# Hazelwood Neg

### Notes

Please read the aff notes section first.

When negating the Hazelwood case you need to answer some important arguments from the case

1. Precedent- the affirmative has to win that the ruling affects more than just a few schools. The evidence to answer this argument says that the ruling is not being used to restrict major amounts of student speech.

2. Journalists Key-the affirmative argues it is uniquely important to protect the speech of journalists. The negative evidence says journalists aren’t being hurt by the current precedent

3. Speech checks the Government- this is a primary aff impact claim. This is a common first amendment argument- the evidence in this section argues that any speech that actually threatened the government would never be allowed.

The negatives offense comes from a CP to only allow censorship in the instance of hate speech. It uses a definition from Byrne to argue hate speech should be considered “a verbal or symbolic expression by a member of one ethnic group that describes another ethnic group or an individual member of another group in terms conventionally derogatory, that offends members of the target group, and that a reasonable and unbiased observer, who understands the meaning of the words and the context of their use, would conclude was purposefully or recklessly abusive.” The CP would only allow schools to censor speech that met this definition.

The CP relies on a few key arguments

1. Definitional clarity- having a clear idea of what speech is not allowed prevents any spillover/precedent effects that threaten other kinds of speech

2. Hate speech is particularly harmful in an educational environment- it causes people to not want to participate in the marketplace of ideas as well as causing emotional/psychological harm

3. A safe learning environment is more important than the first amendment- contrary to the 1AC evidence on the importance of free speech this evidence argues unrestrained speech is infeasible and so reasonable restrictions must exist to protect a safe learning environment.

## Case Answers

### Framing

#### Free speech must be justified consequentially

Van Mill, PhD, 17

(David, Polisci@UWA, Free Speech and the State: An Unprincipled Approach)

Because speech takes place under conditions of sociability, its limits must be determined by the state rather than an abstract notion of rights. Consequentialism rather than rights theory has to be the foundational moral principle that guides the state; it has no choice other than to make decisions based on an assessment of how things are likely to turn out. It might decide to impose lots of limitations on what governments can do, and reify these as civil rights in a constitution, but any such decision has to be grounded in reasons based on an assessment of the costs and benefits of such choices. This applies to speech as much as anything else. No one cares very much about the freedom to make noise; certainly not enough to suggest that there is a right to raise a clamour. What we care about is making and hearing statements that have an impact on the world. But it is precisely because speech has consequences that it has to be regulated. There is no good reason why it would be better to let a liberal polity disintegrate rather than regulate speech. Rights talk tends to obscure this, and jeopardises good policy by paying insufficient consideration to prag- matic concerns.¶ The first question that has to be asked when determining the bound- aries of speech is “why is free speech important?” Whenever this question is answered we will also be given reasons why some speech can be pro- hibited. We will find that a lot of speech simply does not fit with the proffered justification and therefore does not warrant special protection. For example, one will have a hard time defending Holocaust denial if one justifies speech because it leads to truth. Nor could one defend infantile speech acts if the model for engaging in speech is based on the academic seminar. This does not mean speech that sits poorly with the justification should be banned, but it does mean there is no good reason for providing it with special consideration.¶ The heated debate about political correctness (PC) demonstrates this nicely. The usual claim of those opposed to PC is that it stifles free speech. This accusation is difficult to quantify. PC might, for example, limit the speech of white men but enhance that of minorities; I would need more data before reaching a conclusion. But the complaint itself tells us some- thing about the complex nature of speech. Why complain at all? The usual answer is that communication is muted by PC, which suggests we should oppose PC in the name of free speech itself. To accept this claim we need to know why speech is important (enter justification here). Once a justi- fication is proffered we again have an argument for why speech can be limited. Anyone disapproving of PC cannot do so on the grounds that they are opposed to regulating speech. They want to regulate speech but they want to do so in a different way than those who approve of PC. The demand to know why speech is important will always throw up reasons for why speech needs to be protected and why it can be limited. Speech is not equal and it is appropriate to have different levels of protec- tion. Judging the relative merits of speech is a difficult undertaking but the fact we set ourselves this task shows that we cannot privilege speech simpliciter. The most we can say is that some forms of speech are more deserving of protection than others. A more confronting conclusion now comes to the fore. As soon as we give reasons for why speech is important we also reveal underlying values that seem to be more fundamentally important than speech itself. Speech is exposed as an instrumental tool, valuable as a means to some good (autonomy, democracy and so forth) rather than being a good in itself. Speech gets its value by piggybacking on other, more important goods: it is always the subservient and never the dominant value. This leads to the conclusion that everything about the importance of speech becomes contextual. The “problem” of free speech is really about deciding what our goals are and how speech can help or hinder attaining them. In fact, to think of free speech as a problem to be resolved is the wrong approach; it is an inherent part of the social condi- tion and is something that needs to be managed rather than solved. The conclusion that speech is instrumental puts to rest any lingering notion that there is a human right to speech. There is no cordoned-off area of speech that is necessarily protected from state intervention. We can hold our opinions unmolested, but only sometimes can we express them. The idea that speech deserves special status unravels once we stop saying “three cheers for speech”, and start providing arguments for why it is important; this seems fatal for even mild forms of PIFOS. This is why I think it is better to talk of a liberty, rather than a right to speak. This freedom exists in the spaces where it has not been disallowed by the state. Speech will have to wedge itself into the nooks and crannies left over by the more important values it works to serve. This argument applies to any civil rights claim. The right to life, for example, is described as the most basic of all rights because if it is violated, all the others are extinguished along with it. Nevertheless, this right is limited and determined by the state. It can decide to allow or disallow the death penalty: it can decide to make abortion legal or illegal: it can decide to permit or prohibit euthanasia: and it can decide when and where to send young soldiers to war and to conscript them for this purpose if necessary. Because civil rights are “left- overs” it is not surprising that liberal states recognise different rights and protect them in different ways. And sometimes, they prefer to think in terms of liberties residing where the law is silent, rather than rights. This is the approach I prefer because we do not know whether it is appropriate to allow or prohibit speech in the abstract. This is why the boundaries of speech are better decided by parliamentarians than judges, and should be expressed in the form of regular legislation rather than entrenched rights.

#### First amendment rights aren’t important for other rights- they are enforced arbitrarily

Van Mill, PhD, 17

(David, Polisci@UWA, Free Speech and the State: An Unprincipled Approach)

Another important consequentialist claim on behalf of free speech can be found in Alexander Meiklejohn’s work on the American Constitution. He suggests that political speech is necessary for a proper engagement in politics by an informed and rational citizenry. Only when citizens have been exposed to a wide array of arguments and information will they be in a position to make good political judgements. He claims to find this commitment to self-government throughout the Constitution, but par- ticularly in the First and Fifth Amendments. Meiklejohn tells us that the First Amendment protects political speech, and the Fifth Amendment, which states that no one can be deprived of liberty without due process, protects speech more generally. He argues that, “[t]he principle of free- dom of speech springs from the necessities of the program of self-gov- ernment...it is a deduction from the basic American agreement that public issues shall be decided by universal suffrage” (1948, pp. 26–27).¶ It is unclear how he can know that “Congress shall make no law... abridging the freedom of speech” means that it refers primarily to political liberty and I find the claim that the Constitution embodies the idea of self- government even more opaque, unless this is understood in the limited sense of America being free from the control of a foreign government. The Constitution sets up institutions that are designed to limit participation and check majority rule; they are deliberately anti-democratic in nature. Great swathes of the population were barred from political participation by the document, so it is a mystery how universal suffrage can be deduced from it and it is a strange reading of the Constitution to suggest it promotes universal suffrage at the same time as it prevents the participation of women, the indigenous and the poor. It is positively perverse given that the Constitution also permitted slavery.¶ But let us give Meiklejohn the benefit of the doubt and assume he is right; the argument still does not ground anything like PIFOS. At most it protects speech that is deemed necessary for citizens to exercise self- government. Over the course of his life, Meiklejohn expanded his ideas about what type of speech is necessary for citizens to govern themselves. Originally he thought that only issues directly related to voting would be protected. Later he expanded his views and suggested that self-govern- ment required a citizen body that was intelligent, had integrity, and was devoted to the general welfare of society, all of which led him to argue for wider protections of speech. This still leaves a lot of communication unprotected and the argument that speech is necessary for democracy falls a long way short of a blanket justification of expression. Another problem is who decides, and how do they decide, the appropriate bound- aries around any notion of political speech. Alexander provides many examples where it makes no sense to try and parse off some speech as political and other speech as not, and he suggests that Meiklejohn’s position incorrectly “assumes as a metaphysical matter that we can separate expression into discrete units” (2005, p. 138).

#### First amendment rights lack formal justifications

Van Mill, PhD, 17

(David, Polisci@UWA, Free Speech and the State: An Unprincipled Approach)

It should be obvious by now that I think the First Amendment should be thrown out or, if that is too radical, drastically changed, and worded in a way that removes judges from the process as much as possible. It would not be worth doing this, however, if the Amendment is simply replaced by another terse statement about free speech. All statements of this kind are inadequate because we do not know the appropriate limits to speech until we know the details of the situation. However, if this is the best that can be done, Bork’s suggestion might be apt; protect a narrowly defined area of political speech and leave the rest of speech regulation to the legislative branch. The First Amendment is certainly not a model that anyone else should copy. I think it is fair to say that if Americans were asked today to come up with a policy for how best to regulate speech, they would not begin with a statement that says the legislative branch of government cannot be involved in the process.¶ Because there is no formal justification of speech in the Constitution, the Amendment has taken on a mystical quality. If a justification had been provided for why speech is important, it would help to interpret what the Founders intended. Without a clear argument in favour of speech it is difficult to arrive at reasonable limitations on communication that can be supported by the text. This offers a very important lesson: provide a thorough theory of speech to go along with any constitutional statements, or even better, leave decisions about speech to legislatures. The First Amendment is useful, however, because it highlights a problem any civil rights claim faces. If a brief statement about a right to speech is to be of help, it will have to be very ephemeral in order to deal with the complex- ities of the topic; this will necessitate making the rights claim subservient to social interests. As I will soon demonstrate, this is the fate of human rights documents. I prefer, however, that elected politicians rather than unelected judges decide this sort of issue. I also think the discussion would be better served with a focus on whether there is a liberty rather than a right to speech, and it is to this topic in now turn.

### AT: Academia Under Siege

#### Their claims are popular in the media because they sound dramatic – college learning environments operate openly and smoothly, even the most touchy subjects are fine.

Moreno, PhD, 16

(Jonathan D. Moreno, Warning: My Class Is One Big Trigger, Sep 07, 2016, Huffington Post http://www.huffingtonpost.com/jonathan-d-moreno/warning-my-class-is-one-b\_b\_8099466.html)

We’ve been hearing a lot these days about trigger warnings as a phenomenon in American higher education, that teachers are being expected to warn their students if assigned material might upset them. Respected social scientists have argued that trigger warnings pose a serious problem with modern academic culture by impeding students’ growth and exaggerating their sensitivities. There have been several high-profile incidents involving the withdrawal of speaking invitations and some professors have complained that they feel constrained in what they can teach. I must have missed that memo. Anyway, it doesn’t describe the university I know. I’ve seen no evidence that education has been stifled. And if instructors are giving more such warnings, so what? If this practice had the dire consequences that critics of American higher education sometimes claim the typical course catalog would be a lot smaller than it is. Here, for example, are some of the topics and cases I will cover in my bioethics class this fall: Male impotence; physicians who have sex with their patients; a severely burned young man’s request to die; a female college student who was killed by a mentally ill suitor; a young woman with cancer whose doctor helps her end her life; post-traumatic stress disorder; genetically transmitted disease; exploitive human experiments and gender identity. And that’s only a partial list. I’ve taught this course at the University of Pennsylvania since 2008. Every time I offer it student demand exceeds the formal registration limit, as it has this fall. (I can’t take all the credit for the course’s popularity. The issues are compelling and I do show a lot of illustrative film clips, though some of them are disturbing, too.) Long before all the trigger talk started I’ve been giving two warnings the first day of class: first, that in our discussions someone might feel compelled to mention their own medical problem or that of a member their family but that I can’t guarantee confidentiality; second, that they might find a film depicting a disfigured patient disturbing. I regard these warnings as a courtesy, not correctness. But otherwise the beat goes on. Jewish students learn about the vicious concentration camp experiments that inspired modern research codes; African-American students sit through lectures about the syphilis study; feminists hear me talk about fertility clinics that cater to parents who want a male child; gay men read about being excluded from giving blood because of HIV fears; students on medication for hyperactivity disorder have to think about the way some of their peers use the same drugs to enhance their performance. If campuses truly are permeated by political correctness put me down as an equal opportunity offender. In spite of the intensity of the subject matter, I’ve found that when my undergrads get annoyed at me it’s usually because I’m late getting my slides up on the course website, not because I’ve broached emotionally difficult material. They seem to understand that there’s no other way for me to teach this course. Nor are people in their late teens and early twenties necessarily taken aback by what us oldsters might expect. Once while teaching a late afternoon class on ethical issues in gravely ill newborns a young man complained to me that he almost lost his lunch during a film of a baby being delivered. There was no complaint of emotional scarring but it did make me doubt the wisdom of his plan to study medicine.

#### State legislatures are already passing anti-censorship laws for student journalism now, means the aff is not necessary

Wheeler 15

(DAVID R. WHEELER. SEP 30, 2015. “The Plot Against Student Newspapers?” <http://www.theatlantic.com/education/archive/2015/09/the-plot-against-student-newspapers/408106/> )

In response to the Governors State University case, Illinois legislators passed the Illinois College Campus Press Act, which explicitly could have no editorial control or censorship abilities. The Illinois law makes exceptions for threats, harassment, and intimidation, among other types of unlawful speech. Eight other states have passed laws protecting high-school newspapers, college newspapers, or both. Indiana has no such law. And even if it did, it wouldn’t apply to Butler University, which is private. Only California has a law extending protection to student expression at private schools. Named for Republican State Senator Bill Leonard, California’s “Leonard Law” was passed in 1992, but was amended in 2006 to include colleges and universities. The fact that colleges and universities were added later reflects an interesting historical trend: In earlier decades, it was assumed that college students were adults under the law and therefore had the same First Amendment protections as any other reporters. When censorship of college newspapers began increasing in the 2000s, other state legislatures, **including Oregon (2007), Illinois (2008), and North Dakota (2015),** began passing laws explicitly protecting college newspapers from censorship.

### AT: Checks Gov misconduct

#### Their advantage relies on an incoherent political view of speech and its ability to advance a liberal agenda

Redish, Law@NU, 82

(Martin H, University of Pennsylvania Law Review, Vol. 130, No. 3 (Jan., 1982), pp. 591-645)

So described, Blasi's first amendment theory degenerates into little more than a means of fostering one individual's-presumably Professor Blasi's-political philosophy and foreign policy.74 What about the individual who believed that not bombing civilians in the Vietnam War would have been "misconduct"-someone who would assert that "if we are going to fight a war, let's win it; it's immoral to have our boys die in a limited war"-or who believes that assassinating certain foreign political figures-perhaps Castro or Hitler or Idi Amin-is morally dictated? Are only those who share the views on these issues described by Professor Blasi to receive the special pro-tection given speech concerning the checking function? Such a result-oriented, content-based approach to free speech must of course be rejected, yet it seems to be the implication of Professor Blasi's description of, "official misconduct," for Professor Blasi's theory by its terms refers to conduct, rather than issues. Moreover, what about discussion of official conduct that, although perhaps not offensive to Professor Blasi, is considered by many to be so? Is it "misconduct" for the government to allow abortions? To pay welfare? Again, to deny the inclusion of speech concerning such official actions would constitute a wholly unacceptable interpretation of the first amendment on the basis of political or social viewpoint, for if the first amendment means anything it is that the level of constitutional protection cannot vary on the basis of differing viewpoints.75 (612-3)

#### Leaving moral determinations to the individual collapses coherence of speech

Redish, Law@NU, 82

(Martin H, University of Pennsylvania Law Review, Vol. 130, No. 3 (Jan., 1982), pp. 591-645)

Perhaps Professor Blasi did not intend to establish such a solipsistic view of the first amendment. At one point, he states that "[u]nder the checking value, that determination [of what actions can be considered misconduct] must be made by each citizen in deciding when the actions of government so transcend the bounds of decency that active opposition becomes a civic duty." 76 But Blasi's distinction of speech concerning official "misconduct"p from speech about general governmental action collapses if the determination of what is official misconduct is to be left to the individual citizen. For how effective a limit would it be if any individual could render governmental action or inaction "misconduct" for first amendment purposes merely by characterizing it as such? (613)

### AT: Journalists Censored

#### Most recent ruling actually promotes free press- petitioners won on the merits

Madigan, AG IL, 05

(Lisa, 2005 WL 3607214 (U.S.) (Appellate Petition, Motion and Filing) Supreme Court of the United States. Margaret L. HOSTY, Jeni S. Porche, and Steven P. Barba, Petitioners, v. Patricia CARTER, Respondent. No. 05-377. December 28, 2005. On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit Brief in Opposition Lisa Madigan, Attorney General of Illinois, Gary Feinerman, Solicitor General, Mary E. Welsh\*, Assistant Attorney General, 100 West Randolph Street, Chicago, Illinois 60601, (312) 814-2106, Counsel for Respondent. \*i QUESTION PRESENTED)

The other ground petitioners (and their amici) raise for granting their petition is a parade of horribles, which is based on their speculation that the Seventh Circuit’s dicta will have broad effects on other courts’ rulings on expressive activity. Pet. 28-29. Not one of the rulings they cite, however, concerns a college newspaper. Instead, the opinions concern completely different types of restrictions (speech codes and speech zones) and completely different types of speech (extracurricular, obviously private speech). Id. Petitioners likewise speculate that the decision “will surely accelerate the promulgation of such regulations across the nation.” Pet. 27-29 & nn. 12-13. In fact, petitioners won on the merits, and that ruling on the merits has “clearly established” the law for certain designated public forums in the Seventh Circuit. Thus, the effect of the Seventh Circuit’s opinion is more likely to be that college papers will be found not to be non-public forums and thus not subject to Hazelwood’s deferential standard. Petitioners’ rank speculation to the contrary is premature at best and illogical at worst. It is no reason for granting their petition.

#### No spillover –court won’t be more lenient on censorship

Madigan, AG IL, 05

(Lisa, 2005 WL 3607214 (U.S.) (Appellate Petition, Motion and Filing) Supreme Court of the United States. Margaret L. HOSTY, Jeni S. Porche, and Steven P. Barba, Petitioners, v. Patricia CARTER, Respondent. No. 05-377. December 28, 2005. On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit Brief in Opposition Lisa Madigan, Attorney General of Illinois, Gary Feinerman, Solicitor General, Mary E. Welsh\*, Assistant Attorney General, 100 West Randolph Street, Chicago, Illinois 60601, (312) 814-2106, Counsel for Respondent. \*i QUESTION PRESENTED)

II. This Case Is a Poor Vehicle For Determining If and How Hazelwaad Applies to Post-Secondary Schools. However interesting and important may be the question of if and how Hazelwood applies to post-secondary schools, this case is not the right vehicle for resolving that question, on at least two grounds. One is that what petitioners want is this Court’s advice about the Seventh Circuit’s reasons for holding in their favor on the merits (i.e., the first Saucier prong). Even if this Court were to “reverse” that reasoning, reversal would be without any effect on the court’s ultimate qualified immunity holding (i.e., the second Saucier prong). The other reason this case is a poor vehicle for addressing Hazelwood’s applicability to non-public forums at colleges is that petitioners’ speculation about the dire consequences of the Seventh Circuit’s reasoning are premature at best. Nothing in the opinion indicates that courts will be more likely to hold that a college forum is nonpublic in nature (and thus subject to Hazelwood’s deferential standard) or that colleges will be more likely to impose more and greater restrictions on speech.

### AT: Student Journalists Key

#### Lack of diversity guts marketplace of ideas in student papers

Jeffries 15

(Tara Jeffries. November 11, 2015. “A lack of diversity in student media sparks frustration, debates across the country.” <http://www.splc.org/article/2015/11/lack-of-diversity-in-student-media-sparks-debates> )

“That lack of representation in the newsroom leads to a lack of representation in the newspaper, unfortunately,” she said. “The content is very flat, it’s very one-sided, and our diverse students aren’t reading us because they don’t see themselves or their lives reflected in the newspaper. And if students attempt diverse stories, because there’s no one else in the room to say, ‘Hey, that looks off,’ it runs the risk of stereotypical or downright offensive content.” For example, in the midst of a “See Your Stripes” campus-wide campaign encouraging students to embrace diversity at Clemson — whose mascot is an orange tiger — the Tiger News ran an infographic breaking down racial demographics on campus. The “white” category was depicted as orange, which Alexander said indicated to some students a bias toward whites as the “true orange” representatives on campus. And, sometimes, it’s not the stories that are published that cause problems, Alexander said. It’s what student reporters don’t cover. Covering issues central to diverse communities can entice students of color to read and join the newspaper, she said. “You have to be invested in the community,” Alexander said. “You have to show up, and you have to support [students of color]. You have to go to minority events, you’ve got to listen to their stories. As they see themselves represented, more students of color and students of diverse backgrounds will want to participate.”

#### Student papers aren’t democratic or diverse- they reproduce elite viewpoints

Elliott 07

(Justin Elliott. September 6, 2007. “The Racial Politics of College Newspapers.” <https://www.thenation.com/article/racial-politics-college-newspapers/>)

It is a persisting state of affairs: College papers are the province of mostly well-off white and Asian students. African Americans and Latinos are underrepresented compared to the student body or absent altogether. Incidents like the one at K-State–every paper has its own stories of editorial blunders and community protest–occur with a regularity that should no longer be surprising. Why do these editorial mistakes follow from the lack of diversity on staff? Because in campus journalism, where there are few press releases, word of mouth is everything. Thus when the campus paper is run by students from a certain demographic, coverage tends to mirror the concerns and perspectives of that demographic. Right now, top editors at college newspapers everywhere are gearing up for the annual fall recruiting push. Before the grind of putting out a daily paper consumes their schedules and wreaks havoc on their social lives, this is the moment when they may pause, consider the monolithic racial makeup of the staff and wonder, what is to be done? There are lessons to be learned from several papers around the country that have begun to deal with racial and socio-economic disparities. But it’s far from clear whether these new efforts will work. History seems to be against them.

### AT: Marketplace of Ideas

#### Marketplace idea is backwards- truth doesn’t win out

Redish, Law@NU, 82

(Martin H, University of Pennsylvania Law Review, Vol. 130, No. 3 (Jan., 1982), pp. 591-645)

The "marketplace-of-ideas" concept, in its use as a defense of free speech, has often been subjected to savage attack,9' and to a certain extent the attacks have been entirely valid. In one sense, the theory appears to suffer from an internal contradiction: the theory's goal is the attainment of truth, yet it posits that we can never really know the truth,92 so we must keep looking. But, if we can never attain the truth, why bother to continue the fruitless search? More importantly, any theory positing that the value of free speech is the search for truth creates a great danger that someone will decide that he finally has attained knowledge of the truth. At that point, that individual (or society) may feel fully justified, as a matter of both morality and logic, in shutting off expression of any views that are contrary to this "truth." To be sure, Mill would not have accepted such reasoning. He believed that even views that we know to be false deserve protection, because their expression makes the truth appear even stronger by contrast.93 But acceptance of Mill's initial premise that the goal of free speech is the ultimate attainment of truth does not necessitate acceptance of this second premise. For, as Dean Wellington has argued, "[i]t is naive to think that truth will always prevail over falsehood in a free and open encounter, for too many false ideas have captured the imagination of man." 94 Therefore, if the only value of free speech were the attainment of truth, we might persuasively argue that the view that the Earth is the center of the Universe does not deserve constitutional protection, because we know the truth to be different. Perhaps we could further conclude that constitutional protection should not be given to the assertion that cigarette smoking does not cause cancer, because the Surgeon General has already discovered the truth about this subject; the same could be said about the view that certain races are genetically inferior, since we know that all men are created equal. The danger-one that Mill would undoubtedly neither expect nor condone-should by now be clear. (616-17)

### AT: Slippery Slope

#### Regulations are crucial to the functioning of free speech

Farber, PhD Sociology, 2-27-17

(Samuel, Professor Emeritus of Political Science @Brooklyn College, <https://www.jacobinmag.com/2017/02/garton-ash-free-speech-milo-yiannopoulos/>)

Like many European liberals, Garton Ash often conflates freedom with the free market, seeing any state intervention as an attack on individual rights. This extends to his notable opposition to regulation, which he seems to associate with censorship. However, regulation is not only compatible with the protection of civil and political rights, it is essential to it. For one, regulation may actually promote free speech by allowing greater access to the media. Garton Ash recognizes the unequal access to the mass media, even citing A. J. Liebling’s famous dictum that “freedom of the press is guaranteed only to those who own one.” At the same time, Garton Ash rejects even modest measures to improve media access. For example, he is aware of but does not promote the Fairness Doctrine, obligating radio stations to provide airtime for opposing views on controversial issues, which was repealed in 1987. When the Federal Communications Commission adopted this principle in 1949, they did so based on the now-radical notion that the airwaves belong to the listeners, not the stations. Beyond the restoration of such modest measures, we have to look forward to the socialization (not statification) of the big media, putting it into the hands of popular, non-state organizations, in proportion to their size and importance in society. While that is not a demand that is actionable in the near future, it should be an important part of a radical critique of existing society and of a vision for a socialist and democratic future. Garton also explicitly criticizes the laws in many German states that establish the right of any individual, association, company, or public body to demand that a publication print a correction, free of charge, in a later issue. The correction must appear in the same section and in the same type size as the original statement. If need be, a judicial order in a civil court can enforce this rule. Garton Ash objects to these laws because he finds them ineffective in the era of social media. In this, the author once again fails to see rights as good in themselves, falling back into Mills’s consequentialism, and also underestimates the great power still exercised by newspapers like the New York Post and its global equivalents. Consistent with his anti-regulatory stance, Garton Ash argues that European laws granting the right to be forgotten are “indefensible in a society that believes in freedom of expression.” These laws, which allow individuals to have, after a number of years, items removed from the Internet that damage their reputation, do not violate free speech in any significant way. Indeed, in an era when asking job applicants about their criminal records is increasingly challenged, these right-to-be-forgotten laws express an egalitarian sensibility with important racial and class implications.

#### There are institutional checks to their claims.

O’Loughlin 15

(Bridget O’Loughlin, Campaign Coordinator of the No Hate Speech Movement for the Council of Europe, Where should the limits to freedom of speech be set?, 04/06/2015, http://www.debatingeurope.eu/2015/06/04/where-should-the-limits-to-freedom-of-speech-be-set/)

I think this is an extremely pertinent question, and it’s certainly one that many people have been grappling with for some time now… Clearly, you have to be very, very careful because repressive governments have been known to use issues like hate speech to shut down social media and websites without just cause… This is something we need to guard against, and is why we need to look to instruments like the European Convention on Human Rights, and the way it’s been interpreted by the European Court of Human Rights, which has a lot of jurisprudence, a lot of case law, on the limits to freedom of speech in terms of hate speech, or incitement to criminal action or racism, etc. As soon as you’re speaking or writing in the public domain – be that speaking on a soap box in the street corner, or writing an article in a newspaper, or writing a blog which is sent out to millions of people on the internet – you’re in a public area and there have to be some limits on what you are or are not allowed to say… But, clearly, we also have to protect freedom of speech and not let this fight against hate speech be used as an excuse, which I think it is sometimes, to limit freedom of expression.

#### The slippery slope argument is non-sense, history and basic logic are on our side.

Muravchik, PhD, 10

(Joshua Muravchik has been recognized by the Wall Street Journal as “maybe the most cogent and careful of the neoconservative writers on foreign policy.” He is a fellow at the Foreign Policy Institute of the Johns Hopkins University School for Advanced International Studies and formerly a resident scholar at the American Enterprise Institute. He has published more than three hundred articles on politics and international affairs, Free Speech and the Myth of the Slippery Slope, World Affairs Journal, October 15, 2010 http://www.worldaffairsjournal.org/blog/joshua-muravchik/free-speech-and-myth-slippery-slope)

Moreover, a wealth of political history suggests that the slippery slope is a phantom. Almost all European countries ban “hate speech” and many ban Holocaust-denial. This goes against the American grain, but those countries have not sacrificed any other freedoms as a result. Or consider West Germany. The Americans and Germans who framed the Basic Law of the Bonn Republic worked in the terrible shadow of Hitler’s destruction of the Weimar Republic, Germany’s only prior democratic experiment. They were also in uncomfortable proximity to Soviet-run East Germany. So they banned both the Nazi and Communist Parties on the grounds that they were totalitarian movements, aiming to destroy democracy itself. Far from turning into a slippery slope, under this system freedom took hold in Germany at long last and apparently forever. What about America’s experience? The ambit of tolerated speech has grown relentlessly wider. In the realm of obscenity standards, we have gone from Lady Chatterly, to bare breasts, to full frontal, to pictorial gynecology. If there is any slippery slope, it seems to be tilted in the opposite direction from the one invoked by conventional wisdom. Were the court to uphold some constraints on speech, that would merely put us back to some earlier point in the unfolding of American free speech standards. When we were at that point, whatever and whenever it was, we did not slide downward to dictatorship but forward to where we stand today. Where is the danger? I can think of no example in which rights disappeared down a slippery slope. Yes, the Communists used “salami tactics” in subjugating Eastern Europe, but the progressive loss of freedom was scarcely unforeseen. The Kremlin was bent on imposing its model of totalitarianism one way or another on the countries its troops occupied; the salami slices merely made the going smoother. The slippery slope peril is a myth, much like the libertarian bogeyman that the welfare state will lead to dictatorship. In practice, European and other countries have infringed economic freedom without any loss of political freedoms. And they have also constrained speech in ways that most Americans (including me) wouldn’t do but with no further loss of freedom. A sovereign, self-governing people is capable of drawing lines. To argue by imagery and analogy, as does the conventional wisdom apotheosized by the Times, rather than by logic and history, is, you might say, to step onto a slippery slope at the bottom of which lies lots of freedom of thought but very little thinking.

## Hate Speech PIC

### 1NC

#### The Supreme Court should rule that censorship of student journalists and advisors is prohibited except in instances of “racial insults”

#### Contention 1: Hate speech

#### 1. The CP creates a legal standard for regulating hate speech

Byrne, Prof. Law @Georgetown, 91

(J. Peter, Racial Insults and Free Speech Within the University." Geo. LJ 79 (1990): 399.)

This article examines the constitutionality of university prohibitions of¶ public expression that insults members of the academic community by directing¶ hatred or contempt toward them on account of their race. I Several¶ thoughtful scholars have examined generally whether the government can¶ penalize citizens for racist slurs under the first amendment, but to the limited¶ extent that they have discussed university disciplinary codes they have assumed¶ that the state university is merely a government instrumentality subject¶ to the same constitutional limitations as, for example, the legislature or¶ the police. 2 In contrast, I argue that the university has a fundamentally dif ferent relationship to the speech of its members than does the state to the speech of its citizens. On campus, general rights of free speech should be qualified by the intellectual values of academic discourse. I conclude that the protection of these academic values, which themselves enjoy constitutional protection, permits state universities lawfully to bar racially abusive speech, even if the state legislature could not constitutionally prohibit such speech throughout society at large. At the same time, however, I assert that the first amendment renders state universities powerless to punish speakers for advocating any idea in a reasoned manner. It is necessary at the outset to choose a working definition of a racial insult. This definition, however, is necessarily provisional; any such definition implies the writer's views on the boundaries of constitutionally protected offensive speech, and the reader cannot be expected to swallow the definition until she has had the opportunity to inspect the writer's constitutional premises. Having offered such a caution, I define a racial insult as a verbal or symbolic expression by a member of one ethnic group that describes another ethnic group or an individual member of another group in terms conventionally derogatory, that offends members of the target group, and that a reasonable and unbiased observer, who understands the meaning of the words and the context of their use, would conclude was purposefully or recklessly abusive. Excluded from this definition are expressions that convey rational but offensive propositions that can be disputed by argument and evidence. An insult, so conceived, refers to a manner of speech that seeks to demean rather than to criticize, and to appeal to irrational fears and prejudices rather than to respect for others and informed judgment. 3

#### 2. This legal standard provides a backstop to reverse enforcement or the slippery slope

Byrne, Prof. Law @Georgetown, 91

(J. Peter, Racial Insults and Free Speech Within the University." Geo. LJ 79 (1990): 399.)

Disciplinary rules are the least effective way that a university can enhance¶ the quality of speech or foster racial tolerance among its members. The educational¶ program must celebrate and instruct its students in the beauty and¶ usefulness of graceful and accurate speech and writing; a liberal education¶ should leave students intolerant of propaganda and commercial manipulation,¶ and competent to directly and forcefully express coherent views as citizens.¶ Such teaching is not amoral; the graduate ought freely to prefer the¶ exercise of skill, reflective perception, and an abiding curiosity to desires for acquisition, consumption, and domination. Without the university's consistent¶ action on a commitment to reasoned discourse as central to its mission,¶ the university's attempt to prohibit insulting or lewd speech may seem a hypocritical¶ denial of its own failings.¶ Similarly, prohibiting racial insults will advance racial harmony on a campus¶ only when the university has effectively committed itself to educate lovingly¶ the members of every ethnic group. Although nearly every university¶ admits minority students using criteria that aspire in good faith to be fair,¶ many have failed to transform themselves into truly multi-ethnic institutions.¶ Not to have succeeded at this daunting task does not merit reproach; the¶ university's origins and traditions are explicitly European, growth and accommodation¶ to the extent required to create a multi-ethnic community¶ must take time and witness false steps. However, not to have made plain¶ that blacks, hispanics, Asians, Indians, and others who have been excluded in¶ the past are not only now welcome, but are requested to collaborate in shaping¶ new university structures and mores so that the benefits of advanced education¶ will be available without regard to birth and so that the university can¶ continue to spawn for a changing society a cosmopolitan culture based on¶ reason and reflection standing above tribal fears and blind desires, not to¶ have begun this work in earnest merits regret and will provoke anger. Universities¶ that pass rules against racial insults which are not part of a comprehensive¶ commitment to ethnic integration will serve only to exacerbate racial¶ tensions.¶ Schools that adopt prohibitions on racially offensive speech ought to enforce¶ them with restraint. Certainly, when students have sought to intimidate¶ or frighten other students with racial insults, the school should treat this¶ behavior as a fundamental breach of university standards meriting the¶ strongest punitive measures. But often insulting expressions will result from¶ insensitivity or ignorance; complaints about such behavior should be seen as¶ opportunities for teaching, and creative informal measures that make the offenders¶ aware of the harmful consequences and injustice of their behavior¶ should be pursued. The school should also provide succor to the victim¶ whose hurt and anger must be acknowledged and meliorated. But severely¶ punishing ignorant young people for expressions inherited from their parents¶ or neighborhoods may serve to harden. and focus their sense of grievance,¶ create martyrs, and prolong racial animosity. Deans who administer such¶ rules must overcome their personal repugnance at racist speech and enforce¶ the rules for the benefit of the entire community. Controversial interpretative¶ application of the rules should be placed in the hands of faculty and¶ students representative of the entire institution, and the accused, the victim,¶ and the dean should have an opportunity to express their perspectives.¶ A recurrent concern regarding rules against racial insults is their vague-ness and overbreadth. These, of course, were the bases upon which the University¶ of Michigan's policy was declared unconstitutional, although the¶ demonstrated propensity of the school to apply the policy to presumptively¶ protected speech appears to have steered the Court's conclusions on these¶ issues.17 6 In general, university disciplinary rules rarely are struck down for¶ vagueness; courts usually permit universities to regulate student conduct on¶ the basis of generally stated norms, so long as they give fair notice of the¶ behavior proscribed. 177 Courts generally are more strict regarding vagueness¶ in rules that affect speech, in no small part because of the distrust of the¶ competence and motives of the government censor.178¶ A central argument of this article has been that the university can be¶ trusted to administer rules prohibiting racial insults because it has the proper¶ moral basis and adequate expertise to do so. It is not surprising, therefore,¶ that I believe that vagueness concerns about such university rules are largely¶ misplaced. This is not to deny that a university should adopt safeguards to¶ protect accused students from the concerns that the courts have highlighted.¶ First, the rules should state explicitly that no one may be disciplined for the¶ good faith statement of any proposition susceptible to reasoned response, no¶ matter how offensive. The possibility that punishment is precluded by this¶ limitation should be addressed at every stage of the disciplinary process. Second,¶ some response between punishment and acquittal should be available¶ when the university concludes that the speaker was subjectively unaware of¶ the offensive character of his speech; these cases seem to present mainly educational¶ concerns. Third, all controversial issues of interpretation of the¶ rules should be entrusted to a panel of faculty and students who are representative¶ of the institution. Rules furthering primarily academic concerns about¶ the quality of speech and the development of students should be given meaning¶ by those most directly concerned with the academic enterprise rather¶ than by administrators who may register more precisely external political¶ pressures on the university. Given these safeguards and a comprehensible¶ definition of an unacceptable insult, such as the one ventured in the introduction¶ to this article,179 a court which accepts the underlying proposition that a¶ university has the constitutional authority to regulate racial insults should¶ not be troubled independently by vagueness.¶ A difficult prudential consideration is whether a university should decline¶ to regulate insults because of public criticism that censorship demeans the very intellectual virtues towards which the university strives, such as the superiority¶ of persuasion over compulsion. Obviously, the adoption of such¶ regulation has brought forth sincere and bitter criticism from many friends of¶ higher education-the Economist, for example, went so far as to call such¶ regulations "disgraceful."'' 80 To some extent these criticisms stem from misunderstanding¶ about the character of academic speech and the goals of¶ prohibitions on racial insult, but universities should admit that turning to¶ regulation marks a sad failure in civility. A failure already has occurred,¶ however, when students scurrilously demean other students because of their¶ race. The university at this point can only choose among evils. It would not¶ be true to its traditions if it did not come down on the side of protecting the¶ educational environment for blameless students against wanton and hurtful¶ ranting.

#### 3. Hate speech reinforces white supremacy-its hegemonic position makes counter speech ineffective, it only exposes students to more violence

Moore, PhD, 17

(Wendy Leo, Sociology @Texas A&M, "The Right to Be Racist in College: Racist Speech, White Institutional Space, and the First Amendment." Law & Policy (2017).)

Just a small sampling of racist incidents on college and university campuses throughout ￼the post–civil rights era reveals the nature of this persistent form of racism. For example, in September of 2016 a man wearing a gorilla mask and carrying a banana on a string showed up to a Black Lives Matter rally at East Tennessee State University and walked around thrusting the banana into the faces of African American students participating in the rally (Jaschik 2016). In 2010, at the University of California at San Diego (UCSD), a group of white students organized a party called a “Compton Cookout,” which they claimed was in “celebration” of Black History Month. The invitation was posted publicly on Facebook, asking people to dress and behave in “ghetto” fashion and indicating that chicken, watermelon and malt liquor would be served. In response to this provocation, black students organized a protest, criticizing this racist depiction of blackness and black culture. The protest sparked an outburst of racist activity at UCSD, including a campus television broadcast in which white students called the black student protestors “ungrateful niggers,” the hanging of a noose from a bookcase in the main library, and the placement of a white pillowcase in Ku Klux Klan (KKK) style over a campus statue (Archibold 2010; Gordon 2010). In 2007 at Hamline University, six white student-athletes dressed for Halloween in what they called “mock African tribal outfits,” donning blackface, black Lycra suits, and Afro wigs. On the morning of November 4, 2008, the day that Barack Obama became the first African American president of the United States, a noose was found hanging from a prominent tree on campus at Baylor University (Hoffstrom 2008).2 In the spring of 2002, a white student at Harvard Law School used the law school website to outline the facts of a property case involving racially restrictive covenants and used the term “nigs” to refer to African Americans. After a protest in reaction to this incident, another white male student sent an anonymous e-mail (though he was later identified) to a first-year black woman law student that said, among other things, “We at the Harvard Law School, [are] a free, private community, ￼where any member wishing to use the word ‘nigger’ in any form should not be prevented from doing so.”3 In April 2000 at the University of Iowa College of Dentistry, faculty members received an e-mail message demanding that the school dismiss its minority students within three days, and after that three-day period had passed, students of color in the college received threatening racist e-mails (Leonard 2000). In February 1995 at UC Berkeley’s renowned School of Law, 14 students of color received letters in their mailboxes calling them “niggers,” “wetbacks,” and “chinks” and suggesting that Boalt was “for whites only” (Koury and Koh 1995). In the fall of 1986 at the Citadel Military College, five white cadets wearing KKK-type garb stormed into the dormitory room of a black freshman, yelling racial epithets and burning a paper cross (UPI 1986).¶ These examples are illustrative of incidents that have taken place at all types of histori¶ lly white colleges and universities across the nation, beginning after the legal changes of the civil rights era through which people of color gained entry to these institutions. In 1990 the National Institute Against Prejudice and Violence reported that incidents of “hate speech” on college campuses and universities could be calculated at between 800,000 to 1 million per year (Matsuda et al. 1993).4 Indeed, a 1994 report conducted by the University of Houston Institute for Higher Education Law and Governance noted that US colleges and universities are characterized by a “climate of bigotry” (Agguire 1994). Yet when instances like those discussed above occur, individuals in the media and in the academy often seem surprised, and the discourse around these incidents frames them as “recent trends” or “increasing hostilities”—as something new and/or unique (see Matsuda et al. 1993). The reality, however, is that racist expressions and activities on historically white college and university campuses have been consistent and relatively regular occurrences throughout the post–civil rights era. ￼The persistence of these forms of overt and hostile racism in national institutions, which are meant to be gateways to upward mobility, betrays a contradiction in the broader contemporary popular discourse that racism is a thing of the past that disappeared following the legal changes brought about during the era of the civil rights movement. It is perhaps this contradiction that leads scholars and pundits to frame such incidents as newly emergent, isolated, or surprising. Moreover, incidents of blatant racism on college and university campuses seem to contradict contemporary sociological analyses of the racial dynamics of the post–civil rights era. Contemporary race scholars suggest that while racist structures and hierarchies persist, racist expression typically takes place in a less overt, more subtle manner—what Eduardo Bonilla- Silva (2010) has termed “color-blind racism” (see also Coates 2011; Bobo, Kluegel, and Smith 1997; Carr 1997). Rather than expressing overt hostility, color-blind racist narratives assert a decontextualized commitment to racial equality while simultaneously ignoring or justifying— and thereby reifying—historical and structural racial inequality (Bonilla-Silva 2010; Bell and Hartmann 2007). Color-blind racist discourse, then, often takes place through an espoused commitment to “abstract liberalist” discursive tenets, which profess rhetorical commitment to equality of opportunity and, at the same time, minimize the contemporary relevance of the history of explicit racial oppression as well as contemporary institutional and structural mechanisms that perpetuate racial inequality. Many contemporary scholars of race and education have documented the manner in which color-blind racism has become a dominant discourse in educational institutions in the post–civil rights era (e.g.,; Moore 2008; Gallagher 2003; Lewis 2003; Parks-Yancy and Post 2003; Carr 1997; DiTamaso, Feagin, Vera, and Imani 1997). While the concept of color-blind racism provides invaluable theoretical insight into the persistence of racial inequality in the post–civil rights era and its continued manifestations in US institutions, ￼the current scholarship fails to explain adequately the persistence of explicit hostile racist incidents on college and university campuses like the ones described above.¶ Placing these incidents within the broader context of a racialized social structure, which is characterized by a dominant discourse based on color-blind racism, this research reveals an important connection between these overt and blatant racist expressions and the more tacit and covert racial tenets of color-blind racism. In fact, we suggest that the two forms of racial expression—explicit overt racist expression and covert color-blind racist discourse—work in connection with one another to mark and reinscribe colleges and universities as white institutional spaces. Specifically, we suggest that the explicit nature of incidents of racist expression gives rise to two important discursive frames that together tend to reinforce institutional and structural racial inequities. On the one hand, explicitly racist incidents on college and university campuses create a discursive platform for liberal college communities to publicly reject racism while tacitly delimiting the definition of racism to only explicit expressions of racial hostility. In other words, these racist incidents provide an opportunity for institutional actors to reaffirm a commitment to color-blind principles of equality in their institutions. On the other hand, these incidents create a platform for the color-blind, abstract liberalist construction of freedom of speech advocated by organized free speech absolutists and codified by US courts. More specifically, racist incidents on college and university campuses give rise to a discourse that actively defends the right to racist expression. The discursive frames that arise in conjunction with racist expressions on college and university campuses serve as a mechanism of substantive racial exclusion, functioning to reproduce the white institutional space that characterizes historically white colleges and universities in the United States.

#### 4. Hate speech facilitates genocidal violence

Tsesis, Prof. Law @Loyola Chicago, 09

(Alexander, Dignity and speech: The regulation of hate speech in a democracy." (2009).)

Permitting persons or organizations to spread ideology touting a¶ system of discriminatory laws or enlisting vigilante group violence¶ erodes democracy. So it was in the Weimar Republic, where the¶ repeated anti-Semitic propaganda of vulgar ideologues like Julius¶ Streicher, who published perverse attacks against Jews in Der¶ Stiirmer, chipped away at the post-World War I German democratic¶ experiment.6¶ ' Avowedly influenced by nineteenth century antiSemitism,¶ his weekly stories of Jewish ritual murder and sexual¶ exploitation were a crude way of antagonizing the victims and¶ gaining support for widespread prejudice against Jews." It is truly¶ eerie, now, looking at photographs relating the effectiveness of Nazi¶ propaganda: respectable looking adults in suits and dresses¶ listening to long lectures on Jewish inferiority; children, barely able¶ to stand on their two feet, raising their right arm in a Nazi salute.¶ Nazi propaganda incorporated numerous well-known¶ nineteenth century slogans. To take one example, Streicher, who¶ was later sentenced to death by the Nuremberg War Crimes¶ Tribunal, 64 used an inflammatory slogan, "The Jews are our misfortune!" on his newspaper masthead.& At one point over¶ 130,000 copies of his publication were sold and displayed on public¶ message boards throughout the country.66 The phrase also became¶ prominently featured on posters throughout the Third Reich.67¶ This slogan was taken verbatim from an 1879 article by¶ Professor Heinrich von Treitschke, arguably the greatest German¶ historian of the nineteenth century.68 Its visibility in pre-World War¶ II German society helped legitimize anti-Semitism there in¶ intellectual circles.69¶ A gradual process of incitement also occurred elsewhere. In¶ many American colonies, authors and legal institutions had been¶ degrading blacks since the seventeenth century.70 By national¶ independence, in 1776, the colonies of South Carolina and Georgia¶ had long-standing commitments to retaining slavery despite the oftrepeated¶ mantra of universal natural rights. In 1787, those two states refused to endorse the proposed Constitution without¶ provisions protecting that undemocratic institution."72¶ Senator John Calhoun, Congressman Henry Wise, and other¶ powerful racist orators misled the public about the supposedly¶ benevolent slave owner, feeding his slaves and treating them like¶ his own children. 3 The repeated inculcation of supremacism proved¶ effective in misrepresenting blacks as moveable property.¶ Abolitionists like Theodore Weld, Angelina and Sarah Grimk6,¶ Frederick Douglass, and William Lloyd Garrison were unable to win¶ over the country to their abolitionist views.74 To the contrary,¶ proslavery thought monopolized the Southern marketplace of¶ ideas.' Slavery came to an end after a bloody Civil War, not¶ through articulate or even heated debate.6¶ Because intimidating hate speech has so often inflamed¶ dangerous attitudes, the value of such expression should be¶ balanced against the likelihood that it will cause harm. The risks¶ are greater when hate propaganda incorporates symbolism, like¶ swastikas, that demagogues have historically displayed to rally¶ supporters to action. Robert Post is undoubtedly correct that speech¶ is valuable because it provides a breeding ground for "collective selfdetermination."7¶ 7 The more difficult question is how self-expression¶ should be treated when it conflicts with the safety of its target.¶ As much as self-expression is fundamental to democratic¶ institutions, it can, nevertheless, be balanced against the social¶ interest in safeguarding a pluralistic culture by preventing the¶ instigation of demagogic threats. Placing no limits on speech-not¶ even on expressions blatantly intended to make life miserable for¶ minorities-preserves the rights of speakers at the expense of¶ targeted groups. Defamation statutes, zoning regulations, and¶ obscenity laws indicate that the freedom of speech is not shielded¶ where it undermines other individuals' legitimate interests. 7 Hate speech regulation undoubtedly inhibits some opportunities for selfexpression;¶ more importantly, it prevents instigative communication¶ from undermining its targets' ability to live unaccosted by¶ harassment.¶ In the many historic examples when destructive messages¶ proved to be effective in instigating violence, they caused enormous¶ social turmoil. Just like shouting "fire" in a crowded movie theater,¶ which can be prohibited without violating the First Amendment,79¶ hate speech can cause a stampede. Take Spain, for instance, which¶ expelled its Jewish population in 1492.80 The expulsion came after¶ years of Inquisition propaganda and hurt both the exiled Jews and¶ the remaining Spanish population. 1 Teachings by zealous¶ preachers like Vincent Ferrer, a later-canonized Dominican monk,¶ in the late fifteenth century brought on a nationwide anti-Jewish¶ hysteria that opposed the free practice of Judaism while decrying¶ overt violence.82 Pursuant to his instigation, a Castilian decree¶ discriminated against Jews in employment, dress, and criminal¶ punishments.83 Historian Heinrich Graetz explained the connection¶ between anti-Jewish preaching and draconian edicts: the populace¶ was "inflamed by the passionate eloquence of the preacher [and]¶ emphasized his teaching by violent assaults on the Jews." 4 Another¶ historian explained that:¶ For centuries, Christians had been encouraged to hate the¶ Jews. With preachers telling them, Sunday after Sunday, that¶ Jews were perverted and guilty of complicity in the death of¶ Christ, the faithful ended up by detesting them with a hatred 815 that was bound one day to express itself in violence .¶ Once unleashed, the expulsion of Jews from Spain followed¶ naturally from the verbal spread of hatred during the Inquisition.8 6¶ The economic consequences were grave. Many commercial enterprises in Seville and Barcelona, for instance, were ruined .¶ "Spain lost an incalculable treasure by the exodus of Jewish...¶ merchants, craftsmen, scholars, physicians, and scientists," wrote¶ the encyclopedic Will Durant, "and the nations that received them¶ benefitted economically and intellectually."88 Anti-Jewish preaching¶ in parts of Spain influenced a wide social segment of the population,¶ and the result was devastating both for the Jews who fled and for¶ the country that renounced them on dogmatic grounds. Elsewhere¶ in the ancient world, as historian Ben Kiernan has compellingly¶ documented, periodic mass massacres perpetrated against segments¶ of the native populations in Ireland, North and South America, and¶ Australia were likewise influenced by widely disseminated¶ dehumanizing statements. 9¶ The spread of ethnic and racial hatred continues to elicit¶ violence throughout the modern world. The dissemination of¶ ethnically incitable messages has precipitated tribal clashes in¶ Kenya.90 In Rwanda, ethnic stereotyping and repeated media calls¶ for the extermination of Tutsi led to a massive genocide perpetrated¶ against that group.9¶ '¶ Arab racial hate propaganda in the Sudan has catalyzed a¶ government-sponsored attempt to "cleanse" black Africans in¶ Darfur, Sudan." Likewise, in the Democratic Republic of the Congo¶ the government has relied on the incitement of ethnic hatred,¶ creating a culture where ethnic murder is a routine militia¶ practice. In the Arab world, terror organizations like Hamas and¶ Hizballah spread hatred against Jews without any interference from several governments, including Egypt, Syria, Lebanon, and Saudi¶ Arabia. 94 School texts that are "written and produced by Saudi¶ government" teach children to kill Jews and to hate Christians and¶ Jews.95¶ Hate propaganda in these countries is far more virulent than it¶ is in the United States; nevertheless, a democracy committed to the¶ protection of individual rights does not run afoul of free speech¶ principles by criminalizing group incitement that has so globally¶ proven to influence harmful social movements.¶ A First Amendment theory, as the Supreme Court made clear in¶ Virginia v. Black, must examine whether there are historical¶ reasons to believe that offensive expression against an identifiable¶ group is likely to intimidate reasonable audiences. Robert Post's¶ argument about the undemocratic nature of hate speech regulation¶ regards "the function of public discourse" to be the reconciliation of¶ "the will of individuals with the general will. Public discourse is¶ thus ultimately grounded upon a respect for individuals seen as 'free¶ and equal persons."'97 He emphasizes democracy's central obligation¶ to protect private "autonomous wills."9" His insightful¶ characterization, however, captures only part of the raison d'etre of¶ democracy; on a more community-oriented level, that system of¶ governance serves to protect the overall well-being of the polity¶ against the wanton call for discriminatory conduct or violence. And¶ Black explicitly sanctions states' use of historical records to identify¶ symbolism that is likely to terrorize the populace and, therefore,¶ detract from the common good.99 This development in First¶ Amendment jurisprudence indicates that there is more to democracy¶ than self-determination.¶ Post's most recent statement on hate speech does not address¶ Black, even though the chapter was written after the Court¶ rendered its decision. 100 He connects the expression of hate to¶ "'extreme' intolerance and 'extreme' dislike."' °¶ ' This description,¶ while correct, does not account for the connection between hate¶ speech and extreme conduct. While the Constitution does not¶ authorize laws against negative emotions, speech that is¶ substantially likely to cause discriminatory harm, especially violence, can be regulated without infringing on the fundamental¶ principles of democracy.

## Net Benefit Extensions

### Turns Case

#### Racism harms the marketplace of ideas

Post, JD, 91

(ROBERT C. POST - Professor of Law, School of Law (Boalt Hall), University of California at Berkeley. B.A., Harvard College, 1969; J.D., Yale University, 1977; Ph.D., Harvard University, 1980. “RACIST SPEECH, DEMOCRACY, AND THE FIRST AMENDMENT.” William and Mary Law Review. 1991. <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1924&context=wmlr> )

D. Harm to the Marketplace of Ideas A fourth theme in the current debate is that racist expression harms the very marketplace of ideas that the first amendment is designed to foster. A variety of different arguments have been brought forward to support this position. It is argued that racist expression ought to be "proscribed . ..as a form of assault, as conduct" inconsistent with the conditions of respect and noncoercion prerequisite to rational deliberation. 40 It is argued that racist expression is inconsistent with rational deliberation because it "infects, skews, and disables the operation of the market .... Racism is irrational and often unconscious."'41 Finally, it is argued that racism "systematically" silences "whole segments of the population,' 42 either through the "visceral" shock and "preemptive effect on further speech" of racist words,43 or through the distortion of "the marketplace of ideas by muting or devaluing the speech of blacks and other non-whites.."44 The class of communications subject to legal sanction would depend upon which of these various arguments is accepted. Depending upon exactly how racist expression is understood to damage the marketplace of ideas, the class might be confined to communication experienced as coercive and shocking, or it might be expanded to include communication perceived as unconsciously and irrationally racist, or it might be expanded still further to encompass speech explicitly devaluing and stigmatizing victim groups.

#### Racism interferes with and harms education

Post, JD, 91

(ROBERT C. POST - Professor of Law, School of Law (Boalt Hall), University of California at Berkeley. B.A., Harvard College, 1969; J.D., Yale University, 1977; Ph.D., Harvard University, 1980. “RACIST SPEECH, DEMOCRACY, AND THE FIRST AMENDMENT.” William and Mary Law Review. 1991. <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1924&context=wmlr> )

E. Harm to Educational Environment Each of the four categories of harm so far discussed can be caused by racist expression within public discourse. There is, however, yet a fifth kind of harm which is quite important to the contemporary controversy, but which is relevant only to the specific educational environment of institutions of higher learning. This is the harm that racist expression is understood to cause to the educational mission of universities or colleges. The prevention of this harm is central to the definition of a great number of campus regulations. Universities and colleges characteristically seek to regulate racist communications that "directly create a substantial and immediate interference with the educational processes of the University," without articulating exactly how racist expression can cause that interference. 45 Some campus regulations are more specific, focusing on the damage that racist expression is understood to cause to particular individuals or groups. For example, some regulations only proscribe racist expression that "will interfere with the victim's ability to pursue effectively his or her education or otherwise to participate fully in University programs and activities.."46 Presumably this interference will occur for reasons similar to those that we have already canvassed. In a number of instances, however, college or university regulations enunciate special educational goals that are understood to be inherently incompatible with racist expression. For example, Mount Holyoke seeks to inculcate the value of diversity, which it views as plainly inconsistent with racist expression. Accordingly Mount Holyoke's regulations provide: To enter Mount Holyoke College is to become a member of a community.... Our community is committed to maintaining an environment in which diversity is not only tolerated, but is celebrated. Towards this end, each member of the Mount Holyoke community is expected to treat all individuals with a common standard of decency.47 Marquette University defines itself "as a Christian and Catholic institution. . . dedicated to the proposition that all human beings possess an inherent dignity in the eyes of their Creator and equality as children of God."48 Accordingly Marquette's regulations seek to maintain "an environment in which the dignity and worth of each member of its community is respected" and in which "racial abuse or harassment . . . will not be tolerated. 49 Mary Washington College sets forth what appears to be a secular version of this same educational mission; its regulations provide that the "goal of the College is to help all students achieve academic success in an environment that nurtures, encourages growth, and develops sensitivity and appreciation for all people."50 Accordingly "any activity or conduct that detracts from this goal-such as racial or sexual harassment-is inconsistent with the purposes of the college community."51 In such instances, racist expression interferes with education not merely because of general harms that it may inflict on groups or individuals or the marketplace of ideas, 52 but also, and more intrinsically, because racist expression exemplifies conduct that is contrary to the particular educational values that specific colleges or universities seek to instill.5

### AT: Cooption

#### Cooption empirically denied- it’s a scare tactic

Yun and Delgado, JDs, 94

(David, partner @Jaudon & Avery LLP, Richard, Law@Alabama, “Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation.” California Law Review. 1994. http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1712&context=californialawreview)

B. The "Reverse Enforcement" Argument A second paternalistic argument is that enactment of hate speech rules is sure to hurt minorities because the new rules will be applied against minorities themselves.61 A vicious insult hurled by a white person to a black will go unpunished, but even a mild expression of exasperation by a black motorist to a police officer or by a black student to a professor, for example, will bring harsh sanctions. The argument is plausibile because certain authorities are racist and dislike blacks who speak out of turn, and because a few incidents of blacks charged with hate speech for innocuous behavior have occurred. Nadine Strossen, for example, asserts that in Canada, shortly after the Supreme Court upheld a federal hate speech code, prosecutors began charging blacks with hate offenses. 62 But the empirical evidence does not suggest that this is the pattern, much less the rule. Police and FBI reports show that hate crimes are committed much more frequently by whites against blacks than the reverse. 63 Statistics compiled by the National Institute Against Violence and Prejudice confirm what the police reports show, that a large number of blacks and other minorities are victimized by racist acts on campus each year.' Moreover, the distribution of enforcement seems to be consistent with commission of the offense. Although an occasional minority group member may be charged with a hate crime or with violating a campus hate speech code, these prosecutions seem rare.6 5 Racism, of course, is not a one-way street; some minorities have harassed and badgered whites. Still, the reverse-enforcement objection seems to have little validity in the United States. A recent study of the international aspects of hate speech regulation showed that in repressive societies, such as South Africa and the former Soviet Union, laws against hate speech have indeed been deployed to stifle dissenters and members of minority groups.6 6 Yet, this has not happened in more progressive countries.67 The likelihood that officials in the United States would turn hate speech laws into weapons against minorities seems remote.

#### Global empirical evidence denies cooption and benefits from speech

Yun and Delgado, JDs, 94

(David, partner @Jaudon & Avery LLP, Richard, Law@Alabama, Speech We Hate: First Amendment Totalism, the ACLU, and the Principle of Dialogic Politics, The." Ariz. St. LJ 27 (1995): 1281.)

If protecting hate speech and pornography were essential to safeguarding freedom of inquiry and a flourishing democratic politics, we would expect to find that nations that have adopted hate speech rules and curbs against pornog-raphy would suffer quickly a sharp erosion of the spirit of free inquiry. But this has not happened. n46 A host of indus-trialized nations, including Sweden, Italy, Canada, and Great Britain, have instituted laws against hate speech and hate propaganda, n47 in many cases to comply with international treaties and conventions requiring such action. n48 Many of these countries traditionally respect free speech at least as much as the United States does. n49 No such na-tion has reported any erosion of the atmosphere of free speech or debate. n50¶ At the same time, the United States, which until recently has refused to put such rules into effect, has a less than perfect record of protecting even political speech. United States agencies have persecuted communists, n51 hounded Hollywood writers out of the country, n52 and harassed and badgered such civil rights leaders as Josephine Baker, n53 Paul Robeson, n54 and W. E. B. DuBois n55 in a campaign of personal and professional smears that ruined their reputations and destroyed their ability to earn a living. In recent times, conservatives inside and outside the Administra-tion have disparaged progressives to the point where many are now afraid to describe themselves [\*1291] as "liberals." n56 Controversial artists are denied federal funding. n57 Museum exhibits that depict the atomic bombing of Hiroshi-ma have been ordered modified. n58 If political speech lies at the center of the First Amendment, its protection seems to be largely independent of what is taking place at the periphery. There may, indeed, be an inverse correlation. Those institutions most concerned with social fairness have proved to be the ones most likely to promulgate anti-hate speech rules. n59 Part of the reason seems to be the recognition that hate speech can easily silence and demoralize its victims, discouraging them from participating in the life of the institution. n60 If so, enacting hate speech rules may be evi-dence

### AT: Counter Speech

#### Counter speech works vs a small subset of racists but is used to justify all hate speech

Farber, PhD Sociology, 2-27-17

(Samuel, Professor Emeritus of Political Science @Brooklyn College, <https://www.jacobinmag.com/2017/02/garton-ash-free-speech-milo-yiannopoulos/>)

When we turn to public figures invited to speak about controversial topics, we must distinguish between racist persuaders and violent racist intimidators. People like Arthur Jensen, Richard Herrnstein, and Charles Murray, who propagate offensive racist myths under the guise of social science, are racist persuaders. Their pronouncements take place entirely within the realm of discourse, to which opponents can respond through rational discussion and careful refutation. Other free speech rights, including the venerable traditions of picketing and heckling, stop short of using force to stop figures like these from speaking. Even the sharpest ideological struggle abides by implicit rules that social movements have occasionally violated when they have replaced persuasion with the use of force. This not only violates the speakers’ fundamental rights, but is also bad strategy. Protests ignoring the right to free speech alienate both the audience attending the event, whom protesters should be trying to win over, and those who wish to preserve free speech. This differs from racist or antisemitic acts of intimidation perpetrated by organized groups with a history of physical violence. The 1936 march organized by the British Union of Fascists in the Jewish-majority East End of London illustrates this distinction. Oswald Mosley, the demonstration’s leader, did not intend to persuade the Jews living in that neighborhood to join their group. Rather, he wanted to terrify them. Nor did the American neo-Nazi group that applied for a march permit in the also heavily Jewish Chicago suburb of Skokie in 1978 set out to convert the residents, many of whom were Holocaust survivors, into Nazis. In London, Mosley and his followers were met by twenty thousand antifascist demonstrators, who clashed with the six thousand police trying to protect a couple thousand fascists in the now famous Battle of Cable Street. Things went differently in Skokie. The local authorities tried to prevent the march, but the American Civil Liberties Union (ACLU) sued to allow it, causing many of its members to resign. Despite the ACLU’s legal victory, the neo-Nazis decided to stage a rally in downtown Chicago instead. In some ways, this mirrors Mosley’s East London march. But it differs importantly: Nazism was rising in the 1930s, but, by 1978, American neo-Nazism had become a small, fringe group. Regardless of their relative power, both forces belonged to an organized political current with a history of physical violence and a strategy of seizing political power. The ACLU’s defense included two arguments relevant to the present discussion. On the one hand, they pointed to the dangers posed by allowing the state, local, or federal government to limit or regulate speech, fearing it would set a precedent that could be turned against other social movements’ democratic rights, including organized labor, minority groups, and the Left. Indeed, the danger of empowering the state to limit free speech rights is precisely why socialists cannot rely on the state when confronting violent intimidators. Secondly, the ACLU claimed that because the march did not pose an intended, likely, and imminent danger of violence, it counts as constitutionally protected speech. This clarifies an important distinction between the antiracist left and the more broadly liberal ACLU. For groups like the ACLU, violent intimidators should enjoy the same free speech rights as racist persuaders like Jensen, Hernstein, and Murray until the speech becomes dangerous. For the antiracist left, violent intimidators are categorically different from racist persuaders. The relationship between groups like neo-Nazis or the KKK and democratic social movements is one of open belligerence rather than ideological struggle. Violent intimidators are not trying to persuade, but to intimidate. Their language is the language of violence. As far as the social movements are concerned, the otherwise reasonable rule that speech is protected until violence appears imminent should not apply to these violent intimidators: instead, that principle allows them the choice to select the time, place, and manner most favorable for their violent actions.

#### Fighting speech with speech obscures material violence that students of color face.

Carpenter ‘16

(Bennett Carpenter is a graduate student of Duke in the literature department. “Free speech, Black lives and white fragility.” The Chronicle. January 19, 2016. <http://www.dukechronicle.com/article/2016/01/free-speech-black-lives-and-white-fragility> )

As I write my first column, I am thinking a lot about speech. I am thinking about how an urgent and overdue conversation about racism—on our campus and across our country—has been derailed by a diversionary and duplicitous obsession with the First Amendment. I am thinking about how quickly the conversation has shifted from white supremacy to white fragility—and how this shift is itself an expression of white supremacy. White fragility refers to a range of defensive behaviors through which white people (or more accurately, people who believe they are white) deflect conversations about race and racism in order to protect themselves from race-based stress. Because white people tend to live in environments where whiteness is both dominant and invisible, they grow accustomed to racial comfort, as a result of which even a small amount of racial stress becomes intolerable. This helps explain why talking about white supremacy can feel more painful to white people than white supremacy itself, why the ostensible "stifling" of debate can feel more pressing than the literal strangulation of Eric Garner and how "free speech" seems more important than Black lives. Needless to say, it requires an astounding degree of narcissism, ignorance and— yes—fragility to scan headlines detailing the daily, state-sanctioned slaughter of people of color and somehow conclude that speech is the real problem. White fragility weighs the minimal discomfort of being confronted with painful realities about race and racism against the literal death of Black and brown bodies and decides that the latter matter less than white discomfort. Which is how we end up here, talking about speech on campus and reading a dozen iterations of the same editorial in which students describe—with utterly unintentional irony—how being called out by anti-racist activists makes them feel upset and hurts their feelings. This leaves those of us committed to abolishing white supremacy in a double bind. To engage with this debate is to fall for a diversionary tactic in which we again center the conversation on white feelings. To refuse to engage grants the latter a monopoly on the airways, drowning out more vital issues in an ocean of white noise. Still, in the interests of the open, honest debate the free speechers ostensibly advocate, let me try to address the constitutional and philosophical principles at play here. The first point to make is that, despite the hand-wringing, I have yet to see a single example of student activists violating the First Amendment. Indeed, it is hard to imagine how they could do so, given that the latter proscribes government abridgment of speech while student activists are private citizens. Many seem to confuse "free speech" with some banal notion of civility, forgetting that the very freedoms they invoke to defend racist drivel permit anti-racists to respond—whether by calling someone out or calling for their resignation. This would seem to set up a nice equivalence between racists and anti-racists—both exercising free-speech freedoms, which must be equally and indiscriminately defended. What this ignores, however, is the centuries-long history of racialized oppression to which hate speech contributes. Hate speech is thus both violent and an incitement to further violence. The courts already prohibit walking into a crowded theater and shouting "fire." How is this any different from walking into a white supremacist society and shouting racial slurs? It has become almost a truism that there is no hate speech exception to the First Amendment. Historically speaking, this is inaccurate. As M. Alison Kibler details in her "Censoring Racial Ridicule," the U.S. has a long history of regulating forms of speech that expose racialized groups to "contempt, derision or obloquy." Indeed, as recently as 1952, the Supreme Court upheld an Illinois law applying the standards of libel (another free-speech exception) to hate speech. It is only in recent years that the courts have, as the National Center for Human Rights Education puts it, "privileged white racists to express themselves at the expense of the safety of African-Americans and other people of color." Key to this new interpretation is a firm separation between speech and action, a legal variant on the old childhood adage: "sticks and stones may break your bones, but words will never hurt you." The problem—as anyone who has been the victim of hate speech can tell you—is that this simply isn't true. Words hurt as much as actions; indeed, words are actions. Within the context of white supremacy, any distinction between a defaced poster, a racist pamphlet and legal or extralegal murder can be only of degree.

### AT: Safety Valve

#### Speech doesn’t act as a release valve- there are different incentive structures for violence

Dharmapala and McAdams, PhDs, 05

(Dhammika, Economics @Connecticut, Richard H., Law @Illinois, "Words that kill? An economic model of the influence of speech on behavior (with particular reference to hate speech)." The Journal of Legal Studies 34.1 (2005): 93-136.)

Conventional criticisms of hate speech frequently focus on the subjective harm it imposes¶ on its targets. This focus, however, creates severe practical obstacles to regulation because it may¶ not be possible to prevent that harm. There are two problems. First, there is an unappealing¶ trade-off in how one defines hate speech: an overly broad definition may burden non-offensive¶ speech, while a narrow definition – one that attempts to raise the costs only for the harmful¶ speech – may allow racists to shift to a different form of expression, arguably causing the same¶ ill effects on targets as the prohibited expression. American history is full of racially coded¶ phrases, whereby one raises racist concerns without explicit references to race. One might claim,¶ therefore, that any narrowly targeted regulation will fail to raise the cost of hate speech, while¶ any broad regulation is excessively restrictive. A second problem is anonymity. Speakers may¶ react to the formal or informal penalties on hate speech by shifting to anonymous speech, writing¶ their hate messages on buildings or sidewalks when no one is watching, or distributing such¶ messages in untraceable flyers. While this makes detection and enforcement very difficult, it¶ may cause the same harm to the targets as would identified (non-anonymous) messages.¶ These practical problems are less severe, however, when the harm to be avoided is the¶ one we identify: the incentives hate speech gives to potential hate offenders. First, under our¶ approach, the definitional trade-off is less stark because a relatively narrow definition of hate¶ speech may be sufficient to reduce hate crime. For example, to reduce the expected esteem¶ benefits from committing a racially motivated murder, it is only necessary to raise the costs of¶ speech that conveys approval of such murders. Because most people disapprove strongly of¶ murder, it requires strong and explicit language to convince others than one actually approves of it. One can create the benefit we identify merely by raising the costs of this strong and explicit¶ language.¶ Second, the problem of anonymous hate speech is likely to be irrelevant in our¶ framework. The harm we identify from hate speech is that it conveys credible information about¶ the number of individuals who will esteem perpetrators of hate crimes (or do so to a certain¶ intense degree). Overt hate speech, where the speakers are clearly identified, provides more¶ credible information about the number of hate crime approvers than does anonymous hate¶ speech. The reason is that, when one cannot identify the source of many anonymous messages,¶ one usually cannot know how many sources there actually are. It is always possible that just one¶ individual produces all the anonymous messages (an anonymous message may of course claim to¶ represent a large number of individuals, but such claims are usually cheap talk). Thus, potential¶ offenders using Bayesian inference will tend to discount anonymous speech in estimating the¶ number of approvers.32 Although the correspondence bias suggests that people will infer more¶ hate crime approval from more hate speech, it does not suggest any particular bias to this¶ discounting of anonymous speech. Thus, if potential offenders are subject to the correspondence¶ bias, their downward revision of their estimate following a reduction in the level of identified¶ hate speech will not be fully offset even if all or some speakers engage in anonymous speech.¶ 5.2) Are Hate Speech and Hate Crime Substitutes?¶ Finally, we briefly consider a contrary theory. Our model of the behavior of potential¶ offenders has conceptually separated them from speakers – those whose esteem is sought.¶ However, it is also possible that the same individual’s choice of speech may interact with her¶ decision regarding whether to commit the crime. If so, then hate speech and hate crime may be¶ either complements or substitutes. In the latter case, allowing the individual the chance to “blow¶ off steam” by engaging in hate speech may reduce the likelihood that she will also commit a hate¶ crime; this would represent a caveat qualifying some of the claims we have made in this paper.¶ However, it is likely that the distribution of intrinsic utility (B – C) across individuals is such that¶ there are very few individuals who would commit a hate crime, even for a high level of esteem,¶ while there are many more individuals who may engage in hate speech if the costs are¶ sufficiently low. Then, most speakers are inframarginal with respect to the choice of whether to¶ commit the crime, while their hate speech does influence the (relatively small number of) individuals who are on the margin with respect to the crime. Moreover, the opportunities for¶ gaining esteem from racists for being one of a relatively large number of individuals engaging in¶ hate speech are severely limited in comparison to the esteem that can be gained by committing¶ hate crimes. Thus, any “substitution effect” is likely to be a very minor factor.

#### Hate speech isn’t a productive dialogue- it doesn’t change minds

McConnel 12

Reed E. McConnel. “Why Harvard's Hate Speech Policies Are Necessary”. The Harvard Crimson. April 18, 2012. <http://www.thecrimson.com/article/2012/4/18/hate-speech-libertarians/>

The most common argument I have encountered for unrestricted free speech on college campuses is that if we prohibit people from saying certain things, they will simply never talk about them. As a result, their prejudice and oppression—the problems that we are trying to stamp out in the first place with restrictions on speech—will continue quietly, unchecked. However, the argument goes, if we allow people to express these thoughts openly, then there will be discussion about them that leads to greater understanding. This was the view expressed by the member of the Harvard Libertarian Forum quoted in the article, and one that I think is fundamentally misguided. There certainly should be dialogue around issues of racism, sexism, homophobia, and other forms of oppression. If someone has prejudices, a good way to erase these prejudices can indeed be to engage in dialogue with that person in order to understand where their attitude is coming from and educate them about the moral and logical fallacies of their prejudice. But there is also a need to protect people from having violence perpetrated against them. When someone calls a black person the “n” word out of hatred, he or she is not expressing a new idea or outlining a valuable thought. They are committing an act of violence. Speech has great power. It can—and often does—serve as a tool to marginalize and oppress people. Laws that restrict hate speech simply seek to prevent violence against marginalized, oppressed groups in order to prevent them from becoming further marginalized and oppressed. There are freedoms to do things, and there are freedoms from things. When our freedom to speak our mind impinges on someone’s freedom from fear, or on someone’s right to feel safe in their community, then that freedom should not stand unregulated in any group that wishes to create a safe and respectful society for its members. We cannot create a respectful learning environment at our university if students from marginalized groups feel that their administration condones acts of violence against them. University regulations against hate speech are entirely necessary for maintaining respect and dignity among the student body, and Harvard’s policies to this end are well thought-out and fair—and certainly not worthy of protest.

### AT: Underground

#### Hate speech bans are good – underground movements are less effective and destructive, and there are still plenty of people who would be deterred and they allow for coalitions of targeted groups to fight back

Parekh, PhD @LSE, 12

(Bhikhu, Is there a case for banning hate speech? In The Content and Context of Hate Speech Ed. Herz and Molnar)

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

Racism can be cured by rules- it’s not inevitable

Yun and Delgado, JDs, 94

(David, partner @Jaudon & Avery LLP, Richard, Law@Alabama, The Neoconservative Case Against Hate-Speech Regulation." Https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2112274. 1994)

How should we see the bellwether argument? In one respect, the argument does make a valid point. All other things being equal, the racist who is known is less dangerous than the one who is not, when she argument ignores is that there is a third alternative, namely the racist who is cured, or at least deterred by rules, policies, end official statements so as to no longer exhibit the behavior he or she once did. Since most conservatives behave that roles and penalties change conduct (indeed they are emote the strongest AmPonents of hanry penalties for crime), the possibility that campus guidelines against hate speech and assault would decrease those behaviors ought to be conceded, Of course, the conservative may argue that regulation has costs of its own—something even the two of us would concede—but this is a different argument from the bellwether on, Another neoconservative objection is that silencing the racist through legislation might deprive the mauve comminity of the 'down hall" opportunity it has to discuss and analyse issues of race when incidents of racism come to light.. But campuses could told three meetings and discussions anyway. The rules are not likely to suppress hate speech entirely; even with them in place, that will continue to be some number of incidents of racist week and behavior. The difference is that now there will be the possibility of campus discipline, hearings, which are even more barely to instigate the "town hell" discussions the argument assumes are desirable. Because the bellwether argument ignores that wiles will have at least some editing effect and that there are other ways of having campuswide discussions short of allowing racial confrontation to flourish, the argument appears to deserve little weight.

## Counterplan Extensions

### 2NC Hate Speech CP

#### Free speech is already regulated in discriminatory ways. Restricting hate speech is important because speech has material effects more important than first amendment rights.

Nielse, Sociology@Northwestern, 6-21-17

(Laura Beth, http://www.latimes.com/opinion/op-ed/la-oe-nielsen-free-speech-hate-20170621-story.html)

As a sociologist and legal scholar, I struggle to explain the boundaries of free speech to undergraduates. Despite the 1st Amendment—I tell my students—local, state, and federal laws limit all kinds of speech. We regulate advertising, obscenity, slander, libel, and inciting lawless action to name just a few. My students nod along until we get to racist and sexist speech. Some can’t grasp why, if we restrict so many forms of speech, we don’t also restrict hate speech. Why, for example, did the Supreme Court on Monday rule that the trademark office cannot reject “disparaging” applications—like a request from an Oregon band to trademark “the Slants” as in Asian “slant eyes.” The typical answer is that judges must balance benefits and harms. If judges are asked to compare the harm of restricting speech – a cherished core constitutional value – to the harm of hurt feelings, judges will rightly choose to protect free expression. But perhaps it’s nonsense to characterize the nature of the harm as nothing more than an emotional scratch; that’s a reflection of the deep inequalities in our society, and one that demonstrates a profound misunderstanding of how hate speech affects its targets. Legally, we tell members of traditionally disadvantaged groups that they must live with hate speech except under very limited circumstances. The KKK can parade down Main Street. People can’t falsely yell fire in a theater but can yell the N-word at a person of color. College women are told that a crowd of frat boys chanting “no means yes and yes means anal” is something they must tolerate in the name of (someone else’s) freedom. At the same time, our regime of free speech protects the powerful and popular. Many city governments, for instance, have banned panhandling at the behest of their business communities. The legal justification is that the targets of begging (commuters, tourists, and consumers) have important and legitimate purposes for being in public: to get to work or to go shopping. The law therefore protects them from aggressive requests for money. Consider also the protections afforded to soldiers’ families in the case of Westboro Baptist anti-gay demonstrations. When the Supreme Court in 2011 upheld that church’s right to stage offensive protetsts at veterans’ funerals, Congress passed the Honoring America’s Veterans’ Act, which prohibits any protests 300 to 500 feet around such funerals. (The statute made no mention of protecting LGBTQ funeral attendees from hate speech, just soldiers’ families). So soldiers’ families, shoppers and workers are protected from troubling speech. People of color, women walking down public streets or just living in their dorm on a college campus are not. The only way to justify this disparity is to argue that commuters asked for money on the way to work experience a tangible harm, while women catcalled and worse on the way to work do not — as if being the target of a request for change is worse than being racially disparaged by a stranger. In fact, empirical data suggest that frequent verbal harassment can lead to various negative consequences. Racist hate speech has been linked to cigarette smoking, high blood pressure, anxiety, depression and post-traumatic stress disorder, and requires complex coping strategies. Exposure to racial slurs also diminishes academic performance. Women subjected to sexualized speech may develop a phenomenon of “self-objectification,” which is associated with eating disorders. These negative physical and mental health outcomes — which embody the historical roots of race and gender oppression — mean that hate speech is not “just speech.” Hate speech is doing something. It results in tangible harms that are serious in and of themselves and that collectively amount to the harm of subordination. The harm of perpetuating discrimination. The harm of creating inequality. Instead of characterizing racist and sexist hate speech as “just speech,” courts and legislatures need to account for this research and, perhaps, allow the restriction of hate speech as do all of the other economically advanced democracies in the world. Many readers will find this line of thinking repellent. They will insist that protecting hate speech is consistent with and even central to our founding principles. They will argue that regulating hate speech would amount to a serious break from our tradition. They will trivialize the harms that social science research undeniably associates with being the target of hate speech, and call people seeking recognition of these affronts “snowflakes.” But these free-speech absolutists must at least acknowledge two facts. First, the right to speak already is far from absolute. Second, they are asking disadvantaged members of our society to shoulder a heavy burden with serious consequences. Because we are “free” to be hateful, members of traditionally marginalized groups suffer.

### Solvency- Codes Work

#### Hate speech codes are effective they create legal recognition which is key to challenge a culture of racism.

Rosenfel, Prof of Human Rights @Cardozo, 03

(Michel, 24 Cardozo L. Rev. 1523 2002-2003)

The principal disadvantages to the approach to hate speech¶ under consideration, on the other hand, are: that it inevitably has¶ to confront difficult line drawing problems, such as that between¶ fact and opinion in the context of the German scheme of¶ regulation; that when prosecution of perpetrators of hate speech¶ fails, such as in the British Southern News case discussed above,'30¶ regulation may unwittingly do more to legitimate and to¶ disseminate the hate propaganda at issue than a complete absence¶ of regulation would have;' that prosecutions may be too selective¶ or too indiscriminate owing to (often unconscious) biases¶ prevalent among law enforcement officials, as appears to have¶ been the case in the prosecutions of certain black activists under¶ the British Race Relations Act;'32 and, that since not all that may¶ appear to be hate speech actually is hate speech-such as the¶ documentary report involved in Jersild33 or a play in which a racist¶ character engages in hate speech, but the dramatist intends to¶ convey an anti-hate message-regulation of that speech may¶ unwisely bestow powers of censorship over legitimate political,¶ literary and artistic expression to government officials and judges.¶ In the last analysis, none of the existing approaches to hate¶ speech are ideal, but on balance the American seems less¶ satisfactory than its alternatives. Above all, the American¶ approach seems significantly flawed in some of its assumptions, in¶ its impact and in the message it conveys concerning the evils¶ surrounding hate speech. In terms of assumptions, the American¶ approach either underestimates the potential for harm of hate¶ speech that is short of incitement to violence, or it overestimates¶ the potential of rational deliberation as a means to neutralize calls¶ to hate. In terms of impact, given its long history of racial¶ tensions, it is surprising that the United States does not exhibit¶ greater concern for the injuries to security, dignity, autonomy and¶ well being which officially tolerated hate speech causes to its black¶ minority. Likewise, America's hate speech approach seems to¶ unduly discount the pernicious impact that racist hate speech may have on lingering or dormant racist sentiments still harbored by a¶ non-negligible segment of the white population.'34 Furthermore,¶ even if we discount the domestic impact of hate speech, given the¶ worldwide spread of locally produced hate speech, such as in the¶ case of American manufactured Neo-Nazi propaganda¶ disseminated through the worldwide web, a strong argument can¶ be made that American courts should factor in the obvious and¶ serious foreign impact of certain domestic hate speech in¶ determining whether such speech should be entitled to¶ constitutional protection. Finally, in terms of the message¶ conveyed by refusing to curb most hate speech, the American¶ approach looms as a double-edged sword. On the one hand,¶ tolerance of hate speech in a country in which democracy has been¶ solidly entrenched since independence over two hundred years ago¶ conveys a message of confidence against both the message and the¶ prospects of those who endeavor to spread hate.'35 On the other¶ hand, tolerance of hate speech in a country with serious and¶ enduring race relations problems may reinforce racism and¶ hamper full integration of the victims of racism within the broader¶ community.'36¶ The argument in favor of opting for greater regulation of hate¶ speech than that provided in the United States rests on several¶ important considerations, some related to the place and function¶ of free speech in contemporary constitutional democracies, and¶ others to the dangers and problems surrounding hate speech.¶ Typically, contemporary constitutional democracies are¶ increasingly diverse, multiracial, multicultural, multireligious and¶ multilingual. Because of this and because of increased migration,¶ a commitment to pluralism and to respect of diversity seem¶ inextricably linked to vindication of the most fundamental¶ individual and collective rights. Increased diversity is prone to¶ making social cohesion more precarious, thus, if anything,¶ exacerbating the potential evils of hate speech. Contemporary¶ democratic states, on the other hand, are less prone to curtailing free speech rights than their predecessors either because of deeper¶ implantation of the democratic ethos or because respect of¶ supranational norms has become inextricably linked to continued¶ membership in supranational alliances that further vital national¶ interests.¶ In these circumstances, contemporary democracies are more¶ likely to find themselves in a situation like stage four in the context¶ of the American experience with free speech rather than in one¶ that more closely approximates a stage one experience.'37 In other¶ words, to drown out minority discourse seems a much greater¶ threat than government prompted censorship in contemporary¶ constitutional democracies that are pluralistic. Actually, viewed¶ more closely, contemporary pluralistic democracies tend to be in a¶ situation that combines the main features of stage two and stage¶ four. Thus, the main threats to full fledged freedom of expression¶ would seem to come primarily from the "tyranny of the majority"¶ as reflected both within the government and without, and from the¶ dominance of majority discourses at the expense of minority ones.¶ If it is true that majority conformity and the dominance of its¶ discourse pose the greatest threat to uninhibited self-expression¶ and unconstrained political debate in a contemporary pluralist¶ polity, then significant regulation of hate speech seems justified.¶ This is not only because hate speech obviously inhibits the selfexpression¶ and oopportunity of inclusion of its victims, but also,¶ less obviously, because hate speech tends to bear closer links to¶ majority views than might initially appear. Indeed, in a¶ multicultural society, while crude insults uttered by a member of¶ the majority directed against a minority may be unequivocally¶ rejected by almost all other members of the majority culture, the¶ concerns that led to the hate message may be widely shared by the¶ majority culture who regard of other cultures as threats to their¶ way of life. In those circumstances, hate speech might best be¶ characterized as a pathological extension of majority feelings or¶ beliefs.¶ So long as the pluralist contemporary state is committed to¶ maintaining diversity, it cannot simply embrace a value neutral¶ mindset, and consequently it cannot legitimately avoid engaging in¶ some minimum of viewpoint discrimination. This is made clear by¶ the German example, and although the German experience has¶ been unique, it is hard to imagine that any pluralist constitutional¶ democracy would not be committed to a similar position, albeit to¶ a lesser degree.'38 Accordingly, without adopting German free speech jurisprudence, at a minimum contemporary pluralist¶ democracy ought to institutionalize viewpoint discrimination¶ against the crudest and most offensive expressions of racism,¶ religious bigotry and virulent bias on the basis of ethnic or national¶ origin

### AT: Precedent

#### We control uniqueness- hate speech silences in the status quo

Cohen 15

(Tanya Cohen, Here Is Why It’s Time To Get Tough On Hate Speech In America, Thought Catalog, January 5, 2015 http://thoughtcatalog.com/tanya-cohen/2015/01/here-is-why-its-time-to-get-tough-on-hate-speech-in-america/)

Minorities already face widespread discrimination in our society. America’s Orwellian notion of “freedom of speech” as protecting hateful speech is even more abhorrent when you consider how the voices of minorities are persistently marginalized and how they are routinely denied a voice while the rich and powerful are allowed to demean and dehumanize minorities under the guise of “free speech”. How are vulnerable minorities expected to speak up about the injustices that they face when they are always shouted down by the hateful voices of the rich and powerful? Hate speech is not “freedom” to people of color who face constant racist abuse, transgender people who receive non-stop harassment and misgendering, or women visiting abortion clinics who get heckled and called murderers. Not to mention, the right of minorities to NOT be exposed to hate speech is infinitely more important than the so-called “right” of bigots to spew hate speech at minorities. Freedom of speech is extremely important, but so are basic human rights and human decency.