

# THE SCOPE OF FREEDOM OF SPEECH

## When to Suppress Speech

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### ABSTRACT

*Private agents have good reason to suppress speech that transmits lies about matters of objective fact or that personally attacks non-public figures. Still, they should not suppress expressions of offensive or wrongheaded opinions about matters of public interest. The latter kind of speech-suppression risks entrenching erroneous beliefs, sowing distrust and polarization in society, corrupting intellectual discourse, unintentionally chilling discussion of related matters, and undermining the foundation of liberal social order. The best approach to bad ideas is to engage them in reasoned debate. While engaging with bad ideas provides no guarantee that the truth will win out, it is better than the alternative of ideological censorship.*

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#### I. THE QUESTION OF PRIVATE SUPPRESSION

Most discussion of restrictions on free speech concerns restrictions imposed by the state. An under-theorized but increasingly relevant question is when a private agent ought to restrict speech. Here, I am not asking a political or legal question. I am not asking, for example, what *laws* should exist concerning speech restrictions by private agents, or when a private agent should be *held liable* for restricting or failing to restrict speech. Nor am I asking when a private agent *has the right* to restrict speech. I am asking the *ethical* question of when a private agent *ought* to suppress speech. When is this a desirable and morally decent thing to do?

There are many circumstances in which a private agent faces this question. Some private companies, for example, maintain message boards where employees hold discussions. In the event that controversial material appears on the message board, company management has to decide whether and how to react. Such was the case at Google in 2017, when James Damore posted his now-famous essay, “Google’s Ideological Echo Chamber,” to an internal company message board.<sup>1</sup> The essay argued that the shortage of gender diversity in the tech industry, especially among software engineers, could be partly explained by men and

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1. Kate Conger, *Exclusive: Here’s The Full 10-Page Anti-Diversity Screed Circulating Internally at Google [Updated]*, GIZMODO (Aug. 5, 2017, 4:30 PM), <https://gizmodo.com/exclusive-heres-the-full-10-page-anti-diversity-screed-1797564320> [<https://perma.cc/JT96-LTTD>].

women on average having different personality traits and in turn different work preferences, rather than by unfair discrimination. The essay also argued that the company was suffering from ideological bias that suppressed honest discussion or dissent. Google rebutted this by immediately terminating Damore. This action undoubtedly had the intended effect of silencing anyone within the company tempted to challenge the prevailing political views at Google in other ways.

Another type of case concerns platforms that host public discussions, including blogs and social media forums. Given the diversity of users, any large public discussion forum can be expected to sometimes have controversial content. The company can suppress some of this content by deleting it or, in extreme cases, by banning particular users, as when Twitter and Facebook banned President Donald Trump from their platforms in January 2021.<sup>2</sup>

A third type of case is that of private universities or other schools. (Public schools face similar issues, but I discuss private schools here to avoid raising specifically political issues.) Both teachers and students can be expected to periodically have controversial ideas. Schools must decide whether and to what degree to allow open expression of these ideas. In some cases, schools terminate or otherwise discipline teachers for expressing controversial ideas, as in the recent case in which Georgetown University fired adjunct law professor Sandra Sellers for mentioning to another professor that Black students frequently performed poorly in class.<sup>3</sup> In other cases, schools have revoked invitations to visiting speakers due to controversy surrounding those speakers' ideas. College students sometimes attempt to prevent controversial speakers from coming to campus or attempt to shout them down or even physically attack them when they arrive, as happened when Charles Murray went to speak at Middlebury College in 2017.<sup>4</sup>

All of these are examples of what I mean by private speech suppression. I am concerned with cases in which private agents, whether individual or corporate agents, act to silence those with controversial ideas due to disagreement with the content of the ideas expressed.

I am particularly concerned with ideas about matters of public controversy. The type of speech with which I am concerned is traditionally protected against government restraint, at least in the U.S. It is not, however, protected against private suppression.

In the next two sections, I will review the most important reasons for and against suppressing controversial speech, respectively. I shall then propose a limited range of speech suppression as the best response to these reasons.

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2. See, e.g., Dylan Byers, *How Facebook and Twitter Decided to Take Down Trump's Accounts*, NBC NEWS (Jan. 14, 2021, 5:01 PM), <https://www.nbcnews.com/tech/tech-news/how-facebook-twitter-decided-take-down-trump-s-accounts-n1254317> [<https://perma.cc/NSL7-N5BB>].

3. See Catherine Thorbecke & Benjamin Siu, *Georgetown Law Professor Terminated After Remarks About Black Students*, ABC NEWS (Mar. 12, 2021, 1:26 PM), <https://abcnews.go.com/US/georgetown-law-professor-terminated-remarks-black-students/story?id=76413267> [<https://perma.cc/H5SE-KK22>].

4. See *The Charles Murray Event at Middlebury College*, MIDDLEBURY COLLEGE, <http://www.middlebury.edu/newsroom/information-on-charles-murray-visit> [<https://perma.cc/RAV5-GNJV>].

## II. THE CASE FOR SUPPRESSION

### A. Psychological Harm

Why might private agents wish to suppress speech about controversial public issues? There appear to be two main reasons. First is the concern that expressing controversial ideas may cause direct psychological damage to listeners who feel offended or intimidated by those ideas. This is a recent theme for the political left in America. Universities frequently issue apologies for “harm” caused to their students by expressions of controversial ideas or by careless word choices.<sup>5</sup> As novelist Toni Morrison put the point in her Nobel Prize acceptance speech, “[o]ppressive language does more than represent violence; it is violence.”<sup>6</sup> Psychology professor Lisa Barrett, in a *New York Times* opinion piece, explained that words can cause stress, and chronic stress can make you sick, damage your brain, and shorten your life. She concluded, therefore, that “speech that bullies and torments . . . is literally a form of violence.”<sup>7</sup>

What should we think of such arguments? There is certainly an imaginable world where controversial speech would cause sufficient psychological harm to justify suppression. Imagine, for example, that just hearing a specific word caused 50% of listeners to immediately fall into a permanent, suicidal depression. In that case, private actors should attempt to suppress speech that uses that word.

That world, however, is not the actual world. There is no evidence of serious psychological harm resulting from hearing positions ideologically opposite to the listener’s own views, nor from hearing incautious word choices. The psychological studies Barrett cites on the harm caused by stress concern such things as the long-term effects of child abuse, early exposure to war or famine, and other periods of severe, chronic stress; none of them concern subjects who occasionally hear objectionable moral or political views.<sup>8</sup> Barrett acknowledges this, writing

5. See, e.g., Jamie Fullerton, *King’s College Apologizes for ‘Harm’ Caused to Staff by Photo Tribute to Prince Philip*, TELEGRAPH (May 30, 2021), <https://www.yahoo.com/news/kings-college-apologises-harm-caused-192159170.html> [<https://perma.cc/3MQU-K9D5>]; Khaleda Rahman, *University Apologizes After Survey Calls BLM ‘Wild Beast Preying’ on Community*, NEWSWEEK (Mar. 3, 2021, 7:36 AM), <https://www.msn.com/en-us/news/us/university-apologizes-after-survey-calls-blm-wild-beast-preying-on-community/ar-BB1ec4CJ> [<https://perma.cc/J9ZB-E4W2>].

6. Eugene Robinson, *Toni Morrison’s Measured Words*, WASH. POST (Dec. 8, 1993), <https://www.washingtonpost.com/opinions/1993/12/08/toni-morrison-s-measured-words/> [<https://perma.cc/Q59Q-R889>].

7. Lisa Feldman Barrett, *When Is Speech Violence?*, N.Y. TIMES (July 14, 2017), <https://www.nytimes.com/2017/07/14/opinion/sunday/when-is-speech-violence.html> [<https://perma.cc/KN5A-YVUF>]. Barrett also argues that provocateurs such as Milo Yiannopoulos should not be allowed to speak on college campuses; nevertheless, she contends that right-wing scholars such as Charles Murray should still be allowed.

8. See Elissa S. Epel et al., *Accelerated Telomere Shortening in Response to Life Stress*, 101 PNAS 17312 (2004); Gregory E. Miller & Edith Chen, *Harsh Family Climate in Early Life Presages the Emergence of a Proinflammatory Phenotype in Adolescence*, 21 PSYCH. SCI. 848 (2010); Jenny Tung et al., *Cumulative Early Life Adversity Predicts Longevity in Wild Baboons*, 7 NATURE COMM’NS 11181 (2016); Rosanne M. Thomas et al., *Acute Psychosocial Stress Reduces Cell Survival in Adult Hippocampal Neurogenesis without Altering Proliferation*, 27 J. NEUROSCIENCE 2734 (2007).

that “[w]hen you’re forced to engage a position you strongly disagree with . . . it’s a good kind of stress—temporary and not harmful to your body.”<sup>9</sup> The bad kind of stress, she writes, consists of “long stretches of simmering stress,” such as that produced by “[a] culture of constant, casual brutality.”<sup>10</sup>

Bearing this in mind, private agents who are in a position to suppress speech probably have good reason to suppress personal threats and insults directed at other individuals who are present in a given conversation. They do not, however, have any good reason to suppress speech that merely expresses what some find to be offensive or ideologically objectionable ideas. The stress caused by hearing objectionable ideas is temporary and tends to be fairly easily avoidable—a listener who finds a particular speaker unpleasant, or a reader who finds a particular author unpleasant, can generally stop listening or stop reading before very long. There is thus no cause for concern about chronic stress resulting from speakers or authors with bad ideas.

Moreover, suppressing speech due to its alleged offensiveness may be more harmful to the would-be audience than the speech itself would be. As Lukianoff and Haidt argue, individuals become more emotionally resilient as a result of confronting minor stressors; overprotectiveness results in more emotionally fragile human beings. In addition, this kind of speech suppression, with the express motive of guarding against psychological harm, communicates the message that the existence of opposing political views is a major threat to oneself, to which severe anxiety and distress is an appropriate response. That belief itself creates stress.<sup>11</sup> Since it is infeasible to eliminate political disagreement from the wider society, individuals are better served by learning to tolerate such disagreement.

### B. Political Harm

The second major reason to suppress speech is to avert *political* harm, namely the possibility that those with bad ideas will succeed in convincing other people of their bad ideas, and this will result in worse public policies and/or a worse culture in general. For example, if conservative speakers come to college campuses, they might persuade audience members to oppose immigration, which might cause the U.S. to reduce immigration into the country, which would be bad for many people. (If you disagree that immigration restrictions are harmful, substitute some other policy that you consider harmful, and imagine speakers who advocate for that policy.)

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9. Barrett, *supra* note 7.

10. *Id.*

11. See Greg Lukianoff & Jonathan Haidt, *The Coddling of the American Mind*, ATLANTIC (Sept. 2015), <https://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356/> [<https://perma.cc/TF3J-JTGA>]; Jonathan Haidt & Greg Lukianoff, *Why It's a Bad Idea to Tell Students Words Are Violence*, ATLANTIC (July 18, 2017), <https://www.theatlantic.com/education/archive/2017/07/why-its-a-bad-idea-to-tell-students-words-are-violence/533970/> [<https://perma.cc/GUG5-ECF7>].

The traditional response from free speech advocates is that open discussion is the best way for a society to *figure out* what policies are best.<sup>12</sup> As a rule, policy issues that give rise to public controversy are not self-evident, and we do not know what the correct answer is simply by listening to those with whom we are initially inclined to agree. We need to hear people with competing views engage with each other. In open, reasoned dialogue, the best ideas will usually emerge and be more-or-less recognized. Or at least there will be a *tendency* for *better* ideas to outcompete worse ideas. No such tendency can be counted on when those with greater social influence and power suppress dissent.

I agree with the preceding reasoning as a general rule. It must be admitted, however, that the marketplace of ideas cannot always be counted upon to produce reasonable results. Human beings are far from ideal reasoners, and there are some ways in which bad ideas can predictably succeed.

One problem is that human beings can often be misled by the simple tactic of lying about matters of objective fact. Consider the anonymous internet personality QAnon. In 2017, QAnon began posting messages, posing as a high-ranking government official with top-secret security clearance, putatively revealing the existence of a secret cabal of devil-worshipping pedophiles connected with numerous prominent, left-leaning politicians and celebrities. In a world of ideal reasoners, such comically absurd conspiracy theories would be quickly laughed off. In our world, however, they can literally attract millions of followers, some of whom may be moved to violence in service of their cause, as evidenced by the January 6, 2021, riots at the U.S. Capitol.

The standard liberal remedy—counter-speech that seeks to rationally rebut false claims—is only effective if those who might be taken in by the false claims are (i) willing to listen to rebuttals, and (ii) able and willing to evaluate arguments rationally. These conditions are not uniformly realized. Importantly, human cognitive failures are not merely *random*; rather, there are certain *systematic biases* that bad faith content providers can deliberately exploit. Many individuals, for example, have a standing desire to believe the worst about their ideological opponents, a passion for dramatic and shocking stories, and a desire to see themselves as among a small group of people “in the know” concerning great secrets. These passions partly explain the attraction of stories such as those of QAnon. These sorts of passions may easily be stronger than the desire for truth, and there is no guarantee that well-reasoned counter-speech can overcome them.

A related problem is that correct information and reasoning is very often *less entertaining* than false or misleading information. Malicious or irresponsible content providers, freed of the constraints of reality, can *optimize* their stories for entertainment value, whereas scrupulously honest content providers are hampered by the world’s failure to systematically provide the most entertaining fact patterns. In a society in which most audience members seek entertainment,

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12. JOHN STUART MILL, ON LIBERTY 21–23 (Batoche Books Ltd. 2001).

therefore, dishonest content providers will attract larger audiences than honest ones. Hence, in a free marketplace of ideas, unreliable information has a *systematic* advantage over the truth.

Furthermore, in a democratic society, the success of bad ideas poses a threat to all. Bad ideas can lead to bad public policy, which can cause severe harm, up to and including death, to large numbers of people. Some bad ideas can directly promote civil unrest and violence. In view of this, it is not obvious that individuals have a moral right to provide false or misleading content. It seems, therefore, that there is a reasonable case for restricting some instances of deceptive speech. Before we draw this conclusion, however, we must consider the case against restriction.

### III. THE CASE AGAINST SUPPRESSION

#### A. *The Risk of Error*

John Stuart Mill argued famously that “[w]e can never be sure that the opinion we are endeavoring to stifle is a false opinion” and that “[a]ll silencing of discussion is an assumption of infallibility.”<sup>13</sup>

The latter premise is surely overstated. We need not be *absolutely certain* that an idea is false for it to make sense to suppress it. The idea need only be *sufficiently likely* to be false that the expected value of suppressing it is greater than the expected value of allowing it to be expressed. Mill’s reasoning would be sound only on the assumption that the cost of suppressing a correct idea is *infinite*. There is no reason to assume that.

A more plausible argument can be made, however. It is not merely *possible* that one is mistaken about the truth of an idea that one wishes to suppress. This is not merely a hypothesis with some small chance of being correct. Rather, there are special reasons why it is quite likely to be the case.

First, by hypothesis, we are considering a matter of public controversy. As a general rule, human beings are *especially* fallible about such matters. The existence of controversy by itself entails that people are not in general highly reliable about a given question (or else people would be in agreement with the correct view). Indeed, we are so often wrong about controversial questions that a reasonable case can be made for suspending judgment about nearly all such questions.<sup>14</sup>

Second, in the case of political beliefs in particular, there is a good deal of independent evidence that human beings tend to be highly unreliable.<sup>15</sup> Twin studies find that political orientation is significantly heritable, meaning that our genes

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13. *Id.* at 19.

14. See Bryan Frances, *The Illusion of Knowledge*, in Michael Huemer & Bryan Frances, *CAN WE KNOW ANYTHING: A DEBATE* (Routledge, forthcoming).

15. See generally BRYAN CAPLAN, *THE MYTH OF THE RATIONAL VOTER* (2008); ILYA SOMIN, *DEMOCRACY AND POLITICAL IGNORANCE* (2013).

have a major impact on our political views.<sup>16</sup> Studies in political psychology show that people tend to evaluate politically relevant evidence in a highly biased manner and that political views function largely as devices for expressing group affiliations, rather than as serious attempts to understand the world.<sup>17</sup> Of course, it probably does not feel to you as if this is true of *you*. But since it is true of most people, even though it does not *feel* to most people as if it is true of them, it is probably also true of you.

Third, people who endeavor to suppress controversial speech have a less-than-stellar track record at identifying correct ideas. Consider, for example, the Church's campaign to suppress heliocentric cosmology in the 17th century, or the prohibitions against criticizing the government in Nazi Germany, or the prohibitions by various communist governments in the 20th century against criticizing communism, or the attempts by the Nixon administration to silence Daniel Ellsberg during the Vietnam War. In all of these cases, the speech suppressor was disastrously wrong about the matter in controversy, and their suppression worked *against* truth. Historically, the person or group suppressing speech is almost never promoting truth. Therefore, the fact that one is tempted to suppress speech is evidence that one is substantively wrong.

Of course, there are always particular cases in which one feels especially confident that one is in fact correct about some matter of public controversy. It is worth noting, however, that those who *wrongly* suppress speech *regularly* feel especially confident in their opinions. More generally, human beings regularly experience extreme overconfidence when it comes to political questions. So there is good reason for discounting one's own sense of confidence.

### B. Entrenched Opposition

One might hope that incorrect views would be stamped out through speech suppression—if no one is allowed to assert P, perhaps belief in P will gradually die out. This, however, is unlikely to happen in a diverse society. What is more likely is that those whose ideas are prohibited from being expressed in certain forums will become resentful as they withdraw into their own subcultures.

For example, right-wing college students who are intimidated into remaining silent in class will not thereby give up their beliefs. They are more likely, rather, to become resentful and distrustful of the left-wing culture of their college, while they continue to consume right-wing content from other sources.

There are two problems here. First, due to the lack of open dialogue, the right-wing students will fail to learn how left-wing thinkers would respond to the ideas that they (the right-wing students) would have put forward, just as the left-wing students fail to learn how right-wing thinkers would respond to the ideas that the

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16. See John R. Alford, Carolyn L. Funk & John R. Hibbing, *Are Political Orientations Genetically Transmitted?*, 99 AM. POL. SCI. REV. 153 (2005).

17. See CHRISTOPHER H. ACHEN & LARRY M. BARTELS, *DEMOCRACY FOR REALISTS: WHY ELECTIONS DO NOT PRODUCE RESPONSIVE GOVERNMENT* (2016).



left-wing students advance. It is not possible to anticipate every idea and argument that a person of an opposing viewpoint would put forward; hence, many opposing ideas will go unaddressed if people are not encouraged to actually speak. Those whose beliefs are being suppressed will therefore lose opportunities to learn what is wrong with their own ideas, if indeed their ideas are mistaken.

The second problem is that those whose ideas are suppressed are likely to experience a general *loss of trust* in the institutions that are denying their freedom to speak. When, for example, right-wing speech is suppressed on college campuses, right-wing students do not thereupon conclude that right-wing beliefs must be wrong. They are more likely to conclude that academia in general cannot be trusted since it is politically biased, and that the conclusions that academics reach are unreliable since they have been insulated from criticism. Some students may even assume that the *reason* why right-wing ideas are suppressed is that left-leaning academic elites are unable to provide reasoned critiques of them.

Note that the problem that I am pointing to is not that academia is unreliable (though this might also be true). The problem is that right-wing students, as well as right-wing members of society more generally, are likely to *think* that it is unreliable, whether it is or not. As a result, even if academics manage to reach some very well-supported and reliable conclusions about matters of public interest, it may be impossible to convince large portions of society to heed those conclusions. When an institution becomes too closely identified with a position in the culture wars, then those on the other side may distrust *all* information coming from that institution, even information not otherwise connected to politics or ideology.

### C. Intellectual Corruption

Another problem concerns the impact on political thought and discourse of the practice of suppressing speech to avoid psychological harm.

The first predictable effect of this practice is to *multiply claims of psychological harm*. Individuals who wish to silence a speaker now have an incentive to claim to be psychologically damaged by that speaker (or to claim that *someone* is psychologically damaged by the speaker). This claim is easy to make and impossible to refute, since the putative harm need have no physical manifestation and would be observable only by the individuals who claim to experience it. Thus, even if (contrary to the arguments of Section II.A above) the hearing of bad political ideas sometimes causes direct psychological harm, we should expect there to be many cases of non-harmful speech that are suppressed due to false claims of psychological harm. The motives for these false claims would include antipathy toward a particular speaker or ideology, the desire for sympathetic attention, and the desire to exert power over others.

The second effect we should anticipate is a reduction in the *intellectual quality* of the discourse that remains. In a culture of free expression, those who are more articulate and skilled at argumentation tend to have greater influence. But in a culture of speech suppression motivated by claims of psychological harm,

individuals have an alternative to good-faith engagement with reasons and evidence: they can appeal to their own alleged negative emotions as a sort of trump card against opposing arguments. This trump card will not be used equally by everyone. It is more likely to be used successfully by individuals who have pull with those in positions of power (particularly those with the power of suppressing speech). This substitution of social power for reasoning will inevitably degrade discourse.

In many forums, an ideological monoculture will arise. Whichever ideological faction has the greatest power will suppress the ideas of competing factions. For example, if Google management contains many more left-leaning than right-leaning individuals, then the claims of left-leaning employees to be harmed by right-wing ideas will garner more sympathy than symmetrical claims by right-leaning employees (supposing that any have the nerve to advance such claims to begin with). Google can thus be expected to develop (as some claim it has) an ideologically progressive monoculture.

As a result, conflicting ideas fail to confront each other. This does not mean that all conflicting ideas disappear. It means, rather, that individuals of all ideologies will become more simplistic, less accurate, more polarized, and more dogmatic in their views. This is the natural result of a lack of engagement with opposing views. A widespread practice of speech suppression sends a signal to individuals that it is unnecessary to provide reasoned rebuttals to ideas; instead, one can more effectively “win” an argument by manipulating those in power to silence one’s opponents. Once this becomes established, human nature guarantees that there will be a temptation to expand the range of ideas that are deemed unacceptable to express. There will be a temptation, in particular, to find reasons to suppress any argument or idea *that one cannot otherwise rebut*.

This makes it much easier to maintain false beliefs and fallacious reasoning. As a result, even if the dominant ideology is by and large correct at the start, one should expect it to *deteriorate* over time. When new, more extreme, and less rational forms of the ideology arise, they will not be properly critiqued. Partisans of the ideology will become intellectually lazy. By this process, those who begin with a generally correct ideology can be expected to grow increasingly foolish, simplistic, and extreme over time.

#### *D. Penumbral Suppression*

Finally, even if one only directly suppresses ideas that are genuinely false, one cannot avoid *indirectly* suppressing true ideas that are distinct from but *related to* the false ideas. I refer to this phenomenon as penumbral suppression—the suppression of ideas that lie *adjacent* to the ideas that one directly targets.

The reason penumbral suppression occurs is that: (i) many individuals are risk averse, and (ii) when a practice of ideological speech suppression is established, individuals cannot predict with a high degree of confidence exactly which ideas fall within the prohibited region. Thus, many will tend to err on the side of

caution by avoiding discussion of ideas that seem *related* to the ideas they have seen being suppressed.

Suppose, for example, that expression of racist ideas is widely known to be prohibited on university campuses. Suppose also, however (as is in fact the case), that the notion of racism is vague and subject to multiple competing interpretations. Thus, when observers know only that ideas deemed to be racist are forbidden, they cannot be sure exactly how far that prohibition extends. A risk averse interlocutor may therefore decide that it is best to avoid all discussion of race. Of course, no one intends to prohibit all discussion of race. Yet this is not an unreasonable response on the part of someone who is less than confident in his own grasp of the notion of racism, or of *other* people's use of the term "racism."

This sort of penumbral suppression is more likely to occur the vaguer the principles are for identifying proscribed speech, the more serious are the consequences for prohibited speech, and the more risk averse the individual is. Thus, for example, if academics are under threat of termination and blacklisting for statements that are found to be "offensive," this undoubtedly has the effect of suppressing a great deal of unobjectionable speech. Many academics have probably decided to avoid the topics of race, sex, and gender entirely.

Another example is the fate of intelligence research in psychology. Intelligence researcher Richard Haier has observed that his field has often been incorrectly associated with racist ideas, with the result that there is less funding for research and very few courses on intelligence for undergraduate students.<sup>18</sup> Only a tiny portion of the research concerns racial differences in intelligence, yet the field as a whole is adversely affected by the stigma attached to that issue.

### *E. Political Costs: The Foundations of Liberal Order*

Why is political speech important? Frequent disagreement about political matters is inevitable in any modern society. Some of this disagreement is reasonable, and some is, admittedly, *unreasonable*—yet it is no less real and important for that. Furthermore, much of this disagreement concerns important matters about which people have strong feelings and interests. For this reason, disagreement is, fundamentally, a *threat to social order*. In many societies, disagreements about politics, religion, or philosophy have given rise to terrible violence.

*Pace* John Rawls,<sup>19</sup> justice is not the first virtue of social institutions. *Peace* is the first virtue of social institutions.<sup>20</sup> Once peaceful cooperation is established, it may be possible for justice to develop. Without peace, no other social values will be realized.

18. See Richard Haier on the Nature of Human Intelligence, *The Psychology Podcast*, at 14:34–18:57, 1:00:01–1:01:55 (June 25, 2020), <https://scottbarrykaufman.com/podcast/richard-haier-on-the-nature-of-human-intelligence/> [https://perma.cc/79BW-XDSN].

19. JOHN RAWLS, *A THEORY OF JUSTICE* 3 (1971).

20. I owe this point to David Schmidtz, though I may have misunderstood Schmidtz's point. DAVID SCHMIDTZ, *REINVENTING MORAL SCIENCE* (ms., 2018). The point was earlier advanced by John Hasnas. John Hasnas, *Toward a Theory of Empirical Natural Rights*, 22 *SOC. PHIL. & POL'Y* 111, 141–42 (2005).

Given the problem of intractable disagreement about matters of great import, a society requires a mechanism for addressing ideological conflict. This need not be a mechanism that exactly *resolves* disagreements (for that is usually infeasible), but it must be a mechanism that somehow prevents partisans of opposing views from physically fighting with each other.

In a dictatorship, the mechanism is oppression by the government—individuals who attempt to pursue ideas in conflict with government policy may be arrested, disappeared, and so on. This prevents all but a tiny minority of people from actively pursuing such ideas.

Liberal societies, however, reject the mechanism of repression. In a liberal society, the mechanism for addressing ideological conflict is, in large measure, *discussion*. Partisans of opposing views pursue their values by attempting to *persuade* others. Opposing factions accept this *modus vivendi*, partly because they value peace and partly because they believe that their own ideas can ultimately succeed in the marketplace of ideas due to their inherent superiority. All of this is key to the stability and peacefulness of liberal society.

This is why it is important that society in general permit the free expression of a variety of conflicting philosophical, religious, and political views. When dialogue ends, ideological conflict does not end; people's differences only become greater, and the conflict migrates to more destructive forms. In the worst case, people have only violence left as a means to play out their disagreement.

This concern may seem overstated. Surely one individual or organization's decision to censor some particular idea is not going to bring down liberal society. Nevertheless, if *many* individuals and organizations across society behave intolerantly for an extended period of time, this may erode social order and liberal society. Because this would be a very bad outcome, one morally ought to avoid actively contributing to it, even if one's own contribution would be only a tiny portion of the total forces contributing to the bad outcome.

#### IV. FOR LIMITED CENSORSHIP

##### A. *Lies Versus Bad Opinions*

We have seen serious reasons both for and against suppressing the communication of bad ideas, but what should we conclude overall? Is there some way of respecting all the important reasons?

Fortunately, the reasons for and against speech suppression do not apply with equal force to all kinds of false speech. The problems with free speech mostly apply to lies about matters of fact, whereas the problems with suppression of speech apply most strongly to the suppression of sincere opinions. I shall argue, therefore, that the weight of reasons supports suppressing speech that transmits *lies about matters of objective fact* but does not support the suppression of *sincere opinions*, however misguided.

To clarify, by "lies" I do not mean false assertions; I mean assertions that the speaker *does not believe* to be true. The paradigm case is QAnon's assertions.

The individuals who wrote the QAnon posts know that they are not high-ranking government officials with top-secret clearance, that they are not in on government plans to crack a ring of satanic pedophiles, and so on; they are intentionally inventing a fantastical fiction.

By contrast, most individuals with right-wing political views are not liars. When someone argues, for example, that immigration harms the economy, this is in my view *mistaken*, but it is not a *lie*—anti-immigration activists sincerely believe that to be the case.

Thus, it would be appropriate for private agents to ban QAnon content (as Facebook and Twitter have done), but it would not be appropriate to ban conservative authors who mistakenly argue that immigration harms the economy.

Let us examine how this approach best respects the arguments given in Sections 2–3 above.

### *B. The Costs of Suppression*

#### 1. The Risk of Error

The risk of error (Section III.A) applies most strongly when one suppresses sincere opinions. If we take to suppressing conservative views, there is a serious risk that we may be wrong. If, by contrast, we suppress QAnon-style lies, there is much less risk that we may be wrong.<sup>21</sup> The probability, for example, that there really is a ring of Satan-worshipping pedophiles that Donald Trump was working to bring to justice is negligible.

Granted, it may sometimes be difficult to determine whether an individual is sincere or not. In such cases, I advise erring on the side of treating individuals as sincere. While I don't have an algorithm for determining which speakers should be accepted as sincere and which should not, my proposal is nevertheless useful, since there are some clear cases of bad faith content (lies), and many cases of bad ideas that are held in good faith. I have no difficulty recognizing, for example, the sincere beliefs of socialists, Christians, or white supremacists, even though I take all of those to be false beliefs.

#### 2. Entrenching Opposition

The second cost of speech suppression (Section III.B) was that it tends to exacerbate polarization and mistrust, as individuals with opposing ideologies retreat into separate discourses. This, again, is of greatest concern when one suppresses speech by good faith participants in discussion. We need hardly be concerned that *bad* faith participants will become distrustful or polarized as a result of the suppression of their messages, since, by hypothesis, they do not believe the messages that they put forward in the first place.

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21. On my definition, it is possible for a lie to be true—that is, a statement that is not believed by the speaker *can* nevertheless be true. However, this is very rare. It is much rarer than the phenomenon wherein an opinion we disagree with turns out to be correct.

Indeed, the problems of polarization and mistrust may be exacerbated by allowing bad faith content to be freely communicated. There are three main reasons for this. First, when individuals of sound judgment observe bad faith content in a particular forum, they are likely to become more generally distrustful of content appearing in that forum, including content that is in fact advanced in good faith.

Second, bad faith behavior that is visibly tolerated can alter people's perceptions of social norms. If people observe frequent lying, and they see that these lies are tolerated (and neither deleted nor punished), this causes them to conclude that lying is acceptable according to the norms of that social group. Furthermore, perceived social norms have a powerful influence on human behavior. If we believe that lying is socially unacceptable, then we are much less likely to do it than if we believe that lying is socially acceptable. Thus, bad faith content may have a contagious effect.

Third, bad faith content is especially likely to include messages that directly sow discord and suspicion. An especially popular kind of lie consists of slanders against one's ideological opponents. This, again, is part of the secret to QAnon's popularity.

### 3. Intellectual Corruption

The third problem with speech suppression (Section III.C) was its tendency to corrupt our intellectual practices. There is little cause for concern about this in the case of suppression of dishonest content. Active engagement with someone who is simply lying about matters of fact is not an important aid to critical thinking, in the way that engagement with sincere opponents is. There is little to be said to liars beyond, "I don't believe you," which does not typically make for illuminating discussion. Active discussion of their bad faith assertions is more likely to lower the quality of intellectual discourse.

Admittedly, there is some cause for concern that a principle of suppressing dishonest content may be abused. Lazy ideologues may seek to suppress dissent by claiming that their opponents are lying. Therefore, content moderators (for example, employees of Meta who are reviewing content, or college administrators who receive complaints from students) must be basically honest and capable of reasonable judgment.

One might wonder how this is different from a policy of suppressing psychologically harmful speech, which I argued was ripe for abuse—why should one not appeal to the honesty and reasonableness of moderators in that case too? The difference is that it is much easier to mistakenly think that some speech is psychologically harmful (*if* one accepts the general premise that expression of bad ideas is liable to cause psychological harm) than it is to mistakenly think that some speech is not sincere. Those who disagree with a given message can easily claim to be psychologically hurt by that message, whereas it is harder for them to argue that the source of the message does not himself hold the beliefs he expresses. It is quite rare for someone to doubt that ideological opponents believe the positions

they advance. For instance, many claim that allegedly racist messages are psychologically harmful, but almost no one claims that allegedly racist messages are not believed by the people who advance them.

#### 4. Penumbral Suppression

The fourth problem with speech suppression, penumbral suppression (Section III.D), is also less worrisome in the case of dishonest content. The reason is that, as suggested above, there is a great deal less certainty about what political ideas are *politically or psychologically harmful* than there is about what factual claims are *actually believed* by the people who profess to believe them. Because this is generally known to be the case, most participants in a discussion have considerably less cause to fear that they will be mistaken for liars than to fear that their ideas will be considered politically or psychologically harmful. In other words, there simply are *many more* borderline cases of harmful speech than of dishonest speech.

#### 5. Liberal Social Order

The last cost of speech suppression (Section III.E) was the weakening of liberal social order, which, I argue, depends upon dialogue between opposing factions. This consideration, again, only speaks in favor of open expression of sincerely held beliefs. Liberal social order depends upon sincere dialogue between ideological opponents; it does not depend upon free transmission of factual assertions that are not even believed by the people who make them. Indeed, some dishonest content is apt to undermine social order, as in the case of false assertions about election fraud in the 2020 U.S. Presidential Election. (Here, I assume that Mr. Trump and his lawyers were in fact lying about evidence of election fraud.<sup>22</sup>)

#### C. *The Political Costs of Free Speech*

None of this is to deny the potential harms of free speech: bad ideas can cause serious political harm. The most harmful ideas have caused millions of deaths. In a free marketplace of ideas, there is no guarantee that terrible ideas will not take over. As free speech advocates, we should not be naïve or Pollyannaish about the workings of human discourse and reasoning. Having acknowledged the risk, it does not follow that attempting to suppress bad ideas will tend to improve matters. For all of the reasons mentioned above, I think it generally makes matters worse—it is usually not very effective at preventing erroneous beliefs, it may cause more errors and prevent intellectual progress, and it weakens social order in a liberal society.

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22. Chuck Todd, Mark Murray & Carrie Dann, 'Nothing There': More Republicans Are Calling out Trump's Election Lies, NBC NEWS (June 28, 2021, 9:03 AM), <https://www.nbcnews.com/politics/meet-the-press/nothing-there-more-republicans-are-calling-trump-s-election-lies-n1272510> [<https://perma.cc/7JXS-VRM4>].

The best way of trying to minimize the risks of free speech is to encourage reasonable people to participate in public dialogue. In addition, we need schools (which have a different business model from news media and social media corporations) to act as a corrective to the news media and social media by teaching students skills for critically evaluating news stories and other content.

## V. QUESTIONS AND OBJECTIONS

### A. *Completely Unreasonable Ideas*

I suspect that many people today would accept free speech in general but would make an exception for speech that is both (i) potentially very harmful politically, and (ii) utterly unreasonable. Perhaps the paradigm most people would cite is speech by white supremacists or other racists. The “risk of error” argument is much weaker than usual when we suppress such ideas—surely there is negligible probability that the white supremacists are correct, or even that they have interesting things to teach us. Furthermore, because they are completely unreasonable, it seems unlikely that engaging in reasoned dialogue with white supremacists will be fruitful. Or so one might argue.

But the latter assumption, surprisingly, is empirically false: it *is* possible to make progress with white supremacists through reasoned dialogue. Admittedly, the evidence on this matter is anecdotal, but it is often quite striking.

Consider the case of Derek Black, who was considered a rising star in the white nationalist movement circa 2010.<sup>23</sup> Derek is the son of former KKK Grand Wizard Don Black and the godson of the famous neo-Nazi David Duke. When he went to college, Derek Black was about the clearest example one could find of a hardcore racist. Then, one of his Jewish fellow-students started inviting him to Shabbat dinners on a regular basis. Some of the students engaged him about his beliefs. Derek advanced what he thought were powerful arguments for his views, while the other students patiently provided counterevidence. Over a period of one to two years, Derek came to realize that his belief system was false. He publicly renounced white nationalism and apologized for his role in the movement in a letter to the Southern Poverty Law Center in 2013, and he began campaigning against racism.

Or consider the story of Daryl Davis, a Black musician who in 1983 met a KKK member in a bar where he was playing.<sup>24</sup> Davis used the opportunity to try to answer a longstanding question he had about racists: “How can you hate me when you don’t even know me?” Davis got to know the Klansman, tried to understand the man’s beliefs, and offered his own counterpoints. The man eventually quit the Klan and gave up on racism. Davis subsequently got to know many other Klansmen and converted them away from racism, including the leader of the

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23. For Black’s story, see ELI SASLOW, *RISING OUT OF HATRED: THE AWAKENING OF A FORMER WHITE NATIONALIST* (2018).

24. See *ACCIDENTAL COURTESY: DARYL DAVIS, RACE & AMERICA* (PBS 2017).



KKK in Maryland. Davis reports having directly caused forty to sixty people to leave the Klan and indirectly caused 200 to leave.

There are many other stories of people who were converted away from racist beliefs and attitudes.<sup>25</sup> Most of them involve personal interaction with a person who belongs to the hated race. None of them involve people of opposing beliefs silencing or refusing to engage with the racists.

### B. *Semi-Honest Content*

My proposal turns crucially on the distinction between good faith (if misguided) content and outright lies. But there are many in-between cases: content that (seemingly deliberately) creates misleading impressions, distorts other people's views, omits crucial information, or makes other errors that the authors should know better than to make. Very often, individuals advance opinions that they sincerely hold, but they do so by means of semi-deliberate deception about the state of the evidence. Discussants often act like defense lawyers who use every trick they can think of to help their client, while hiding any unfavorable information.

How should such cases be treated? In my view, one should generally err on the side of liberty, meaning that semi-honest content should typically be tolerated. The proper response is for other discussants to rebut that content using better information. There are two reasons for this.

First, the border between honest content and misleading content is difficult to discern, and there will be an extremely large number of borderline cases if we decide to suppress content that is "too misleading." This would open the door to the five main problems with speech suppression previously discussed (Section III).

Second, there are too many cases of misleading content for it to be feasible to protect audiences from it. Probably the *majority* of news and political content is misleading. Among news reports, it is very common for journalists to portray events as more dramatic than they really were, to omit relevant but unentertaining information, and simply to misunderstand the story. At the same time, defenses of controversial political or other opinions are almost never scrupulously fair, and it is extremely common that opposing partisans view them as misleading or even intellectually dishonest. Therefore, to attempt to suppress information that is merely *misleading* would open the door to turning our intellectual discourse into a battle over who should be silenced.

### C. *Insults*

The last category of undesirable content to consider is that of insults. Public discourse and the pursuit of truth are surely not aided by the (unfortunately

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25. See, e.g., Jonas Grinevičius & Mindaugas Balčiauskas, *30 Ex-Racists Share What Honestly Changed Their Views*, BORED PANDA (May 2021), <https://www.boredpanda.com/reformed-racists-reveal-what-forced-them-to-change-views/> [<https://perma.cc/USW7-PA36>].

widespread) practice of people insulting one another. Therefore, perhaps insulting content should be suppressed, in addition to blatantly dishonest content.

I won't discuss the prudential reasons for and against such a policy by a private agent. Here, as in the preceding sections, I focus on ethical considerations grounded in the welfare of society. From that standpoint, insulting content is usually of no social value, and even of negative value, as it tends to degrade the intellectual quality of discourse, thus making it more difficult for society to arrive at well-reasoned and correct beliefs. Thus, it is usually both permissible and desirable to suppress insulting content.

There are, however, exceptions to this rule. The exceptions concern content that is of legitimate *public interest* despite that some find it insulting. People should be free to speak on matters of public interest for the five reasons discussed above (Section III). These reasons do not, however, apply to matters of no public interest.

For instance, there is no need for a university to permit professors to call their students names while in class, or for a company to permit employees to personally attack each other on company message boards, or for a moderator of a public discussion forum to permit personally insulting comments. These things do not contribute to discussion of matters of legitimate public interest.

On the other hand, personal attacks on *public figures*, particularly public *political* figures, can very well be of legitimate public interest, since, in a democratic society, voters may need to assess the moral character of their leaders to decide how to vote. Thus, for example, arguments or assertions that the President is a bad person are a legitimate part of public discussion.

Another type of case is one where an individual who belongs to a particular group finds certain generalizations about the group to be insulting or offensive, even though that specific individual was not targeted. For instance, individual women might take offense at statements that seemingly support stereotypes about women, as occurred in the case of the Damore essay mentioned in Section 1. Such content, in my view, should *not* be suppressed since it addresses matters of legitimate public interest. The question of whether and how men and women differ from each other is important to our understanding of humanity as well as to many public policy issues. This is similarly true for questions about differences between races or other groups. Most obviously, the differences between different populations, and the causes of those differences, are relevant to affirmative action and other policies designed to address social disparities. Society thus needs to be able to openly discuss those issues.

## VI. CONCLUSION

A generation ago, much of what I have written was received wisdom—it was simply obvious, at least to liberal intellectuals, that *free discussion of matters of public interest should not be stifled*. A generation ago, I would not have bothered to write this paper.

But today, much of the received wisdom of the past seems to have collapsed. It is, apparently, no longer obvious that we should not silence those who disagree with us about issues of public interest. Today, we hear that expressing bad political views is harmful, perhaps even “violent.” We hear that individuals should be protected from offense, and that the way to do this is to silence those with offensive beliefs and refuse to engage with them.

All of this, in my view, is a disastrous error. There is no evidence that people suffer psychological damage from hearing offensive or wrongheaded political views. The approach of suppressing political dissent has the consequences of:

- i. Entrenching mistaken views and protecting them from criticism;
- ii. Driving people of different political orientations into separate ideological bubbles, thus increasing polarization and distrust in our society;
- iii. Corrupting our intellectual discourse, as rational argument is replaced by threats and social pressure as tools for responding to opponents;
- iv. Unintentionally suppressing discussion of ideas that are *related* to the central ideas that one means to suppress; and
- v. Weakening the fundamental basis for liberal order: the ability to address our differences through dialogue.

The best way to oppose offensive or wrongheaded views is to *engage* with their proponents in reasoned debate. Many people have been persuaded to change extremist views through such means. This is the rational approach to take if one is genuinely confident of the truth of one’s own views. Open, reasoned debate does not guarantee a triumph of the truth, but it gives the truth its best shot at success while avoiding the harms described above.