#### This was our hate speech DA file – we mostly read hate speech on case with more general case turns so this may not be the most comprehensive or useful file

# DA

## DA

#### Removing restrictions on constitutionally protected speech permits hate speech – the aff reinforces inequities at the level of speech

Boler 04 [Boler, Megan (“Megan Boler is Professor in the Ontario Institute for Studies in Education at the University of Toronto and editor of "Digital Media and Democracy: Tactics in Hard Times"). "All Speech Is Not Free: The Ethics of" Affirmative Action Pedagogy" Vol. 240, Democratic Dialogue in Education: TROUBLING Speech, DISTURBING Silence (2004), pp. 3-13, https://www.jstor.org/stable/42978376]

On what basis might one justify an affirmative action pedagogy? The first justifica-¶ tion is forwarded by legal scholars in the area of critical race theory. The authors of¶ Words That Wound (Matsuda, Lawrence, Delgado, & Crenshaw, 1993) address the¶ tension between the First and Fourteenth Amendment. The tension arises because,¶ in fact, all people are not equally protected under the law because of the institutionalized inequities within our society. This reality complicates the effectiveness¶ of the First Amendment. Scholarship in critical race theory and educational analy-¶ ses document that in recent years, we find incidents of hate speech primarily to be¶ directed at racial, religious, or sexual minorities. Not surprisingly, one finds in turn¶ that invocations of the right to free speech are most often invocations to protect¶ the right of the members of the dominant culture to express their hatred toward¶ members of minority culture. These authors make important legal and historical¶ cases to support their observation that, in practice, while the rhetoric of the First¶ Amendment is a buzz word that makes all of us want to rally for its principle, in¶ practice "the first amendment arms conscious and unconscious racists - Nazis and¶ liberals alike - with a constitutional right to be racist. Racism is just another idea¶ deserving of constitutional protection like all ideas" (Matsuda et al., 1993, p. 15). A¶ scholar from another discipline addresses classroom dynamics and similarly argues¶ that we must "read the appeal to the First Amendment as itself a kind of panic response in the same order as hate speech itself" (Roof, 1999, p. 45).¶ A second justification for privileging marginalized voices is based on the meas-¶ urement of the psychological effect of hate speech on targeted groups and individ-¶ uals. As one legal scholar explains, hate speech affects its victim in the visceral ex-¶ perience of a "disorienting powerlessness" (Lawrence, 1993, p. 70), an effect¶ achieved because hate speech is comparable to an act of violence. In reaction to¶ hate speech, the target commonly experiences a "state of semishock," nausea, and dizziness, and an inability to articulate a response. This scholar gives an example of a student who is white and gay. The student reports that in an instance where he¶ was called "faggot" he experienced all of the above symptoms. However, when he¶ was called "honky," he did not experience the disorienting powerlessness. As the¶ scholar remarks, "the context of the power relationships in which the speech takes¶ place, and the connection to violence must be considered as we decide how best to¶ foster the freest and fullest dialogue within our communities" (Lawrence, 1993,¶ p. 70).¶ These considerations bring me to another key point: The analysis of utterance¶ in the classroom requires more than rational dialogue. In fact, the critical race¶ theorists argue that because racism is irrational, no amount of rational dialogue¶ will change racist attitudes. I disagree, in part because I am convinced that class-¶ room discussion must recognize the emotions that shape and construct the mean-¶ ings of our claims, our interchange with one another, and our investments in par-¶ ticular worldviews. Thus, a discussion of racism or homophobia cannot rely¶ simply on rational exchange but must delve into the deeply emotional investments¶ and associations that surround perceptions of difference and ideologies. One is po-¶ tentially faced with allowing ones worldviews to be shattered, in itself a pro-¶ foundly emotionally charged experience

#### Unrestricted free speech perpetuates hate speech and invites violence.

Arthur 12. [Joyce. Founder of FIRST, Activist, Author, Journalist. “Should Hate Speech be a Crime?” New Internationalist Magazine. ]

Hate speech is a public expression of discrimination against a vulnerable group (based on race, gender, sexual orientation, disability etc) and it is counter-productive not to criminalize it. A society that allows hate speech to go unpunished is one that tolerates discrimination and invites violence. Decades of hateful anti-abortion rhetoric in the US led to assassinations of providers, because hate speech is a precursor to violence.¶ Hate speech has no redeeming value, so we should never pretend it occupies a rightful spot in the marketplace of ideas, or has anything to do with ‘rational debate’. Challenging hate speech through education and debate is not enough. Governments have a duty to protect citizens and reduce discrimination and violence by criminalizing hate speech.

#### Hate speech codes empirically decrease racist beliefs

Rumney 3 [32 Comm. L. World Rev. 117 (2003) The British Experience of Racist Hate Speech Regulation: A Lesson for First Amendment Absolutists, Rumney, Philip N. S. (Philip Rumney is a professor of criminal justice at Bristol Law School ); https://heinonline.org/HOL/Page?handle=hein.journals/comlwr32&start\_page=117&collection=journals&id=127 //BWSWJ]

In fact, far from 'confirming' Strossen's prediction that regulation forces racist 'thought and expression' underground, thereby making it more difficult to challenge, Lasson merely speculates as to the possible effect of the British legislation. Hence his use of the words 'possible' and 'could'. It is even less clear how precisely the incitement law would have any impact upon racist 'thought' as Strossen claims.'79 Likewise, in the context of Lasson's comments, there is no evidence whatsoever that hate speech regulation in Britain has, in fact, increased racial ill will. Indeed, it is evident from attitude surveys that there has been a gradual reduction in racist beliefs in Britain, a trend that appears to have accelerated in more recent years,180 as well as a general reduction of support for the racist political parties since the 1970s. 181

#### Hate speech chills campus behavior – this turns AC impacts. Tsesis 10(Tsesis, Alexander. "Burning Crosses On Campus: University Hate Speech Codes." Connecticut Law Review 617. 2010. Web. December 05, 2016. <http://lawecommons.luc.edu/facpubs/131/>.)

Allowing students or faculty members to intimidate others through hate symbols or expressions favors the bigots' desire to advocate discrimination and violence while denying the victims' reasonable expectation of security while on campus. 29 0 The constitutional importance of the First Amendment to democratic governance and self-assertion does not extend to menacing messages that tend to diminish the targeted group's sense of security and its ability to enjoy college commons areas and to attend university sponsored events.291 Students and faculty members are more likely to think twice before going to hear the college orchestra or heading to the student union if it requires walking through an area where a cross has recently been burned, a swastika has been displayed, or a supremacist rally has taken place. Hate speakers are neither inviting intellectual debate and rejoinder nor seeking political dialogue. Theirs is a campaign of silencing through intimidation-something that threatens the university's "marketplace of ideas" and is no benefit to educational interactions.292 Academic freedom is not alicense for harassment. Neither does hate speech further the pursuit for' truth: calling Jews vermin, blacks apes, women whores, Native Americans savages, Tutsis cockroaches, or Mexicans lazy has nothing to do with truth. These derogatory statements are meant to exclude and stamp certain groups with the label of outsider to the university community. Derisive speech becomes academically punishable when it is meant to defame, intimidate, threaten, terrify, or instigate violence.

# Frontlines

## Solvency Cards

### Rumney

#### Hate speech codes effectively reduce influence of extremist groups – Britain proves

Rumney 3 [32 Comm. L. World Rev. 117 (2003) The British Experience of Racist Hate Speech Regulation: A Lesson for First Amendment Absolutists, Rumney, Philip N. S. (Philip Rumney is a professor of criminal justice at Bristol Law School ); https://heinonline.org/HOL/Page?handle=hein.journals/comlwr32&start\_page=117&collection=journals&id=127 //BWSWJ]

The impact of the incitement provision in doing away with the more crude and vicious racist words and behaviour should not be underestimated. While it might be assumed that the use of more moderate and restrained language may be dangerous as suggested by the White Paper, one can argue that the language that the incitement law prohibits could be even more dangerous. For example, it would appear that some individuals who have engaged in acts of terrorism are linked with right-wing, extremist groups that use provocative and violent language. Certainly, amongst such people there appears to be a progression from milder forms of racist material to the more extreme, which in the latter instance might well be unlawful under English law. Such material may help to inform, motivate and inspire violent action. Indeed, it is ultimately difficult to separate the message contained in extremist racist materials and the actions of some of those who read such material.'4 2 Two people who fit within this characterization are Timothy McVeigh who was responsible for the Oklahoma City bombing,'4 3 and the British example of David Copeland. In the case of McVeigh his attraction to more extremist publications such as The TurnerDiaries,'44 anti-government, militia and racist literature grew over time and appeared to inform, validate and inspire his deep antagonism for the Federal government in the United States. 45 In point of fact, it has been claimed that McVeigh's attack on the Federal building in Oklahoma was similar to a bombing portrayed in The TurnerDiaries.4 6 David Copeland, a self-confessed neo-Nazi, was convicted in 2000 of carrying out three nail bombings in London, killing three people and injuring more than 130 others. 4 ' It is evident that over a period of years Copeland was progressively drawn towards more extreme racist material on the Internet and, like McVeigh, possessed a copy of The Turner Diaries. He joined the British National Party (from which he resigned for its failure to engage in a 'paramilitary struggle" 48) and later joined the even more extreme National Socialist Movement (NSM).149 The NSM was an organization that expressly encouraged its members to engage in acts of violence against ethnic minority groups. For example, on an NSM website members were given advice on how to fight a 'racial war'.150 Whilst it would be absurd to suggest that the exposure to extremist material was the only causal factor in the actions of McVeigh and Copeland, the potential impact of the more violent and extreme racist material on such disaffected individuals should not be ignored and may provide a key justification for regulation of the most provocative racist material. In this way, it may be argued that the incitement provision has performed a useful purpose in reducing the dissemination of much (though clearly not all) of this type of material in Britain. In claiming that hate speech laws are ineffectual in countering racism, Strossen claims that 'even vicious racist epithets have gone unpunished under the British law'.'5' To support this assertion Strossen cites a case involving Kingsley Read, then chairman of the British National Party, who during a public speech in 1976 made reference to 'niggers, wogs, and coons' and when referring to the recent murder of an Asian stated 'Last week in Southall, one nigger stabbed another '152 nigger. Very unfortunate. One down a million to go . Of course, what Strossen neglects to mention is why Read was not convicted. He was charged under the Race Relations Act 1965, section 6(1) that required the prosecution to prove that the defendant had 'intent' to incite racial hatred. Given that Read described the comments as a 'joke', it would make the proving of intent more difficult. Indeed, this was identified by a number of scholars as severely limiting the effectiveness of section 6.151 Perhaps more important were comments made by the trial judge in this case. During his summing up the trial judge gave the jury what was in effect a direction to acquit the defendant. He stated that in his view Read's comments did not fulfil the 'threatening, abusive or insulting' criteria,154 and also stated that 'you have got to allow toleration and freedom to the individual otherwise we are caught up in a vice of dictatorship, repression and slavery'.'5 5 The decision of the jury in Read to acquit resulted from the language employed by the trial judge as much as it did from the limitations of the incitement provision itself. Indeed, contrary to Strossen's analysis, it is evident that the expression of 'vicious racist epithets' has undoubtedly resulted in convictions in other cases. 5 6 In addition, it is worth noting that whilst the incitement provision may not have deterred individuals such as Read, it has limited the activities of others. Colin Jordan (the defendant in Jordanv Burgoyne"7 ), leader of the National Socialist Movement in the 1960s, was 'undermined by his refusal to martyr himself to the new [incitement] law'. 58 Thurlow has also claimed that the incitement provision, in conjunction with other factors, led to the decline of the National Front.15 9 In this context it is also worth referring to the Public Order Act 1936 which, whilst not specifically designed to deal with hate speech,160 was intended inter alia to impact upon the activities of organized racist groups.' 6 ' There is evidence that the Public Order Act 1936 did have an impact upon the activities of fascists in the 1930s. It has been claimed that the passage of the Act led to some improvement in the conduct of meetings and demonstrations,162 particularly in areas where there had been significant violence between fascists and their opponents.163 It has also been suggested that the 'startling' decline of anti-Semitism in the 1930s was partly as a result of 'the actions of the police and the government... The law did not abandon the streets to private armies as was done in Germany.

### Hodulik

#### Chilling effect and abuse are empirically denied

Hodulik 91 [Racist Speech on Campus; Wayne Law Review, Vol. 37, Issue 3 (Winter 1991), pp. 1433-1450 Hodulik, Patricia https://heinonline.org/HOL/Page?handle=hein.journals/waynlr37&start\_page=1433&collection=journals&id=1445 //BWSWJ]

As the controversy over speech rules has continued in the press and other media, they have been cited as evidence of a trend toward thought control, "politically correct" thinking, and other repressive evils.41 There is, however, little in these cases to suggest that the Wisconsin regulation has had the effect of cutting off debate within the university community, or that a narrow restriction on discriminatory, harassing speech creates a threat to free expression. Rather, the practical experiences with the Wisconsin rule indicate that the risk of a "chilling effect" on speech from a narrowly applicable rule is minimal or nonexistent. The small number of complaints and even smaller number of disciplinary actions under the Wisconsin rule reflects its limited applicability and impact on campus speech and other expressive activities. As noted above, the regulation is so narrow that many of the incidents leading to its adoption would not be prohibited by its terms.42 The "Harlem room" and "Fiji Island party" episodes mentioned above would not, for example, have been prohibited under the rule because they did not involve racist epithets directed at specific individuals, coupled with the dual intent to demean and to make the educational environment hostile for those persons. Similarly, a variety of complaints brought since the adoption of the rule have been dismissed because the conduct involved was beyond the rule's scope. In a number of situations, the behavior simply was not the kind of specifically directed, intentionally demeaning and harmful discriminatory speech proscribed by the rule even where it included offensive language or opinions. Incidents found not to violate Wisconsin's rule included: The display, in a campus gallery, of artwork offensive to Catholics; a student's collective reference to a group of student senators as "rednecks;" a statement by a Libyan to a Zionist that Libyans would ultimately destroy Zionism; and a cartoon in a student newspaper on the subject of abortion that was allegedly offensive to Christians.4 As these situations illustrate, there is a wide range of expressive conduct unaffected by the rule, even if it is regarded as offensive by some. Such conduct includes artistic expression, opinions and even name-calling aimed at a group of people (as opposed to individuals.) Conversely, situations that have resulted in disciplinary action under the rule reflect the narrow range of expressive conduct to which it applies: Calling a woman "fucking cunt" and "fucking bitch"; calling a black residence hall employee "a piece of shit nigger"; and sending an Islamic professor a computer message saying, "Death to all Arabs!!! Die Islamic scumbags!"" These situations are very similar to Chaplinsky's fighting words model, in which the speech is not offered in the marketplace of ideas and does not invite any further discourse, but only serves to provoke an immediate and potentially violent response.4 5 In fact, these situations represent little more than verbal assaults.46 Regulation of the expressive conduct represented in these examples is hardly likely to inhibit other forms of expression, even expression that is offensive to some. Indeed, there is little to suggest that the existence and application of a narrow rule prohibiting discriminatory harassment has had the kind of "chilling effect" initially predicted by critics. The Wisconsin rule does not apply, and has not been applied, to the merely offensive, or in group settings or classrooms, but rather to abusive, one-to-one hate speech. The small number of complaints leading to disciplinary action,47 and the kinds of behavior for which discipline has been imposed, simply do not support a conclusion that the rule has restricted debate or expression. The reality is that discipline has been infrequently invoked; it has been applied only to incidents involving individually directed insults. A wide range of expression has continued unabated and unaffected by the rule. 4 Under these circumstances, no widespread "chilling" of campus speech activities or threat to first amendment values appears to have occurred as a result of enforcing the rule.

#### Wisconsin is a good model – tons of colleges enact codes similar to it

Hodulik 91 [Racist Speech on Campus; Wayne Law Review, Vol. 37, Issue 3 (Winter 1991), pp. 1433-1450 Hodulik, Patricia https://heinonline.org/HOL/Page?handle=hein.journals/waynlr37&start\_page=1433&collection=journals&id=1445 //BWSWJ]

To assess the policy implications of adopting university rules regulating hate speech, it is necessary to understand both the context in which regulatory efforts arose, and the nature of the rules that emerged following public debate and controversy over these efforts. A wave of racist incidents on college campuses provided the primary impetus for the adoption of regulations to limit discriminatory speech. The University of Wisconsin System's rule, for example, was approved following a series of highly publicized episodes of racist conduct involving university students: A fraternity placed a large cardboard caricature of a black manon its lawn to announce a "Fiji Island" party;4 another fraternity held a party featuring a "Harlem room," in which it served watermelon punch and fried chicken, and students wore black- face;5 racist name-calling led to an altercation at a third fraternity house.6 Many other universities across the country experienced similar events, and many-like the University of Wisconsin System-responded with policies or rules prohibiting racist or discriminatory harassment.

### France

#### Legal restrictions can work – France proves

Bleich 15 [Erik Bleich Professor of Political Science, Middlebury College, “Limiting Hate Speech Is Important, Even After Charlie Hebdo”, 01/14/2015 //BWSWJ]

If the social restraints in France are looser than those in the United States, the legal ones are stricter. For many Americans, France’s hate speech laws seem to come straight from George Orwell’s nightmares. It is hard to square that image with the truth that they were passed by the democratically-elected legislature rather than imposed by a dictator. As one French judge explained to me, the restrictions were deliberately placed in the “freedom of the press” law to signal that they were to be treated with the utmost care. Walking the tightrope between upholding freedom of expression and punishing racist hate speech is difficult, but possible. The French high court examined 105 cases between passage of the law in 1972 and 2012. It sided with restricting speech fewer than 60% of the cases, a rate that dropped to about 40% in the most recent decade. Moreover, Charlie Hebdo has a well-established legal right to produce satire that offends. Since its re-launch in 1992, it has been involved in roughly 50 court cases regarding freedom of expression, but was acquitted far more often than it was convicted. Orwellian scenarios just aren’t coming to pass in France, where courts have honed their skills in adjudicating racist speech cases. It is perfectly possible to feel attached to free speech while seeing value in France’s hate speech laws. “Islam kills!” is a horrible refrain, but statements about the relationship between religions and violence must be protected, even if they are couched in shocking terms at extreme right rallies. “Islam out of Europe!” is closer to the French legal line, but probably does not cross it; French law prohibits provocation against groups of people defined by religion, not denigrating a religion itself or challenging its beliefs. But if the chants had turned into “Muslims kill!” and “Get Muslims out of France by any means necessary!” French law would enable repression of that speech. These statements call for human rights violations against an entire group of people. Especially in the post-Charlie Hebdo context, this kind of inflammatory language harms the public debate more than it contributes to it, and may even endanger lives. Freedom of speech is vital, but it is not the only value we have. We can defend Charlie Hebdo‘s right to offend, understand the social reasons why the New York Times did not publish their cartoons, and support legal restrictions on far right attempts to incite hatred and violence. This is a more complicated stance than insisting on free speech at all costs. But it is also a better one.

## AT – No Link

### General

#### Hate speech is protected by the First Amendment – Supreme Court Ruling proves.

#### Free Dictionary. Free Speech. The Free Dictionary. http://legal-dictionary.thefreedictionary.com/Protected+speech

Since the 1980s, a number of laws have been passed that attempt to regulate or ban "hate speech," which is defined as utterances, displays, or expressions of racial, religious, or sexual bias. The U.S. Supreme Court has generally invalidated such laws on the ground that they infringe First Amendment rights. In R.A.V. v. City of St. Paul, 505 U.S. 377, 112 S. Ct. 2538, 120 L. Ed. 2d 305 (1992), the Court invalidated the city of St. Paul's hate­crime ordinance, ruling that it unconstitutionally infringed free speech. The defendant in that case had been prosecuted for burning a cross on the lawn of an African­American family's residence. The Minnesota Supreme Court held that the ordinance was limited to restricting conduct that amounted to Chaplinksky "fighting words." Therefore, the ordinance was not impermissibly content­based because it was "narrowly tailored" to further the "compelling governmental interest in protecting the community against bias­motivated threats to public safety and order." The U.S. Supreme Court disagreed. Justice Antonin Scalia, in his majority opinion, wrote that, even assuming that the cross burning was proscribable under the "fighting words" doctrine, the ordinance was, on its face, unconstitutional. It violated the First Amendment because it prohibited "otherwise permitted speech solely on the basis of the subjects the speech addresses." Scalia agreed that the government may constitutionally proscribe content such as LIBEL, but that it may not proscribe only libel that is critical of the government. In Scalia's view, the unprotected features of "fighting words" are their "nonspeech" element of communication. Thus, fighting words are like a noisy sound truck: each is a mode of speech, and both can be used to convey an idea, but neither has a claim on the First Amendment. The government cannot, however, regulate fighting words or a sound truck based on "hostility­or favoritism­towards the underlying message expressed." In addition, the ordinance was not over­broad but underinclusive. The content limitation was impermissible because it displayed "the city council's special hostility towards the particular biases thus singled out." An ordinance not restricted "to the favored topics" would have the same effect the city desired, but without the discrimination against unpopular views. Justice Scalia also noted that the city could have prosecuted the defendant under traditional Criminal Law statutes, including Arson, trespass, and terroristic threats. In his view, the city had other means to address the problem "without adding the First Amendment to the fire."

### AT – Fighting Words

#### Racial Insults do not meet the fighting words protection of a breach of peace.

Byrne ‘91. J. Peter Byrne. 1991 Racial Insults and Free Speech Within the University. Georgetown University Law Center, byrne@law.georgetown.edu //Alpha

The "fighting words" doctrine encompasses direct, scurrilous verbal abuse of an individual or small group likely to incite an immediate breach of the peace. 32 Although the Supreme Court has placed fighting words outside the protection of the first amendment, it has also narrowed the definition of this category of speech over time.33 For speech to fall within the fighting words exception, the Court requires that it have little or no social value and that the prohibition be justified by realistic concerns about a breach of the peace,34 not by official antipathy to the content of the speech. Advocates of regulation of racist insults have struggled with the latter requirement. It is common ground that racist insults have little or no value as expression. But it has proven difficult to satisfy the requirement that the speech bring on an imminent breach of the peace. Obviously, a racist insult may be fighting words if delivered to a target able and inclined to answer with violence. But advocates of regulation understandably want to prohibit racially offensive speech in circumstances in which the targets will not respond with violence. The approach taken by advocates of regulation, therefore, has been to emphasize a harm resulting directly from the scurrilous expression that is analogous to a breach of the peace, such as the listener's severe emotional distress or feeling of loss of social equality. 35 In the context of the university, the harm has been portrayed as the creation of a hostile environment that denies the student target equal educational opportunity.36 This argument has moral weight and legal plausibility, at least when the insult is directed at a specific victim who suffers demonstrable harm. But for published, broadcast, or diffuse insults, the harms suffered do not call for government intervention as insistently as do words sparking physical violence. Government cannot sit by while its citizens fight each other; government can sit by while parties attempt to explain the nature of the emotional or social injury they have suffered from hearing offensive comments. Moreover, public certification of the seriousness of the listener's injury is inseparable from public evaluation of the acceptability of the speaker's message-the very determination that liberals do not wish government ever to make.37 Despite these flaws, however, regulations treating racist insults like fighting words have been the most prevalent and least controversial in the university 38 setting.

### AT – Group Libel

#### Racial Insults do not constitute group libel. Arguments for collapse to a fighting words approach are maintain a flawed view of personhood.

Byrne ‘91. J. Peter Byrne. 1991 Racial Insults and Free Speech Within the University. Georgetown University Law Center, byrne@law.georgetown.edu //Alpha

Efforts to regulate racially offensive speech have also sought to resuscitate the tort of group libel, at least when the speech is directed toward a "captive" audience. 39 Group libel is defined as the depiction of the "depravity, criminality, unchastity, or lack of virtue" of any social group, including a race, which holds the group up to public contempt. ° Although in 1952 the Supreme Court upheld the criminal conviction of a man who distributed leaflets containing an offensive verbal stereotype of blacks under the theory of group liable,41 most commentators do not believe that a federal court today would or should permit a prosecution in similar circumstances because the leaflets were part of an attempt to secure legislation through the political process.42 Rather, advocates of regulation have urged that speech which libels a race be punishable when targeted at a discrete set of individuals who cannot easily avoid the insult.43 Although on the surface this approach emphasizes the defamatory harm of the speech rather than its tendency to precipitate violence, functionally it tends to collapse into the fighting words approach, supporting only regulation of face to face insults, which are the most likely to lead to physical violence." The greater weakness of any group libel approach, however, remains the failure to distinguish between offensive statements about a group that are merely rank vilification and those that instead represent flawed public debate which should not be suppressed. Some arguments seeking to justify broader regulation of racist speech are plainly untenable. For example, it has been argued that a form of group libel based on the theoretical literature on communitarian political values should be recognized. 4 5 The argument posits that because "group membership is a precondition of individual autonomy," 4 6 failure to legally penalize group vilification injures the personhood or social equality of the victim. 47 This argument, however, fails to advance the discussion. If it can be said that the victim of a racial insult belongs to a group that is the primary significance for his "personhood," so does the speaker. In degrading the listener's racial group, the speaker is defending his own racial group by implicitly or explicitly asserting its superiority. If society accepts the primacy of group identity, by what shared values can it justify to the speaker restriction of his outspoken preference for his group to the listener's? The argument seeks to escape this dilemma by invoking an idea of equality among groups as basic to American political life.48 Such a notion of equality must derive from some perspective above group membership, however, and if it is allowed to limit the claims of any group one might conclude that at least some values that transcend group membership are more significant than group values. In any event, such emphasis on the primacy of the interests or values of involuntarily formed groups conflicts with much of the American experience, which has emphasized liberty from the confines of inherited norms and creation of the self. No political theory that fails to accommodate this cultural value will gain many adherents for restricting freedom of expression. 49

## AT Turns

### AT – Democracy

#### White liberal democracy has failed to protect minority victims – hate speech codes are a response to democratic failure

Delgado 98 [Delgado, Richard. "Are Hate-Speech Rules Constitutional Heresy? A Reply To Steven Gey." UNIVERSITY OFPENNSYLVANIA LAW REVIEW Vol. 146. March 01, 1998. Web. December 06, 2016. <http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3437&context=penn\_law\_ review>.]

A similar intuition applies to censorship. Suppression of speech is odious when it is government hat is censoring the speech of a weak, voiceless dissident.'9 There, the dangers of silencing, govern-mental self-aggrandizement, and nest-feathering rise to their most acute level. A powerful actor like government should never be above criticism. But with hate-speech regulation, the opposite situation prevails-an arm of government, usually a university, is intervening to prevent private harm.2 0 Far from trying to insulate itself from criticism, or intervening on the side of the powerful, the university is acting on behalf of persons who are disempowered vis-a-vis their tormentors. Because few, if any, of the dangers of censorship loom, it seems perverse to use the term in that way, just as it would sound strange to call a story ridiculing blind people satire. Gey is particularly concerned with the social-construction justification for anti-hate-speech measures.2 I think it perfectly sensiblewho would want to live in a society ten or twenty percent of whose members were regularly demeaned by face-to-face insults7 and in popular culture? But even if not, this is by no means the only interest proregulation writers have advanced. Racist speech damages the dignity, pecuniary prospects, and psyches of its victims (particularly children),24 while it impedes the ability of colleges to diversify their student bodies. When severe or protracted, it can even cause physical sickness, including high blood pressure, tremors, sleep disturbance, and early death.26 In focusing only on the most abstract and novel of the justifications, Gey has overlooked that hate-speech rules are necessary to promote a number of social and educational objectives of a quite ordinary nature. Moreover, Gey himself often blithely invokes the informed social consensus or "common understanding"27 as though these were not social constructs, and ignores that the status quo (in which minorities suffer frequent slights and insults) has a bias, too.28 Social constructionism, it turns out, is impermissible only when wielded by minorities seeking to change the prevailing situation. In addition, in his fixation on the supposed political dangers of hate-speech regulation, Gey overlooks the numerous other "exceptions" and special doctrines that riddle free-speech law—libel, defamation (even of vegetables and produce), words of threat and of monopoly, state secrets, copyright, plagiarism, disrespectful speech uttered to a judge or other authority figure, and many more.29 With these, the state intervenes on behalf of actors who are quite empowered, such as the military, agribusiness, or the community of commercially successful authors, and where the risks of aggrandizement and increase of power are very real. Government, authors, consumers, and other powerful groups are able to suppress speech that of-fends them, but when a university proposes a speech code to protect some of the most defenseless members of societyblack, brown, gay, or lesbian undergraduates at dominantly white institutionsProfessor Gey charges us with constitutional heresy and warns that we will all end up thought-controlled zombies.0 But racism is a classic case of democratic failure; to insist that minorities be at the mercy of private remonstrance against their tormentors-and that the alternative is censorship-is to turn things on their head.

### AT – Underground

#### Underground speech is empirically denied

Rumney 3 [32 Comm. L. World Rev. 117 (2003) The British Experience of Racist Hate Speech Regulation: A Lesson for First Amendment Absolutists, Rumney, Philip N. S. (Philip Rumney is a professor of criminal justice at Bristol Law School ); https://heinonline.org/HOL/Page?handle=hein.journals/comlwr32&start\_page=117&collection=journals&id=127 //BWSWJ]

In fact, far from 'confirming' Strossen's prediction that regulation forces racist 'thought and expression' underground, thereby making it more difficult to challenge, Lasson merely speculates as to the possible effect of the British legislation. Hence his use of the words 'possible' and 'could'. It is even less clear how precisely the incitement law would have any impact upon racist 'thought' as Strossen claims.'79 Likewise, in the context of Lasson's comments, there is no evidence whatsoever that hate speech regulation in Britain has, in fact, increased racial ill will. Indeed, it is evident from attitude surveys that there has been a gradual reduction in racist beliefs in Britain, a trend that appears to have accelerated in more recent years,180 as well as a general reduction of support for the racist political parties since the 1970s. 181

### AT – Equality

#### Only balancing free speech against the rights of victims promotes equality for all. Catlin 94, Scott J. Catlin, “Proposal for Regulating Hate Speech in the United States: Balancing Rights under the International Covenant on Civil and Political Rights”, 69 Notre Dame L. Rev. 771 (1994). http://scholarship.law.nd.edu/ndlr/vol69/iss4/4

The belief that “all Men are created equal” is a basic tenet of one of our most cherished and fundamental documents, the Declaration of Independence.“9 Equality cannot abide weighing the right of one person more heavily than the right of another. The First Amendment must not continue to protect the dangerous and harmful hate speech of racists and bigots at the expense of silencing and subordinating the voices and rights of minorities. The inordinate protection of such worthless speech is a”quixotic tilt at wind mills which belittles great principles of liberty.“220 It is time that the United States recognizes the rights of the speaker and the listener. It is time that the United States fully accept its obligations under the International Covenant on Civil and Political Rightsjoining the international community in protecting the rights of all by balancing the competing and equal rights of each.

### AT – Victimization

#### Speech codes would not create a victim mentality. Delgado ’94 [Charles Inglis Thomson Professor of Law, University of Colorado] and David Yun [JD, University of Colorado], “The Neo-conservative Case Against Hate Speech Regulation Lively, D’souza, Gates, Carter, and the Toughlove Crowd,”1994. //Alpha

Would putting into place hate-speech rules induce passivity and a victim mentality among minority populations? This seems unlikely, among other reasons because other alternatives will remain as before. No African American or lesbian student is required to make a complaint when targeted by vicious verbal abuse. He or she can talk back or ignore it if he or she sees fit. Hate-speech rules simply provide an additional avenue of recourse to those who wish to take advantage of them. Indeed, one could argue that filing a complaint constitutes one way of taking charge of one’s destiny: One is active, instead of passively “lumping it” when verbal abuse strikes. It is worth noting that we do not make the “victimization” charge in connection with other offenses that we suffer, such as having a car stolen or a house burglarized, nor do we encourage those victimized in this fashion to “rise above it” or talk back to their victimizer. If we see recourse differently in the two sets of situations it may be because we secretly believe that a black who is called “nigger” by a group of whites is in reality not a victim. If so, it would make sense to encourage him not to dwell on or sulk over the event. But this is different from saying that filing a complaint deepens victimization; moreover, many studies have shown it simply is untrue.68 Racist speech is the harm. Filing a complaint is not. There is no empirical evidence that filing a civil rights complaint causes otherwise innocuous behavior to acquire the capacity to harm the complainant.

### AT – Patronization

#### It’s not paternalistic for the state to help protect minorities – our country is so messed up the state is required to guarantee liberty

Abrams 92 [Willie Abrams (Assistant General Counsel, NAACP, Baltimore, Maryland. B.A. 1971, J.D. 1974, Columbus School of Law, Catholic University of America.); 1992; “RACIAL EQUALITY OVER HATE SPEECH”; Wm. Mitchell L. Rev. 18; http://heinonline.org/hol-cgi-bin/get\_pdf.cgi?handle=hein.journals/wmitch18&section=56; //BWSWJ]

Somehow, though, to turn the tide, the accusation is made that we are engaged in, or we wish to engage in, social engineering. Unfortunately for African-Americans, we have to use the power of government to gain freedom. We did not freely immigrate to this country from elsewhere. We were brought here against our will and enslaved. We have had to resort to using the means of the state to gain freedom, starting with the American Civil War, by siding with the Union forces against the Confederate, and then during the process of Reconstruction, and then during the Civil Rights movements of the 1950s and the 1960s. So government involvement in guaranteeing liberty and equal rights to African-Americans is not something considered paternalistic. I don't think, in terms of racial equality, that we subscribe to the notion that the government that governs least governs best. That is just not the history of this country. That may be the history of some other country, but not the United States.

### AT – Shield of the Movement

#### Saying free speech is the one value that has protected civil rights is inaccurate and exudes privilege – NAACP confirms there’s a difference between free and hate speech

Abrams 92 [Willie Abrams (Assistant General Counsel, NAACP, Baltimore, Maryland. B.A. 1971, J.D. 1974, Columbus School of Law, Catholic University of America.); 1992; “RACIAL EQUALITY OVER HATE SPEECH”; Wm. Mitchell L. Rev. 18; http://heinonline.org/hol-cgi-bin/get\_pdf.cgi?handle=hein.journals/wmitch18&section=56; //BWSWJ]

It was very interesting to hear Professor Strossen comment about my boss, Dr. Benjamin Hooks, Executive Director of the NAACP,' saying that the First Amendment had been sword and shield of civil rights movement. Clearly, the NAACP has relied on the First Amendment in these cases. But in this case, the NAACP filed an amicus brief in support of the city of St. Paul because, Ms. Strossen and others to the contrary, we see a conflict here between racial equality and hate speech. Now we don't use the phrase "free speech" because we don't think free speech is involved here. It is hate conduct and it should be regulated. The NAACP has fought hard to make it possible for AfricanAmericans to be integrated into this society and to enjoy equal benefits and equal rights as other Americans. We believe that African-American families should be able to live in neighborhoods that are predominantly white. We believe that AfricanAmerican students should be able to attend colleges and universities that may be overwhelmingly white. We think that black families and black students, once they get there, should be free of certain kinds of attacks. That is why this case raises such rancor because there are other implications that people see that could flow from this particular case.

### AT – Psychology

#### You’re wrong about psychology, free speech makes people MORE likely to escalate violence

Delgado and Yun 94 [Richard Delgado and David H. Yun, Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation, 82 Cal. L. Rev. 871 (1994). Available at: http://scholarship.law.berkeley.edu/californialawreview/vol82/iss4/5 //BWSWJ]

Hate speech may make the speaker feel better, at least temporarily, but it does not make the victim safer. Quite the contrary, the psychological evidence suggests that permitting one person to say or do hateful things to another increases, rather than decreases, the chance that he or she will do so again in the future. 2 Moreover, others may believe it is permissible to follow suit. 3 Human beings are not mechanical objects. Our behavior is more complex than the laws of physics that describe pressure valves, tanks, and the behavior of a gas or liquid in a tube. In particular, we use symbols to construct our social world, a world that contains categories and expectations for "black," "woman," "child," "criminal," "wartime enemy," and so on.5 4 Once the roles we create for these categories are in place, they govern the way we speak of and act toward members of those categories in the future.55 Even simple barnyard animals act on the basis of categories. Poultry farmers know that a chicken with a single speck of blood will be pecked to death by the others." With chickens, of course, the categories are neural and innate, functioning at a level more basic than language. But social science experiments demonstrate that the way we categorize others affects our treatment of them. An Iowa teacher's famous "blue eyes/brown eyes" experiment showed that even a one-day assignment of stigma can change behavior and school performance.57 At Stanford University, Phillip Zimbardo assigned students to play the roles of prisoner and prison guard, but was forced to discontinue the experiment when some of the participants began taking their roles too seriously. 8 And Diane Sculley's interviews with male sexual offenders showed that many did not see themselves as offenders at all. In fact, research suggests that exposure to sexually violent pornography increases men's antagonism toward women and intensifies rapists' belief that their victims really welcomed their attentions.59 At Yale University, Stanley Milgram showed that many members of a university community could be made to violate their conscience if an authority figure invited them to do so and assured them this was permissible and safe.6 " The evidence, then, suggests that allowing persons to stigmatize or revile others makes them more aggressive, not less so. Once the speaker forms the category of deserved-victim, his or her behavior may well continue and escalate to bullying and physical violence. Further, the studies appear to demonstrate that stereotypical treatment tends to generalize what we do teaches others that they may do likewise. Pressure valves may be safer after letting off steam; human beings are not.