suit after being fired from his coaching position when he complained that his girls’ basketball team was receiving inferior treatment. The U.S. Supreme Court ruled that retaliation is prohibited under Title IX and that an ‘indirect victim of sex discrimination could bring a Title IX case against a school that retaliates against him because he complained of sex discrimination.” <http://supct.law.cornell.edu/supct/html/02-1672.ZS.html>

#### Harassment of minorities – like racial epithets and sexual harassment – that create hostile environments as defined by Title VI are not constitutionally protected.

McClellan ’15: (Cara McClellan, J.D. Yale Law and Judicial Law Clerk at United States District Court, “Discrimination as Disruption: Addressing Hostile Environments Without Violating the Constitution,” Yale L. & Pol'y Rev. Inter Alia (Nov. 11, 2015)//FT)

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

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

### Case

#### Overly protective sexual harassment restrictions replicate protectionist views of women that re-inscribe traditional gender roles

Strossen 92 [Villanova Law Review, Vol. 37, Issue 4 (1992), pp. 757-786 Strossen, Nadine (She was the first woman and the youngest person to ever lead the ACLU. A professor at New York Law School, Strossen sits on the Council on Foreign Relations. She has been called one of the most influential business leaders, women, or lawyers in National Law Journal and Vanity Fair) Regulating Workplace Sexual Harassment and Upholding the First Amendment - Avoiding a Collision; http://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=2783&context=vlr //BWSWJ]

As the Supreme Court noted in 1973, in actual operation, these "protective" laws "put women, not on a pedestal, but in a cage." 75 This protective labor legislation at best has been only partially beneficial to women; historical evidence reveals compellingly that it has always carried concealed costs, such as the loss of jobs and the depression of women's wages. 76 Moreover, any doc- trine resting upon the incomparability of the sexes cannot be con- fined to circumstances which may at first appear "beneficial"; the principle can always then be used to "justify" the denial of rights. 77 For example, by invoking women's special reproductive role, certain employers have excluded women from high-paying jobs that entail exposure to certain substances that might impair their fetuses, even if the women do not intend to have children, and even though there is evidence that these substances could damage the male reproductive functions as well.78 "Protectionist" measures designed to shelter women from sexually explicit expression conform to the general pattern of gender-specific "protectionist" measures by actually operating to women's detriment. Regardless of the benevolent intent of such measures, they in fact reflect and reinforce a patronizing, paternalistic view of women's sexuality that is inconsistent with women's full equality. This point has been made by feminists in a context highly analogous to the present one: the controversy over whether certain sexually-oriented "pornography," defined as "subordinating" women, should be censored. While some feminists advocate such censorship, others oppose it. For example, in 1985, the Feminist Anti-Censorship Taskforce (FACT) submitted a brief opposing a city ordinance drafted by feminist pro-censorship advocates Andrea Dworkin and Catharine MacKinnon, which punished "pornography," de- fined as any "sexually explicit subordination of women through pictures and/or words," 79 that was "demeaning" to women as a violation of women's civil rights. To the contrary, the FACT brief argued, the Dworkin-MacKinnon ordinance would itself violate women's civil rights.80 That brief's warning words are also appli- cable to overly broad restrictions on sexually explicit expression in the workplace: The ordinance presumes women as a class (and only wo- men) are subordinated by virtually any sexually explicit image.... Such assumptions reinforce and perpetuate central sexist stereotypes; they weaken, rather than enhance, women's struggles to free themselves of archaic notions of gender roles.... In treating women as a special class, [this ordinance] repeats the error of earlier protectionist legislation which gave women no significant benefits and denied their equality.8 1

#### Having the state define what speech creates a “hostile learning environment” for women replicates essentialism and sexism

Strossen 92 [Villanova Law Review, Vol. 37, Issue 4 (1992), pp. 757-786 Strossen, Nadine (She was the first woman and the youngest person to ever lead the ACLU. A professor at New York Law School, Strossen sits on the Council on Foreign Relations. She has been called one of the most influential business leaders, women, or lawyers in National Law Journal and Vanity Fair) Regulating Workplace Sexual Harassment and Upholding the First Amendment - Avoiding a Collision; http://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=2783&context=vlr //BWSWJ]

Reflecting the view of many feminists that the Dworkin- MacKinnon approach to sexually-oriented speech undermines equality, in 1991 and 1992 many feminists and feminist groups opposed a proposed congressional statute that embodied the Dworkin-MacKinnon philosophy. The opposing groups included FACT, Feminists for Free Expression and various chapters of the National Organization for Women, including its two largest chap- ters (in California and New York). For example, Feminists for Free Expression explained: Women do not require "protection" from explicit sexual materials. It is no goal of feminism to restrict individual choices or stamp out sexual imagery.... Women are as varied as any citizens of a democracy; there is no agree- ment or feminist code as to what images are distasteful or even sexist. It is the right and responsibility of each woman to read, view or produce the sexual material she chooses without the intervention of the state "for her own good." We believe genuine feminism encourages individuals to make these choices for themselves.8 7

#### Free speech is key to women’s liberation –you allow discriminatory abuse and avenues to distribute messages important to gender equality

Strossen 92 [Villanova Law Review, Vol. 37, Issue 4 (1992), pp. 757-786 Strossen, Nadine (She was the first woman and the youngest person to ever lead the ACLU. A professor at New York Law School, Strossen sits on the Council on Foreign Relations. She has been called one of the most influential business leaders, women, or lawyers in National Law Journal and Vanity Fair) Regulating Workplace Sexual Harassment and Upholding the First Amendment - Avoiding a Collision; http://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=2783&context=vlr //BWSWJ]

There is yet another reason why weakening free speech in the workplace may undermine, rather than foster, gender equality: history has shown that a free speech regime is particularly important to the cause of women's equality. Historically, the suppression of free speech has been a major tactic of the anti-feminist movement. From 1873 until 1971, the Comstock Act was used to suppress information about contraception and abortion.88 More recently, repeated attempts have been made to ban the feminist magazine Ms. from high school libraries,89 and the Supreme Court has approved the Department of Health and Human Services' "gag rule," which prevents the millions of women who seek health care at federally-funded family planning clinics from receiving full and accurate information about their reproductive options .90

#### Obscenity laws are used to suppress progressive dissidents and minorities – Consistently proven

Strossen 95 [Strossen, Nadine (She was the first woman and the youngest person to ever lead the ACLU. A professor at New York Law School, Strossen sits on the Council on Foreign Relations. She has been called one of the most influential business leaders, women, or lawyers in National Law Journal and Vanity Fair) "Hate speech and pornography: Do we have to choose between freedom of speech and equality." Case W. Res. L. Rev. 46 (1995): 449. http://heinonline.org/hol-cgi-bin/get\_pdf.cgi?handle=hein.journals/cwrlrv46&section=17 //BWSWJ]

I will now turn to one final example of the adverse impacts on equality goals that follow from censoring any hate speech, including pornography. Recall that the pro-censorship feminists' conception of suppressible pornography is sexually explicit sexist expression. To highlight the dangers of this concept, I would like to underscore the positive role that sexual expression plays in advancing human freedom. Sexual expression is an integral aspect of human freedom. Hence, governments that repress human rights in general have always suppressed sexual speech. Correspondingly, laws against sexual speech have always targeted views that challenge the prevailing political, religious, cultural, or social orthodoxy.24 Sexually explicit speech has been banned by the most repressive regimes, including Communism in the former Soviet Union, Eastern bloc countries, and China, apartheid in South Africa, and fascist or clerical dictatorships in Chile, Iran, and Iraq. Conversely, recent studies of Russia have correlated improvements in human rights, including women's rights, with the rise of free sexual expression. In places where real pornography is conspicuously absent, tellingly, political dissent is labeled as such. The Communist government of the former Soviet Union suppressed political dissidents under obscenity laws. In 1987, when the Chinese Communist government dramatically increased its censorship of books and magazines with Western political and literary messages, it condemned them as "obscene," "pornographic," and "bawdy." The white supremacist South African government banned black writing as "pornographically immoral."'" In Nazi Germany and the former Soviet Union, Jewish writings were reviled as "pornographic," as were any works that criticized the Nazi or Communist party, respectively.

#### This isn’t just in Nazi Germany, in the US claims of obscenity are used to suppress minority voices

Strossen 95 [Strossen, Nadine (She was the first woman and the youngest person to ever lead the ACLU. A professor at New York Law School, Strossen sits on the Council on Foreign Relations. She has been called one of the most influential business leaders, women, or lawyers in National Law Journal and Vanity Fair) "Hate speech and pornography: Do we have to choose between freedom of speech and equality." Case W. Res. L. Rev. 46 (1995): 449. http://heinonline.org/hol-cgi-bin/get\_pdf.cgi?handle=hein.journals/cwrlrv46&section=17 //BWSWJ]

The pattern holds today. Obscenity laws in the United States regularly have been used to suppress expression of those who are relatively unpopular or disempowered, whether because of their ideas or because of their membership in particular societal groups.3 Recent major obscenity prosecutions have targeted expressions by or about members of groups that are powerless and unpopular, including rap music of young African-American men and homoerotic photographs and other works by gay and lesbian artists.' Likewise, the National Endowment for the Arts (NEA) has been subject to many political attacks for its funding of art exploring feminist or homoerotic themes.'32 This point was recognized by the federal district court judge in the "NEA Four" case, in which the ACLU represented four artists whose NEA grants were cut off because of their works' controversial political and sexual themes. He wrote, "The NEA has been the target of congressional critics ...for funding works ...that express women's anger over male dominance in the realm of sexuality or which endorse equal legitimacy for homosexual and heterosexual practices."3'

## Courts CP

#### Judicial rulings regarding the First Amendment are fraught with political resentment and are circumvented

Miller 09 [Mark - Professor of Political Science, Adjunct Professor of History, Director of Law and Society Program, at Clark University, ‘Constitutionalism and Democracy : View of the Courts from the Hill : Interactions Between Congress and the Federal Judiciary.” University of Virginia Press, 2009, proquest]

Fights between Congress and the Supreme Court over the interpretation of the Free Exercise Clause of the First Amendment have also occurred recently. After Congress overwhelmingly enacted the Religious Freedom Restoration Act in an attempt to overturn the Supreme Court’s decision limiting the free exercise of religion in Employment Division v. Smith (1990), the Supreme Court promptly struck down that statute in City of Boerne v. Archbishop Flores (1997) (see, e.g., Bragaw and Miller 2004). Congress responded by enacting the Religious Land Use and Institutionalized Persons Act of 2000, which reestablished some of the rights protected by the Religious Freedom Restoration Act (see Baum 2004, 212). In striking down the Religious Freedom Restoration Act, the Supreme Court said in the Boerne case, “Our national experience teaches that the Constitution is preserved best when each part of the government respects both the Constitution and the proper action and determinations of the other branches. When the Court has interpreted the Constitution, it has acted within the province of the Judicial Branch, which embraces the duty to say what the law is. When the political branches of the Government act against the background of a judicial interpretation of the Constitution already issued, . . . it is this Court’s precedent . . . which must control” (521 U.S. 507, 535– 36). Thus the Boerne decision will long be remembered for “its stunning assertion of the Court’s supremacy in settling all governmental disputes” (Bragaw and Perry 2002, 21). Therefore, the U.S. Supreme Court claims to be the last word on issues of constitutional interpretation. However, many scholars doubt that Congress will refrain in the future from attempting to modify or to overrule Supreme Court decisions through statutory means (see Murphy et al. 2006, 339).

#### Court rulings are circumvented

Boonin summarizing Gould [Boonin, David. Should race matter?: unusual answers to the usual questions. Cambridge University Press, 2011. //BWSWJ]

“But treating the debate over hate speech restrictions as one that has come and gone is an important mistake for two reasons. First, as Jon B. Gould convincingly argues in his provocative 2005 book, Speak No Evil: The Triumph of Hate Speech Regulation, the fact that campus hate speech restrictions were rejected by the courts doesn’t mean that they were rejected by the campuses themselves. And, in fact, Gould’s book offers a detailed and persuasive case for the conclusion that the court rulings against such restrictions have largely been ignored and that the number of colleges and universities with hate speech codes has actually increased significantly in the years since the courts rejected them.6 To the extent that campus hate speech restrictions raise a moral question, then, that question is actually more pressing now than it was then despite the fact that the courts seem to have rendered it moot. Second, while there are no laws against hate speech in the United States, and while the courts here seem clearly to have closed the door on their arising in the foreseeable future, there are hate speech laws of one sort or another on the books in most other “countries that have roughly similar legal systems, including Canada, Australia, and New Zealand, and much of Western Europe. As a 1992 policy paper from Human Rights Watch put it, “The United States stands virtually alone in having no valid statutes penalizing expression that is offensive or insulting on such grounds as race, religion or ethnicity.”7 And several prominent international human rights declarations ” “implicitly or explicitly endorse hate speech restrictions as well. Article 20 of the 1966 International Covenant on Civil and Political Rights, for example, declares that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.”8 Far from being a settled matter, then, the debate over the moral status of hate speech restrictions remains a contentious issue, not just in America, but around the globe.9”

# Ks

## Cap

### General Link Turns

#### The alt’s resistance to free speech is exactly what neoliberal elites want: a divided working class with internal strife and intelligible goals that can be easily shut down.

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

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

#### Neoliberal cooption of free speech is the result of assigning rights to corporations, but university opposition to free-speech is a neoliberal ploy to destroy critical education.

Brown 14: (Free Speech is not for Feeling Safe, by Wendy Brown, http://ucbfa.org/2014/10/free-speech-is-not-for-feeling-safe-by-wendy-brown/, October 10, 2014)

Ok, that was freedom. Now speech, where I will also mark just one of many major differences between then and now, or between what we might call the repressive liberal era and the putatively emancipated neoliberal era. This one pertains to the ways that the neoliberal assault on public things—a public sphere, public goods, public life–has led both university administrators and would-be activists into a certain confusion about free speech as a distinctly political right, one born from political struggle and secured historically for political life. We have seen a bit of this confusion in recent months when “civility” or “respectful listening” have been mistakenly declared an inherent entailment of free speech or academic freedom. Certainly civility and respectful listening may be expected at a dinner table, a university classroom or a department meeting—it would be good if they prevailed more routinely. But they have nothing to do with the exercise of free speech in public, where (barring threats, harassment, or dangerous incitements), anyone may say anything…and no one must listen or listen well. A far more treacherous instance of contemporary confusion about our political rights comes from the Supreme Court in recent years. From Citizens United to Hobby Lobby, the Court majority has been busily granting political freedoms—of speech, of religious belief– to corporations who may now use their enormous wealth and power to overwhelm the last standing icon of democracy, elections, and withhold medical insurance for Constitutionally guaranteed reproductive rights. This confusion, from high places, of whom and what our political rights are for, and what they do and don’t entail, would take hours to analyze properly. But I want to consider one especially troubling version of it on college campuses today, one that we can do something about. This is the effort to regulate public speech to protect certain vulnerable groups from offense, hatred, being retraumatized. This protection racket begin, alas, a couple of decades ago with well-intentioned feminist and anti-racist efforts to outlaw hateful or offensive speech and images. But this tool, which aimed to shield the historically hated or subordinated from being hit again in the present, has not remained in the hands of the Left. Indeed, while it’s animating the contemporary “trigger warning” madness (a discussion for another day) it has also become one of the more potent instruments of illiberal American ultra-Zionism today. It is what dignifies the fallacious argument that publicly criticizing Israel on campus creates an unsafe or offensive climate for Jewish students. So what begin as a concern with subordinating or hateful speech has been appropriated to silence protest against power. Of course any political argument can be flipped—Californians know this best from the legislation that ended affirmative action, which, you’ll recall, was called The Civil Rights Initiative. But there’s something more troubling here, which is the confusion of the public sphere with therapeutic spaces or homes. The domain of free public speech is not one of emotional safety or reassurance, and what you might hear in Sproul Plaza or up at this podium might be disturbing, uncomfortable, enraging, even offensive. Public speech is one of the most powerful weapons ordinary human beings have, and even the most civilly uttered sentences can disturb or terrify. Certainly the speeches of Sojourner Truth, Frederick Douglass, Martin Luther King Jr., or Malcolm X made neither white people nor many blacks feel safe. Certainly the revolutionary slogan, “liberty, equality, fraternity” did not reassure either the French aristocracy or its minions in mid-18th century Paris. Do you think Wall St Bankers felt safe when they walked past thousands of Occupy protestors decrying the obscene wealth, destruction of democracy, and carnage of public goods for which they were being held responsible? Do you think closeted homosexuals felt safe when the Stonewall rebellion broke out? Do you think men who have pushed, drunk or drugged women into unwanted sex feel safe as women on campuses everywhere are finally speaking out against the commonplace of sexual assault? Or that civil servants, police and other hired guns of regimes across the Middle East felt safe when citizens amassed in public squares to denounce them during the Arab spring? Emotional safety is not what the public sphere and political speech promise. It’s for cultivating at home if you are lucky enough to have one. It is what you seek among friends and intimates where you expect your vulnerability to be taken into account. A university education, too, ought to call you to think, question, doubt. It ought to incite you to question everything you assume, think you know or care about, not because those assumptions or cares will be jettisoned. Rather, because, as those wild-eyed radicals Immanuel Kant and John Stuart Mill insisted, there is no possibility of knowing what’s right, justified, valuable or true unless you question deeply and relentlessly…unless you’re willing to consider whether your attachment to an idea or principle is really just a teddy bear you cling to, a comforting familiar. The public sphere and a university classroom are not for hanging onto your teddy bears. Your bears have their place, back in your room where you’re safe and restored. But when we demand—from the Right OR the Left– that universities be cleansed of what is disturbing, upsetting, enraging, “offensive” or triggering, we are complicit both with the neoliberal destruction of university as a place of being undone, transformed, awakened (rather than a place to get job training) AND with neoliberalism’s destruction of public spaces and the distinctive meaning of political rights, (rights that some in this room fought to bring onto campus 50 years ago). Let’s demand something far more important, which is to be provoked and challenged, every day and down to our very toes in what remains of this extraordinary institution. Let’s have the courage to stand for that, and to be willing to withstand it.

#### The fight against free speech is the latest tool of reactionaries to individualize the market through institutionalizing the language of trauma – the aff breaks these chains and fights against neoliberal cooption

Chomsky 16 [AVIVA CHOMSKY; MAY 25, 2016; Students vs. neoliberals: The unreported conflict at the heart of our campus culture wars; http://www.salon.com/2016/05/25/students\_vs\_neoliberals\_the\_unreported\_conflict\_at\_the\_heart\_of\_our\_campus\_culture\_wars\_partner/ //BWSWJ]

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

#### Speech is affected by money but so is the state - Speech codes cast the state as a benign, nonviolent institution without economic and political investments. The aff opens up the space for subversive critique outside reactionary confines

Brown 01 [Brown, Wendy. Politics out of History. Princeton University Press, 2001. //BWSWJ]

"Speech codes kill critique," Henry Louis Gates remarked in a 1993 essay on hate speech.14 Although Gates was referring to what happens when hate speech regulations, and the debates about them, usurp the discursive space in which one might have offered a substantive political response to bigoted epithets, his point also applies to prohibitions against questioning from within selected political practices or institu­ tions. But turning political questions into moralistic ones-as speech codes of any sort do-not only prohibits certain questions and man­ dates certain genuflections, it also expresses a profound hostility toward political life insofar as it seeks to preempt argument with a legislated and enforced truth. And the realization of that patently undemocratic desire can only and always convert emancipatory aspirations into reactionary ones. Indeed, it insulates those aspirations from questioning at the very moment that Weberian forces of rationalization and bureaucratization are quite likely to be domesticating them from another direction. Here we greet a persistent political paradox: the moralistic defense of critical practices, or of any besieged identity, weakens what it strives to fortify precisely by sequestering those practices from the kind of critical inquiry out of which they were born. Thus Gates might have said, "Speech codes, born of social critique, kill critique." And, we might add, contemporary identity­ based institutions, born of social critique, invariably become conservative as they are forced to essentialize the identity and naturalize the boundaries of what they once grasped as a contingent effect of historically specific social powers. But moralistic reproaches to certain kinds of speech or argument kill critique not only by displacing it with arguments about abstract rights versus identity-bound injuries, but also by configuring political injustice and political righteousness as a problem of remarks, attitude, and speech rather than as a matter of historical, political-economic, and cultural format ion of power. Rather than offering analytically substantive accounts of the forces of injustice or injury, they condemn the manifestation of those forces in particular remarks or events. There is, in the inclination to ban (formally or informally) certain utterances and to mandate others, a politics of rhetoric and gesture that itself symptomizes despair over effecting change at more significant levels. As vast quantities of left and liberal attention go to determining what socially marked individuals say, how they are represented, and how many of each kind appear in certain institutions or are appointed to various commissions, the sources that generate racism, poverty, vio-lence against women, and other elements of social injustice remain relatively unarticulated and unaddressed. We are lost as how to address those sources; but rather than examine this loss or disorientation, rather than bear the humiliation of our impotence, we posture as if we were still fighting the big and good fight in our clamor over words and names. Don't mourn, moralize. But here the problem goes well beyond superficiality of political analysis or compensatory gestures in the face of felt impotence. A moralistic, gestural politics often inadvertently becomes a regressive politics. Moralizing condemnation of the National Endowment for the Arts for not funding politically radical art, of the U.S. military or the White House for not embracing open homosexuality or sanctioning gay marriage, or even of the National Institutes of Health for not treat-ing as a political priority the lives of HIV target populations (gay men, prostitutes, and drug addicts) conveys at best naive political expecta-tions and at worst, patently confused ones. For this condemnation implicitly figures the state (and other mainstream institutions) as if it did not have specific political and economic investments, as if it were not the codification of various dominant social powers, but was, rather a momentarily misguided parent who forgot her promise to treat all her children the same way. These expressions of moralistic outrage implicitly cast the state as if it were or could be a deeply demo-cratic and nonviolent institution; conversely, it renders radical art, radical social movements, and various fringe populations as if they were not potentially subversive, representing a significant political challenge to the norms of the regime, but rather were benign entities and populations entirely appropriate for the state to equally protect, fund, and promote. Here, moralism's objection to politics as a domain of power and history rather than principle is not simply irritating: it re-sults in a troubling and confused political stance. It misleads About the nature of power, the state, and capitalism; it misleads about the nature of oppressive social forces, and about the scope of the project of transformation required by serious ambitions for justice. Such ob­ fuscation is not the aim of the moralists but falls within that more general package of displaced effects consequent to a felt yet unac­ knowledged impotence. It signals disavowed despair over the prospects for more far-reaching transformations.

### AT - “You assume speech is ‘free’”

#### The aff doesn’t characterize speech as inherently free – it is simply a term of art. Our analysis actually indicates that white institutions implement speech codes against minorities – recognizing that access to speech *is affected by power*. Yes, the aff cannot resolve the inequality in constitutionally protected speech, but giving institutions control over what dissent is ‘too hateful’ is also dangerous.

### AT – Constitution Link

#### ‘Speech’ as protected by the constitution *is imperfect.* The aff does not put support protected speech *because it is in the constitution* – but because our analysis reveals that checks against state definition of ‘acceptable discourse’ are important and the constitution serves that purpose right now. Our scholarship does not put misplaced faith in *free speech* as enshrined in the constitution. Thus, aff advantages link turn the K – its ivory tower cedes power to the state that subverts protest.

#### The constitution is imperfect but total abandonment prevents commitment to those we claim to help – their alt results in authoritarianism.

**Turner 15** (Jack Turner, "The Constitution of Radical Democracy", © 2015 Northeastern Political Science Association 0032-3497/15 www.palgrave-journals.com/polity/, Polity . Volume 47, Number 4 . October 2015)

Like all political movements, radical democratic movements are susceptible to the temptation to think of themselves as forces of original goodness doing battle against evil. The heat of political conflict drives all to exaggerate enmity. Part of what I value about liberal constitutionalism—committing ourselves to the rights and dignity of our enemies before going into battle, and resolving to share a polity with them under the rule of law upon the battle’s completion—is that it can help save us from the corruption that gave Arendt and Baldwin pause. The challenge of democratic politics is not simply to democratize power, but to ensure that the agents of democratic revolution remain committed to the practice of equality even after seizing power. Liberal constitutionalism is one way of binding ourselves to universalist principles and memorializing that promise before entering into conflict. Even when we overthrow one constitution, we can still commit ourselves to writing another that enshrines the life, liberty, and political voice of both enemies and allies. We can commit ourselves to conducting democratic struggles in ways that remember our enemies’ humanity.27 These promises help prevent radical democracy from sliding into a crude democratic consequentialism that justifies the assassination, persecution, and subordination of political opponents. The personal and political rights of both democratic actors and their opponents are the invisible constitution of radical democracy. Anyone calling himself a democrat must treat that constitution as binding.

### AT State Bad

Omitted

### Cap good

omitted

## Baudrilliard

### Protests

Omitted

### Alt - Hyperconformity (Lynbrook)

Omitted

### Alt - Generic

Omitted

# NCs

## Ideal theory bad

Omitted

## Kant

### Framework – Political Philosophy

**Omitted**

### Framework – Moral Philosophy

#### Omitted

### Contention

#### 1. Public universities are an extension of that state, so they must act consistent with the state’s mandate, the constitution.

Ripstein 6: Arthur Ripstein, “Force and Freedom” 2009

The idea of the original contract extends the strategy of considering the pure case to **public institutions charged with making arrangements for people**, by **articulat**ing **the structure through which the power to make and enforce those arrangements can be consistent with freedom, and so fully legitimate**. We saw in the previous section that **institutions can create an omnilateral will because they incorporate the distinction between the mandate of an office and the purposes of the** particular **person filling it**. An official acting within his or her mandate will often have room to exercise judgment in determining what it requires in a particular situation, or how best to carry out its purposes. In so doing, the official will both exercise judgment and take account of empirical and anthropological factors that might be relevant to those purposes. **Any** such **judgment, discretion, or consideration of facts has to be exercised within the terms of the mandate; an official is not entitled to use public office to pursue private purposes, nor to make the world better in ways unrelated to his or her mandate**. That is the sense in which of cials are public servants: they act on behalf of the public. We also saw that the entitlement to make arrangements for others is limited to the arrangements that those others would have been entitled, as a matter of right, to make for themselves. The structure of making arrangements that others could have made for themselves includes not only the particular laws that the state makes, but also the “constitutional” law that creates the institutional structure through which some make arrangements for others. **The postulate of public right entitles officials to make arrangements for citizens; the idea of the original contract represents citizens themselves as authors of the higher-order arrangement empowering those officials, so that all political power is exercised by the people themselves.** The ideal case serves as a standard because it provides the only consistent way of organizing the use of power to guarantee everyone’s freedom under law. **Institutions** and their officials **have a duty of right to act in conformity with it because they have a duty of right to act in conformity with every human being’s right to freedom.** Kant’s argument does not say that since officials are making law, they should do the ideal version of lawmaking, or that in making law they are already committing themselves to some aspirational ideal of law. Such an approach is foreign to the Kantian project. The suggestion that the duty to rule in conformity with **the idea of the original contract** is a special case of a more general principle that **requires you to do whatever you are doing in accordance with the standard internal to whatever you happen to be doing**—as someone might imagine that the problem with making bad arguments is that person’s failure to live upto the proper standards internal to argumentation, and so to somehow ensnare herself in some form of performative contradiction—would fault the person who failed to live up to the ideal with some sort of nonrela- tional, self-regarding failure of rational consistency, rather than a wrong against others. **A state that makes laws inconsistent with the idea of the original contract is defective because it creates a condition that is not rightful**, not because it violates a norm of inner consistency.

#### 2. Free speech is a necessary component of your innate right to freedom – speech can’t violate freedom since it’s up to the listener whether to believe you

Ripstein 7: Arthur Ripstein, “Force and Freedom” 2009

Instead of advantage, **possible agreement is limited by each person’s innate right of humanity**. Many individual rights are grounded in the “au- thorizations” that are “already contained” in the innate right to freedom; **political rights are derived from the idea of the original contract**. **Freedom of expression follows from the innate right of humanity authorizing a person “to do to others anything that does not in itself diminish what is theirs, so long as they do not want to accept it—such things as merely communicating his thoughts to them, telling or promising them something, whether what he says is true and sincere or untrue and insincere; for it is entirely up to them whether they want to believe [the speaker] him or not.**”46 The right to say what you think is a reflection of the more general point that **no person has a right that others conduct themselves in ways best suited to his or her preferred purposes. Short of depriving you of something you already have a right to,** I can use my words as I see fit. Other aspects of right determine the ways in which one person can be wronged by another’s words. Your right to a good reputation, which Kant argues extends even beyond your death, is one example. Others include the wrongfulness of fraud and even of speaking in another person’s name by publishing a copyrighted book without the author’s permission.

#### **3. Restricting speech puts the soverign in contradiction with itself and precludes the possibility of a rightful condition.**

Surprenant 15: Chris W. Surprenant Kant on the Virtues of a Free Society APR 7, 2015. <https://www.libertarianism.org/columns/kant-virtues-free-society> Chris W. Surprenant is an associate professor of philosophy at the University of New Orleans, where he directs the Alexis de Tocqueville Project in Law, Liberty, and Morality. He is the author of Kant and the Cultivation of Virtue (Routledge 2014), co-editor of Kant and Education: Interpretations and Commentary (Routledge 2012), and has published numerous journal articles in moral and political philosophy. He holds a BA in philosophy and government from Colby College, and a PhD in philosophy from Boston University.

The second point is a bit less straightforward. His claim is that **a sovereign that outlaws free speech creates a condition where [its]** his **actions “put [it]** him **in contradiction with** him**[it]self**.” This language is remarkably similar to what he uses in his moral theory to describe principles that violate the categorical imperative, Kant’s supreme principle of morality. In the Groundwork, Kant claims that when a principle of action fails when tested against the categorical imperative, it fails because something about that principle is contradictory. It may be the case that it is not possible to conceive of the action that comes about as a result of universalizing the underlying principle connected to the action (i.e., a contradiction in conception), or the result of universalizing the principle is self-defeating in some way (i.e., a contradiction in the will). In the case of the sovereign restricting freedom of the press, the contradiction appears to be more practical. Elsewhere Kant argues **what justifies sovereign authority is that [its]** his **actions are supposed to represent the united will of the people** (MM 6:313). **But a sovereign that denies free speech and otherwise undermines the conditions necessary to maintain a free society has made it impossible to gather the information needed to represent the will of the people appropriately**. In this way, **Kant sees any attempt by the sovereign to limit or otherwise suppress the free exchange of ideas, and**, in particular, **the exchange of ideas among the educated members of society** (e.g., academics), **as undermining [its]** his **own authority.**

#### Threats and coercion aren’t speech – their offense doesn’t link

Helga Varden 10 (University of Illinois at Urbana-Champaign). “A Kantian Conception of Free Speech”. Springer, 22 May 2010. http://link.springer.com/chapter/10.1007%2F978-90-481-8999-1\_4 RC

Second, **it is important to distinguish threats of coercion from merely immoral speech. When you threaten me, you** tell me that you **do not intend to interact rightfully with me** in the future. Simply saying so does not deprive me of anything that is mine, of course, but if you are serious and have the ability to make a strike against me, that is, **if you** really are **threaten**ing **me, then you intend to back up your words with physical force.** When you really threaten me, neither are you uttering ‘empty words’ nor are you taking yourself to be doing so. For example, assume that instead of yielding to your threat, I begin to walk away. You then move forward to block my retreat. This signals your intention to follow through with the threat. In fact, you might engage in other acts to signal that the threat is not empty. Perhaps you crush my hat under your foot or take a baseball bat to my car. In cases like these **the words contained in the threat no longer function merely as speech but take on the role of communicating an intended future wrongdoing against me. Hence, threats are not considered mere speech on this view.**

## Virtue Ethics

### Framework Answers

#### Omitted

### Contention

#### Speech codes undermine inculcating virtue – the entire point of flourishing is that it can’t be coerced

Sherry 91 (Sherry, Suzanna. "Speaking Of Virtue: A Republican Approach To University Regulation Of Hate Speech." 75 Minn. L. Rev. 933. 1991. Web. December 07, 2016. <http://discoverarchive.vanderbilt.edu/bitstream/handle/1803/6521/Speaking%20of%20V irtue.pdf?sequence=1&isAllowed=y>.)

Finally, even if the most important university function is value transmission–which would be a sad commentary on the state of American universities–using coercive methods in an attempt to inculcate virtue in young adults is bound to fail. Most studies suggest that civics courses and other attempts to inculcate civic virtue are unsuccessful, even at the high school level, because students have already acquired a nearly unalterable belief system.50 Only teaching critical thinking might induce them to change their minds. 51 Hate speech regulations, by suppressing or eliminating the need for critical thought about crucial social issues, undermine even this possibility. Moreover, enforcing virtuous behavior reduces the likelihood of producing truly virtuous citizens, because virtue requires taking responsibility for one's actions, and taking responsibility requires choice.5 2 Finally, coercing tolerance of cultural diversity–the stated goal of many hate speech regulations–is especially difficult: as one author has noted, "you cannot indoctrinate for pluralism."53

## Contractarianism

### Framework

Omitted

### Contention

#### **Disrupting isn’t protected speech – no links their offense**

Kissel 10: Disruptive Protesters Face Disciplinary Consequences at UC Irvine By Adam Kissel February 10, 2010 <https://www.thefire.org/disruptive-protesters-face-disciplinary-consequences-at-uc-irvine/> Senior Program Officer, University Investments, at Charles Koch Foundation - ‎Charles Koch Foundation

On Monday, **a few dozen people disrupted a speech** by Michael Oren, Israel’s Ambassador to the United States, who was speaking **at the University of California, Irvine** (UCI), in the UCI Student Center for a public lecture on "U.S. Israel Relations from a Political and Personal Perspective." The lecture was sponsored by 10 campus bodies including the Department of Political Science and the School of Law, as well as the Consulate General of Israel and three other off-campus bodies. According to an account distributed by an off-campus, pro-Israel organization named StandWithUs, "it was clear to everyone in the audience that the MSU [the university’s Muslim Student Union] had orchestrated the raucous effort to prevent free speech." From the video of the event posted by StandWithUs, it seems clear that the disruption was organized and intentional. At least some of the disruptive persons were reading off of prepared cards, and after the first sentence of each disruption, the same group of a few dozen people immediately burst into applause—disrupting even the disrupter, since nobody could hear what was said after the first sentence. According to StandWithUs and the video, at least 10 people, one by one, stood up, shouted, got applause from the concentrated group, and then were ushered from the room by police. At some point, the whole group rose from their seats, further disrupting the event, and left noisily, drawing much attention to themselves and shouting toward the audience. **The video shows UCI officials announcing to the audience that UCI students who disrupted the event would face disciplinary charges that could lead to suspension and expulsion. Given the severity of the disruption and the fact that it was premeditated and organized, UCI has the right to follow through with the discipline that it judges the disruptive students deserve, as long as their punishments are fair and equitable**. (Since the lecture was open to the public, we do not know whether all of the disruptive persons were students.) **Speaking to the audience, a UCI official also confirmed that the people who were disrupting the event by standing and shouting were being arrested. This should be no surprise; by disrupting Oren’s speech, what they were practicing could at best be called civil disobedience. And as with any civil disobedience, those breaking the law should be willing to face the appropriate penalties.** The Associated Press reported yesterday that "**UC Irvine spokesman Tom Vasich says nine Irvine students and two students from UC Riverside were arrested for disturbing a public event. All were cited and released**." To his credit, despite the interruptions, Ambassador Oren calmly awaited his next opportunity to speak. As the video shows, he pointed out not only that the disruptive persons were violating campus rules and the law, but also that they were violating basic standards of hospitality. What the disruptive students must understand is that **in the United States, our rule of law protects the speech of people like Ambassador Oren when it is his turn to speak, regardless of what he stands for and regardless of the audience’s opinions of him or his nation**. That rule also protected Dutch politician Geert Wilders when he recently spoke out against Muslim terrorism at Temple University. Of course, the same protection would be extended to any of Oren’s Palestinian counterparts. **One way it protects them is by protecting them against disruptions by people in the audience when it is not those people’s turn to speak.** It is not an exercise of free speech to speak out of turn and disrupt someone else’s event**; on the contrary, it can even be criminal to do so.**

## Skep

Omitted

## Ilaw

#### See DA answers