## 1

#### A] Interpretation: The affirmative must defend that a hypothetical world where public colleges and universities implement the resolution.

#### “Resolved” implies enactment of a law.

Words and Phrases 64 Words and Phrases Permanent Edition (Multi-volume set of judicial definitions). “Resolved”. 1964.

Definition of the word **“resolve,”** given by Webster is “to express an opinion or determination by resolution or vote; as ‘it was resolved by the legislature;” It **is** of **similar** force **to the word “enact,”** which is defined by Bouvier as **meaning “to establish by law”.**

#### Protected speech is a legal doctrine relating to the 1st Amendment, so the topic inherent requires legal action.

**FLD 16** "Freedom of Speech", Definition. http://legal-dictionary.thefreedictionary.com/Freedom+of+Speech  
The Framers of the Constitution guaranteed freedom of speech and expression to the citizens of the United States with the First Amendment, which reads, in part, "Congress shall make no law … abridging the freedom of speech." Almost since the adoption of the [**Bill of Rights**](http://legal-dictionary.thefreedictionary.com/Bill+of+Rights), however, the judiciary has struggled to define speech and expression and the extent to which freedom of speech should be protected. Some, like Justice hugo l. black, have believed that freedom of speech is absolute. But most jurists, along with most U.S. citizens, agree with Justice oliver wendell holmes jr., who felt that the Constitution allows some restrictions on speech under certain circumstances. To illustrate this point, Holmes wrote, "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic" (schenck v. united states, 249 U.S. 47, 39 S. Ct. 247, 63 L. Ed. 470 [1919]).

#### B] Violation- advocacy text and the framing of the aff prove the abuse. They only defend the resolution as a “thought experiment.”

#### C] Net Benefits: 1. Ground: I lose access to all policy based disadvantages because you refuse to defend implementation. I can’t go for ILaw DA, Endowment DA, specific CP’s, solvency turns, etc in order to answer the aff, you’ll just delink my offense in the 1ar by claiming implementation is irrelevant. Few impacts: a) link turns why your framework is good- you stop a key part of discussion about util because the neg has no incentive to read a util framework since it can’t generate offense under that framing. b) Kills key neg ground because certain principles like adhering to free speech are good in the abstract; it only makes sense taking everything into context. Ground is key to fairness since equal access to arguments controls equal access to the ballot. c) Pigeonholes the negative out of util even that is my best layer. Aff shouldn’t be able to make the debate just phil because they are most comfortable on that layer. 2. Topical Version of the aff: just defend implementation. You can still read critical lit in my world that claims implementation is irrelevant, just allow the neg to read a framework that claims implementation is relevant and garner offense on arguments that depend on implementation.

#### D] Voting issue: Vote on fairness. Debate is a competitive activity governed by rules. You can’t evaluate who did better debating if the round is structurally skewed, so fairness is a gateway to substantive debate. Jurisdiction is a constraint on fairness and education—absent a topical advocacy, it becomes impossible to affirm the resolution since you are endorsing something else which is a reason to negate. Drop the debater on T: 1. Drop the arg is severance—lets you read new arguments in the 1AR and connect the plan to whole res which is a complete restart. 2. I had to spend time reading T-dropping the arg gives you a huge time trade-off which incentivizes sketchy affs. Competing interps: 1. Reasonability causes a race to the bottom where we read increasingly unfair practices that minimally fit the brightline- we should set the best norms. 2. Collapses- you use offense-defense to determine reasonability being good which concedes the authority of competing interps- saying reasonability is reasonable is circular.

#### And, fairness outweighs everything else:

#### Evaluation – even if their arguments seem true, that’s only because they already had an advantage – fairness is a meta constraint on your ability to determine who best meets their ROB. If one debater had ten minutes to speak and the other had three there would be incongruence that alters ability to judge the *truth value* of who wins on the AC so cross-applications don’t work.

#### Dogmatic assertions of identity destroy the possibility of communication – constraints and procedural guidelines are a pre-condition to engagement in discussion.

JohnDryzek 6, Professor of Social and Political Theory, The Australian National University, Reconciling Pluralism and Consensus as Political Ideals, American Journal of Political Science,Vol. 50, No. 3, July 2006, Pp. 634–649  
Mouffe is a radical pluralist: “By pluralism I mean the end of a substantive idea of the good life” (1996, 246). But neither Mouffe nor Young want to abolish communication in the name of pluralism and difference; much of their work advocates sustained attention to communication. Mouffe also cautions against uncritical celebration of difference, for some differences imply “subordination and should therefore be challenged by a radical democratic politics” (1996, 247). Mouffe raises the question of **the terms in which engagement across difference might proceed.** Participants should ideally accept that the positions of others are legitimate, though not as a result of being persuaded in argument. Instead, it **is a matter of being open to conversion due to adoption of a particular kind ofdemocratic attitude**that converts antagonism into agonism, fighting into critical engagement, enemies into adversaries who are treated with respect. Respect here is notjust (liberal) toleration, but positive validation of the position of others. For Young, a communicative democracy would be composed of people showing “equal respect,” under **“procedural rules of fair discussion and decisionmaking**” (1996, 126). Schlosberg speaks of “agonistic respect” as “a critical pluralist ethos” (1999, 70). Mouffe and Young both want pluralism to be regulated by a particular kind of attitude, be it respectful, agonistic, or even in Young’s (2000, 16–51) case reasonable. Thus **neither proposes unregulated pluralism as an alternative to (deliberative) consensus. This regulation cannot be just procedural, for that would imply “anything goes” in terms of the substance of positions**. Recall that Mouffe rejects differences that imply subordination. Agonistic ideals demand judgments about what is worthy of respect and what is not. Connolly (1991, 211) worries about **dogmatic assertions**and denials **of identity that fuel existential resentments that would have to be changed to make agonism possible**. Young seeks “transformation of private, self-regarding desires into public appeals to justice” (2000, 51). Thus for Mouffe, Connolly, and Young alike**, regulative principles for democratic communication are not just attitudinal or procedural; they also refer to the substance of the kinds of claims that are worthy of respect.** These authors would not want to legislate substance and are suspicious of the content of any alleged consensus. But in retreating from “anything goes” relativism, **they need principles to regulate the substance of what rightfully belongs in democratic debate.**

## 2

#### Universal rules fail. Any application of rules can never be verified because rules are indeterminate, as they require prior knowledge to understand them, which can never be the basis for truth.

**Kripke** “Wittgenstein on Rules and Private Language” by Saul A. Kripke Harvard University Press Cambridge, Massachusetts 1982

“Normally, when we consider a mathematical rule such as addition, we think of ourselves as guided in our application of it to each new instance. Just this is the difference between someone who computes new values of a function and someone who calls out numbers at random. Given my past intentions regarding the symbol ‘+’, one and only one answer is dictated as the one appropriate to ‘68+57'. On the other hand, although **a**n intelligence **tester may suppose** that there is **only** **one** possible **continuation to** the sequence **2, 4, 6**, 8,…, mathematical and philosophical sophisticates know that **an indefinite number of rules** (even rules stated in terms of mathematical functions as conventional as ordinary polynomials) **are compatible with any such finite** initial **segment.** So if the tester urges me to respond, after 2, 4, 6, 8, . . ., with the unique appropriate next number, the proper response is that **no** such **unique number exists**, nor is there any unique (rule determined) infinite sequence that continues the given one. The problem can then be put this way: Did I myself, in the directions for the future that I gave myself regarding [plus] ‘+’, really differ from the intelligence tester? True, I may not merely stipulate that [plus] ‘+’ is to be a function instantiated by a finite number of computations. In addition, I may give myself directions for the further computation of [plus] ‘+', stated in terms of other functions and rules. In turn, I may give myself directions for the further computation of these functions and rules, and so on. Eventually, however, the process must stop, with ‘ultimate’ functions and rules that I have stipulated for myself only by a finite number of examples, just as in the intelligence test. If so, is not my procedure as arbitrary as that of the man who guesses the continuation of the intelligence test? In what sense is my actual computation procedure, following an algorithm that yields ‘125’, more justified by my past instructions than an alternative procedure that would have resulted in ‘5'? Am I not simply following an unjustifiable impulse?" Of course, **these problems** apply throughout language and **are not confined to math**ematical examples, though it is with mathematical examples that they can be most smoothly brought out. **I think** that I have learned the term **'table'** in such a way that it will **[to] apply to indefinite**ly many **future items.** **So** **I** can **apply the term** to a new situation, say **when I enter the Eiffel Tower** for the first time and see a table at the base. **Can I answer a sceptic who supposes that by `table'** in the past **I meant tabair, where** a **'tabair' is anything that is a table not found at** the base of **the Eiffel Tower**, or a chair found there?. .” (17-20)

#### If ethics cannot be based on rules, the ethical project must begin with practices. Unlike rules, practices are followed based on socially accepted procedures, as opposed to an indefinite number of rules.

**Mouffe** “The Democratic Paradox” by Chantal Mouffe 2000

“This reveals that procedures only exist as complex ensembles of practices. Those **practices** constitute specific forms of individuality and identity that **make possible** the allegiance to the **procedures. It is because they are inscribed in shared forms of life and agreements in judgements** **that procedures can be accepted and followed. They cannot be seen as rules that are created on the basis of principles and then applied to specific cases.** Rules, for Wittgenstein, are always abridgements of practices, they are inseparable from specific forms of life. The distinction between procedural and substantial cannot therefore be as clear as most liberal theorists would have it. In the case of justice. for instance, it means that one cannot oppose. as so many liberals do, procedural and substantial justice without recognizing that procedural justice already presupposes accep- tance of anain values. It is the liberal conception of justice which posits the priority of the right over the good. but this is already the expression of a specific good. Democracy is not only a mauer of establishing the right procedures independently of the practices that make possible democratic forms of individual- ity. The question of the conditions of existence of democratic forms of individuality and of the practices and language-games in which they are constituted is a central one, even in a liberal- democratic society where procedures playa central role. **Procedures always involve substantial ethical commitments.** For that reason they cannot work properly if they are not supported by a specific form of ethos.” (68-69)

#### An ethic based in a practice instead of rules require particularism. The virtuous character does not follow a rule that precedes and guides every context. In a particular context, the virtuous character acts for the right reasons, with the right motives, and at the right time. We agree on the goodness of virtues, and the particular context determines the conditions for virtuous decision making.

**Leibowitz** PARTICULARISM IN ARISTOTLE’S NICOMACHEAN ETHICS \* Uri D. Leibowitz University of Nottingham (Forthcoming in The Journal of Moral Philosophy)

“Following Burnyeat (1980), I understand Aristotle here as engaged in a dialectical inquiry towards first principles [1]. This inquiry towards first principles, Aristotle argues, must begin with what is known to us [2]. Our starting points, I suggest, are the normative statuses of particular actions. As Burnyeat observes, “the ancient commentators are agreed that **Aristotle has in mind knowledge about actions in accordance with** the **virtues; these actions are** the things **familiar** to us from which we must start, **and** what **we know** about them is that **they are** noble or **just”** (1980:71- 72). In other words, we must start our moral theorizing from our judgments about particular actions. However, we need not know why those actions have the normative status we identify them as having [4]; one can engage in moral theorizing even if one does not know why right acts are right, as long as one can identify that they are right, or as long as one is willing to accept the judgments of “one who speaks well” as one’s starting points [6]. This is one reason why Aristotle insists that a competent student is one who has had a good moral upbringing [3]. A person who is brought up well should be able to tell apart noble acts from ignoble ones; he is expected to be able to identify courageous acts, or just acts, and he is expected to be able to tell them apart from those acts that are cowardly or unjust. One of **Aristotle’s goals** in the NE, I propose, is **[are] to teach his students why those acts they identify as right are right.** But how could one identify particular actions as right if one doesn’t know why these acts are right? **A native speaker of a language can** often **tell whether a sentence is grammatical even [if] in cases in which she does not know why it is so.** Naturally, only native speakers who have been “brought up well” with respect to language are able to do this correctly and reliably. Aristotle thinks that with a proper moral upbringing one can form habits that would enable one to distinguish right actions from wrong ones [5]. This is one reason why in I.3 Aristotle insists that young men are not the target audience for his lectures: “for they are inexperienced in the actions that constitute life, and what is said will start from these and will be about these” (1095a3-4, Rowe trans.). Our discussion, Aristotle tells us, concerns [with] the rightness of actions but it also starts with correct judgments about which particular actions are right. **The ability to identify right acts as right is acquired by habit**uation **and the[y]** habits we form **depend on** the kind of **moral upbringing** we get. Having correct starting points is vital to a successful dialectical inquiry; if our initial judgments about the normative status of actions are incorrect, then the first principles we discover by way of a dialectical inquiry from these judgments are likely to be false.13 In I.7 Aristotle reminds us that the appropriate degree of precision for each investigation depends on the nature of the subject matter being explored (1098a26-28). He then goes on to say this: [7] One should not demand to know the reason why, either, in the same way in all matters: in some cases, it will suffice if that something is so has been well shown, [8] as indeed is true of starting points; some are grasped by induction, some by perception, some by a sort of habituation, and others in other ways: [9] one must try to get hold of each sort in the appropriate way, and take care that they are well marked out, [10] since they have great importance in relation to what comes later. For the start of something seems to be more than half of the whole, and through it many of the things being looked for seem to become evident. (1098a33-1098b7, Rowe trans.)14 In this passage Aristotle tells us that inquiries can differ not only with respect to their appropriate degree of precision [7], but also in the way in which their starting points are obtained [8].15 Moreover, Aristotle insists that it is important to obtain the starting points for each inquiry in the appropriate way [9]. Finally, Aristotle stresses again the importance of having the correct starting points [10]. Aristotle’s goal, as I have mentioned above, is to help us understand why those acts that we identify as right—our starting points—are, in fact, right. But he warns us that **the kind of explanation we ought to seek should be appropriate to the subject** matter we are investigating [7]. In geometry we can give demonstrative explanation. But we “should not demand to know the reason why in the same way in all matters.” **Explanations of the rightness** of actions **will take** a **different form[s].** “Pure science involves demonstration,” Aristotle tells us, “while things whose starting points or first causes can be other than they are do not admit of demonstrations” (VI.5:1140a34). After reminding us in II.2 that the subject matter of **ethics lacks fixity and hence that our account will not be** very **precise**,16 Aristotle goes on to say this: “But though our present account is of this nature we must give what help we can” (1104a10, Ross trans.). What immediately follows, are Aristotle’s observations about the harmful effects of excess and deficiency and the positive effects of the proportionate amount, or the mean. These observations, Aristotle tells us, hold true for health and strength as well as for characteristics like temperance, courage, and other virtues. To act in accordance with the mean is not only the way to acquire virtuous characteristics, but is also the mark of virtuous actions. Aristotle seems to think that his comments on the mean are helpful. But what kind of help does he think these comments provide? Broadie (1991) proposes the following hypothesis: [Aristotle] could be deceived into thinking the doctrine of the mean useful in ways in which in fact it is not. This may be what happens in NE II.2, where he bewails the impossibility of giving exact rules for correct particular responses (1104a5-9); then says that he must give what help he can (1104a10- 11); and then goes on to discuss, not responses, but dispositions.” (101-2) If Aristotle had thought that his comments on the mean can help us to identify the right response in various situations, then, like Broadie, I think he was mistaken about their usefulness. However, I doubt that this is what Aristotle had in mind. Indeed, in VI.1 Aristotle explicitly tells us that he does not think that his remarks on the mean can help us to identify what we ought to do: We stated earlier that we must choose the median, and not excess or deficiency, and that the median is what right reason dictates...but this statement, true though it is, lacks clarity. In all other fields of endeavor in which scientific knowledge is possible, it is indeed true to say that we must exert ourselves or relax neither too much nor too little, but to an intermediate extent and as right reason demands. But if this is the only thing a person knows, he will be none the wiser: he will, for example, not know what kind of medicines to apply to his body, if he is merely told to apply whatever medical science prescribes and in a manner in which a medical expert applies them.” (VI.1:1138b19-35) So what kind of help are these comments on the mean supposed to provide? I propose that these remarks are meant to help us to explain why those acts that we already know are virtuous are virtuous. **If we can tell**—as we must be able to in order to obtain starting points for our ethical inquiry—**that a[n] particular act is courageous**, for instance, **we** now **know** that this action **[it] lies in the mean. So we can explain its rightness by pointing out that this act is neither excessive nor deficient.** This, of course, is a rudimentary sketch of an explanatory schema but we can now already identify the basic structure of the explanation: if an act is right, then we should be able to identify a scale on which it is neither excessive nor deficient.Aristotle recognizes that what he has given us so far is extremely undeveloped and he goes on to expound on this explanatory model in several phases. First, after presenting the bare bones of his explanatory schema, Aristotle discusses some general features of the virtues: he tells us that a mark of an action performed virtuously is that the agent of the action takes pleasure in performing the action (II.3); he distinguishes between a virtuous action and an action performed virtuously (II.4); and he identifies the genus and differentia of virtue (II.5-6). By the end of II.6 we get Aristotle’s definition of virtue: “We may thus conclude that virtue or excellence is a characteristic involving choice, and that it consists in observing the mean relative to us, a mean which is defined by a rational principle, such as a man of practical wisdom would use to determine it” (1106b35-1107a1). We now know a bit more about the proper explanation of the virtuousness of a particular action. Consider: “Why is this action of standing one’s ground in battle courageous?” The proper answer will take the following form: “This action is courageous because the agent chose to perform it, and it is located in the mean (relative to the agent)17 of some relevant scale.” What we have so far is a sketch of an explanatory schema and we must now learn how to properly fill in this schema in order to provide satisfactory explanations of the rightness of individual actions. Aristotle turns to this in II.7: However, this general statement is not enough; we must also show that it fits particular instances. For in a discussion of moral actions, although the general statements have a wider range of application, statements on particular points have more truth in them: actions are concerned with particulars and our statements must harmonize with them.” (1107a28-33) We already know that in order to explain why a particular act is virtuous we must locate this action in the mean of some relevant scale—this statement has a wide range of application—but in order to appreciate its truth, we must see how it applies to particular virtuous actions, since we are, most fundamentally, concerned with the rightness of individual actions. Aristotle, then, wants to show us that by applying his schema properly we can generate adequate explanation of the rightness of particular actions. In the remainder of II.7 Aristotle lists the various scales that are relevant to each virtue. And whenever possible he introduces the relevant vocabulary we should use in our explanation. For example, if we want to explain why an act is courageous, we should locate the agent’s emotional state while performing the action as a mean on a scale (or scales)18 of fear and confidence; the agent might be reckless if he exceeds in confidence, or cowardly if he is deficient in confidence. If we want to explain why an action is generous we should locate the action as a mean on a scale ranging from stinginess to extravagance. Aristotle goes on to list relevant scales for other virtues. Yet he is well aware that even now we have only been given a sketch—“For our present purposes, we must rest content with an outline and a summary, but we shall later define these qualities more precisely” (II.7:1107b15). By the end of II.7, if we are asked, for example, why Ms. Smith’s act of donating $100,000 to cancer research is generous, we could say that she chose to perform this action, and that given her economic and social situation, donating $100,000 to this cause was neither stingy nor extravagant. Moreover, we know that if she did not take pleasure in her generous donation, then she did not act generously. This explanatory schema does not generate deductive explanations. From the fact that Ms. Smith’s action was neither stingy nor extravagant it does not follow that her action was right or virtuous; there may have been other, more urgent, causes to which to donate, or there could have been good reasons not to donate to the particular organization that she had chosen. So explanations produced by applying Aristotle’s explanatory schema do not guarantee the truth of the explanandum.19 But as we have seen, Aristotle insists that we “should not demand to know the reason why in the same way in all matters,” and that explanations in ethics “do not admit of demonstrations.” This is why it is important for Aristotle that we already know that the action is right before we explain why it is right; that the act is right is part of the data we have at our disposal when we explain its rightness. The reading of Aristotle I propose helps us to make sense of several features of Aristotle’s work that commentators have found perplexing. First, it helps us to understand the importance of the doctrine of the mean for Aristotle’s project. Some readers of the NE are puzzled by the seriousness with which Aristotle approaches the doctrine of the mean. As Broadie (1991) puts it: Aristotle regards [the doctrine of the mean] as an important contribution, to judge by the solemnity with which he introduces it and the many pages where he strains over the details of its application. Yet the doctrine often gets a disappointed reception. It seems at first to offer special illumination, but in the end, according to its critics, it only deals with truisms together with a questionable taxonomy of virtues and vices. (95) On my reading the doctrine of the mean plays an important explanatory role which lies at the heart of Aristotle’s project. Although the doctrine of **the mean** doesn’t identify for us the features that make right actions right, it does **tell us** what a proper explanation of the rightness of a particular action should look like. **We obtain a satisfactory explanation** only when we replace the truisms about the harmful effects of excess and deficiency and the positive effects of the proportionate amount with the specific features of the action/situation; i.e., we must identify the relevant scale on which the action lies in the mean, and **we** have to **identify the mean** **relative to the agent of the action and the situation in which the act is performed.** This is why Aristotle methodically lists not only those virtues and vices that have names, but also those that do not have names, and this is why he identifies those qualities that resemble virtues but are not quite virtues. The proper explanation of the rightness of each individual action depends on the specific features of the particular act in question. “What sort of things are to be chosen and in return for what, it is not easy to state; for there are many differences in the particular cases” (III.1:1110b8, Ross trans.). **There is no algorithm** that we can use to generate adequate explanations, as Aristotle emphasizes again in III.4: “What is good and pleasant differs with different characteristics and conditions, and perhaps the chief distinction of a man of high moral standards is his ability to see the truth in each particular moral question, since he is, as it were, the standard and measure for such questions” (1113a31-34). This is why Aristotle gives us many examples of how to generate explanations by substituting the truisms in the generic explanatory schema with particular features of actions. In his discussion of courage Aristotle specifies different possible objects of fear (e.g., death, poverty, disease), and various contexts in which one could exemplify courage (e.g., in battle, at sea, in illness). **“[s]He is courageous,”** we are told, **who endures and fears the right things, for the right motive, in the right manner, and at the right time**, and who displays confidence in similar ways. For a courageous man feels **and acts according to the merits of each case** and as reason guides him.” (III.7:1115b19-20) When we explain the rightness of a particular courageous action, we must replace the hedges (“the right things,” “in the right manner,” etc.) with specific features of the action in question; **for example**, his action was courageous because **he left his family in order to join the army and he risked his life in order to protect his country when no non-military option was available to resolve the conflict.**” (7-14)

#### Thus, the standard is appealing to virtuous character clarified by the moral complexities of specific situations. To clarify, the standard is not consequentialist since that would rely on the rule of maximizing utility preceding every context that it applies to. Virtuous character requires commitment to particularistic decision making, so the rule of maximizing utility in every context cannot frame how to act virtuously.

#### First, universal claims negate. The resolution says that we ought not restrict any constitutionally protected speech, which assumes a sufficient reason for the claim, but no single reason can account for the legitimacy of preventing every instance of restriction, as per the framework. All advocacies must be made in relationship to particular instances.

#### Second, restrictions are uniquely consistent with particularism because they acknowledge that there is no one-size-fits-all policy, so restrictions are a necessary check on generalist policies. Even if they prove that restrictions violate particularism, this doesn’t turn the NC because the structure of the AFF’s advocacy still wills a general reason that applies beyond its context.

## Case

### A2: Fiat Bad

#### Topical version of the aff solves 100 percent of your aff – defend neg action, or just make reasons that there is no reason there’s any harms

#### Not intrinsic to your framework - this is just a generic roleplaying bad argument, which means you can still read your aff just without this useless evidence.

#### A lot of your framing relies on education beign relevant: irt’s not to the judge

Judge has no obligation to care whether or not debaters learn, even if they could help debaters learn, they’re not obligated to, it’s just a side benefit.

Alt solvency - majority of education received from debate occurs out of round, e.g, in the process of researching, front lining, and case writing

Education voters are disingenuous- This is the TOC. We are all here to win, not increase education

### A2: State Power

#### The AFFs prioritization of free speech assumes a liberalist notion of language where people can express themselves freely. This is misleading and harms any ability to engage in discussion.

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

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