An Ethical Exploration of Free Expression and the Problem of Hate Speech

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The traditional Western notion of freedom of expression has been criticized in recent years by critical race theorists who argue that this ethos ignores the gross power imbalance between the users of hate speech and their victims. These claims have in turn produced a counterattack by those who hew to the classical libertarian model of free speech. This article examines the arguments put forth by both proponents of the libertarian model of free expression and critical race theorists. By providing a historical analysis of the competing ethical models behind these arguments and the ramifications of each approach toward hate speech, this article attempts to provide a useful and practical model for approaching the problem of hateful messages in modern society.

Over the past few decades, the traditional American notion of unfettered public discourse has been challenged by a number of scholars and social critics. These commentators argue that not every message is deserving of the protection that almost every form of speech currently enjoys under the law. Many of these critics are particularly concerned about what is commonly referred to as hate speech. Although there is no simple definition of hate speech, it is generally considered speech that singles out minorities for abuse and harassment. In its most obvious form, hate speech takes the form of ethnic slurs. Some critics

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contend, however, that hate speech can take other more subtle forms. Books and movies that might demean minorities are included in this definition (Wolfson, 1997).

Opponents of hate speech take issue with the classical libertarian approach that American jurisprudence utilizes when dealing with matters of free expression. These opponents, many of whom identify themselves as critical race theorists, argue that the legal framework that permits these messages does not acknowledge the imbalance of power that exists within American society. The groups that usually are singled out by hate speech, they note, are often groups that have been the subject of official and unofficial persecution (Walker, 1994). They still suffer from disparities in education, healthcare, and employment. When hate speech is allowed to demean, denigrate, or silence these groups, critics argue, this imbalance of power is further perpetuated and the promise of equality under the law is made hollow. Because the critical race theorists often stress the rights of the group, rather than those of the individual, they embrace a communitarian, rather than libertarian, approach to law and ethics.

These contrasting approaches to the issue of hate speech are rooted in venerable and conflicting ethical models: the utilitarian model of John Milton and John Stuart Mill versus the moral universalism of Immanuel Kant. The former acknowledges that hate speech may inflict harm upon individuals but that such harm is necessary for the unimpeded exchange of ideas that permits society to advance. The latter embodies a deontological approach to ethics that demands its adherents to ignore the consequences of a given action and instead focus on the inherent morality of that action.

Much of the scholarly discussion of the tension between the proponents of the libertarian model of free speech and the communitarian model is couched in the language of the law, that is, what may or may not be permissible under the system of American jurisprudence. This article seeks to address the fundamental ethical issue that undergirds this discussion: What is the most ethically responsible way to deal with hate speech? To that end, it will address the arguments on both sides and consider how different ethical models might evaluate them.

THE CLASSICAL MODEL OF FREE EXPRESSION

The roots of the classical libertarian model of free expression date back to 17th century England. It was in that setting that John Milton (1644/1951) wrote *Areopagitica*, generally regarded as the ur-text of this school of thought. Milton envisioned the realm of ideas as a battlefield, one in which competing arguments and ideologies would vie for supremacy. Milton surmised that the truth would always triumph over falsehood. However, Milton was writing in an explicitly

religious context. Milton's faith is not in humanity's rationality but in God's power. The truth he speaks of is divine, and its triumph is assured by God's own omnipotence. The argument here is theological, not epistemological. It has little relevance to secular-minded libertarians.

It would take nearly two more centuries before someone articulated a secular analogue to Milton's ideas. The utilitarian philosopher John Stuart Mill's major contribution to libertarian thinking was to extend his discussion of censorship from the state to society at large in his treatise *On Liberty* (1859/1985). Mill's archnemesis was not the government censor (though he worried about him as well) but rather the stifling conformity that modern society encouraged in its members: "The worst offense ... which can be committed by a polemic is to stigmatize those who hold the contrary opinion as bad and immoral men" (Mill, 1859/1985, p. 117).

Like Milton, Mill feared for a society that discouraged unorthodox ideas. To stifle discussion of unpopular opinions is to subtract a voice from the on-going conversation of a community. This, Mill argues, is why society requires "eccentrics" to provoke new questions and create new controversies. Without them, the conversation becomes muted and the people's political will dissipates. Conformity, he concludes, is not congenial to the development of a healthy democracy.

Mill's (1859/1985) ideas were already reflected in First Amendment to the Constitution, which established freedom of speech and the press. The more recent proponents of the classical model frequently use Milton's (1644/1951) and Mill's arguments as the explicit or implicit foundations for their own arguments in support of unfettered speech. One of them, Zechariah Chaffee (1941/1969), describes the evolution of the utilitarian model in America as a process whereby the search for truth is generally considered within the relatively narrow context of self government. A democracy such as the United States that permits an open exchange of ideas promotes two interests. The first is "a social interest in the attainment of truth, so that the country may not only adopt the wisest course of action but carry it out in the wisest way" (Chaffee, 1941/1969, p. 33). The second is an "individual interest, the need of many men to express their opinions on matters vital to them if life is to be worth living" (Chaffee, 1941/1969, p. 33). Chaffee defines the first interest as the primary one, and one that is defined in modern society as a usually political interest.

The simplest and most eloquent defense of the libertarian model in the 20th century was penned by Alexander Meiklejohn (1948) in his short but influential tract "Free Speech and its Relationship to Self-Government." Meiklejohn argues that absolute freedom of speech is an inevitable corollary of self-rule. As their own rulers, citizens of a democracy make their own decisions about the government, and therefore the government has no right to suppress any kind of speech.

CRITICAL RACE THEORY AND THE
PROBLEM OF HATE SPEECH

The libertarian model of free expression went mostly unchallenged for decades, until the 1980s and early 1990s. During this time, many universities and other public institutions experienced a rise in the incidence of hate speech. In response, some of these institutions attempted to prohibit or restrict such expressions. This touched off a heated controversy about both the legality and morality of regulating an individual's or group's messages. In the wake of these controversies emerged a new group of scholars who presented an alternative interpretation of the limits of free expression. These scholars dubbed this new approach to free expression critical race theory.

Four of the most influential of the critical race theorists published their ideas in a book entitled *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment* (Matsuda, Lawrence, Delgado, & Crenshaw, 1993). In it, they defined critical race theory as one that

> is grounded in the particulars of a social reality that is defined by our experiences and the collective historical experience of our communities of origin. Critical race theorists embrace subjectivity of perspective and are avowedly political. Our work is both pragmatic and utopian, as we seek to respond to the immediate needs of the subordinated and oppressed even as we imagine a different world and offer different values. (Matsuda et al., 1993, p. 3)

For the critical race theorists, this approach is a necessary corrective to the libertarian model, which they believe has failed as a system of honest intellectual and moral exchange.

The libertarian concept of the community as an arena in which ideologies vie for dominance is deeply flawed, according to the critical race theorists. It posits the existence of a level playing field that does not exist in the real world. Existing prejudices and imbalances of power among different races, ethnicities, religions, genders, and sexual orientations make it impossible for traditionally marginalized groups to confront opposing messages on an equal footing. As one scholar puts it,

> I do not believe that truth will prevail in a rigged game or in a contest where the referees are on the payroll of the proponents of falsity. The argument that good speech ultimately drives out bad speech rests on a false premise unless those of us who fight racism are vigilant and unequivocal in that fight. (Matsuda et al., 1993, p. 83)

This fight, the critical race theorists argue, means establishing a new way of confronting such hateful messages.

One of the authors of *Words That Wound*, Mari Matsuda (1993), has articulated a system whereby messages could be evaluated through the prism of critical race theory. According to Matsuda, hate speech is defined by three characteristics: the message is of racial inferiority; the message is directed against a historically oppressed group; and the message is persecutory, hateful, and degrading. These criteria are designed to systematically single out truly damaging and hateful messages from other kinds of controversial speech such as satire and unpopular political philosophies (i.e., Marxism). Such messages would then be subject to some form of regulation or restriction, although Matsuda does not put forth a specific remedy.

Interestingly, Matsuda's (1993) system explicitly permits hateful verbal attacks upon the members of a society's dominant group. She acknowledges that such attacks can be as hateful as similar attacks upon minority groups but argues that the response to these attacks is best left to the options presented by the libertarian model: counterspeech, social approbation, boycott, and persuasion. These are the very remedies that Matsuda and her allies deride as unsuitable weapons for belittled minority groups. The difference, they argue, is that the members of the dominant group possess far more power and are therefore able to wield these rhetorical weapons to greater effect.

Since the publication of *Words That Wound*, many other writers and scholars have elaborated on critical race theory. Chris Demaske (2004) offers an updated version of Matsuda's framework for evaluating potentially hateful messages. Like Matsuda, Demaske contends that historical context must be considered when formulating an appropriate response to hate speech. Group identity, she argues, is a social construction and one for which the traditionally atomistic concept of libertarianism fails to account. She proposes a framework to create effective hate speech regulations.

Some supporters of hate speech regulation describe the problem of hurtful messages in dire tones. Alexander Tsesis (2002) describes hate speech as a kind of societal virus, one that will gradually and subtly grow in power and influence if left unchecked. Moreover, Tsesis explicitly links these hateful messages with harmful social movements. Such messages, he argues, are essential instruments for racists, anti-Semites, and other hatemongers seeking to advance harmful agendas. He describes in detail the "misethnic discourses" used to justify the African slave trade and the relocation of Native Americans. Notions of free expression are rendered quaint, he says, by the reality of violent hate crimes like murder and assault that are committed upon members of minority groups.

Other scholars are less convinced of a causal relationship between speech and action than Tsesis, yet they believe that some form of restriction on hate speech is ethically permissible. Rodney Smolla (1992) generally supports the idea of a "marketplace of ideas," yet theorizes that there are some forms of speech that, because they possess no intrinsic societal value, are undeserving of protections.

Hate speech would fall into this category. Smolla acknowledges the apparent contradiction here: hate speech, by its very definition, would seem to contain a message. However, Smolla notes that pure hate speech "states no fact, offers no opinion, proposes no transaction, attempts no persuasion" (Smolla, 1992, pp. 166–167). As such, it cannot contribute to a societal dialogue and therefore can be ethically curtailed.

Another case for a regulated approach to hate speech is made by Stanley Fish (1994) in the title essay of his boldly named book *There's No Such Thing As Free Speech (And It's a Good Thing, Too)*. In it, Fish puts forth the notion that traditional definitions of free speech break down when confronted with concrete examples of troublesome expressions. Although Fish does not identify himself as a critical race theorist, he shares some of their views regarding the damaging effects of hateful language. To Fish, words are far more dangerous than many of the libertarians are willing to admit. The description of hate speech as merely "obnoxious" or "offensive," he writes, is a dismissal of the very real harm it can inflict. Fish also confronts the tenets of the modern libertarian model. Pointing to the religious origins of Milton's (1644/1951) argument in *Areopagitica*, he argues that that it is Milton's Christian faith that justifies the libertarian concept of a self-correcting process. The idea that the truth will triumph in a contest of ideologies is apparent when that truth is divinely created. Absent this Christian framework, Fish writes, the libertarian model fails to convince.

The most nuanced argument for at least a partial redefinition of traditional free speech doctrine is found in Cass Sunstein's (1993) *Democracy and the Problem of Free Speech*. He writes that "a subject matter restriction on unprotected speech should probably be upheld if the legislature can plausibly argue that it is counteracting harms rather than ideas" (Sunstein, 1993, p. 193). Sunstein's conception of free speech is linked to James Madison's idea of "deliberative democracy," in which unfettered speech is permitted in order to foster a national conversation about issues of importance. He argues that certain categories of speech, such as hate speech, are so harmful that some kind of restrictions should be allowed. In a university setting, where much of the controversial speech occurs, the educational mission of the institution provides additional reasons for regulating hate speech. Yet Sunstein (1993) cautions that speech contributing to social deliberation should not be curtailed. Who decides, though, what is mere epithet and what is an "exchange of ideas"? How are lines to be drawn between a message that is harmful and one that is merely obnoxious, and who is to draw them? Sunstein acknowledges that these are difficult questions, but concludes that they must be seriously addressed to confront the inequalities of modern society.

The rise of the Internet as a highly effective system for cheaply and easily disseminating information has also been a growing cause for concern for many opponents of hate speech. Supporters of restricting hate speech point to research

that suggests that audiences who are exposed to online hate speech perceive it as a real and growing threat to society. Irene Nemes notes that "the Web is a particularly good resource for those wishing to spread message of hate. It offers an inexpensive method of spreading the message to a potential audience of millions, without having to pay for distribution" (Nemes, 2002, p. 199). Another critic of online hate speech, Laura Leets, writes that "white supremacist Web pages take hyperbole and incivility to a degree rarely found in other media" (Leets, 2001, p. 316). Many of these critics contend that the Internet makes hate groups' messages even more dangerous than in the past, as they can reach a much larger audience with little effort or cost.

THE LIBERTARIAN RESPONSE

The ideas of critical race theorists and their allies ignited a firestorm of controversy in the hall of universities and in the pages of scholarly journals. The traditional libertarian model, for all its alleged shortcomings, had no shortage of defenders, many of whom mounted impassioned and eloquent defenses of it. While acknowledging the deleterious effects of hate speech, these critics argued forcefully that the proper response to hateful messages was more speech, not less.

One of the most influential responses is Jonathan Rauch's (1993) *Kindly Inquisitors*. Rauch reaches back to Mill for his justification of what he calls the liberal social science system. This system, whereby claims of knowledge are subjected to public scrutiny and then adopted or discarded, has been the basis of all Western intellectual progress since the days of the Enlightenment, Rauch writes. The challenges of the critical race theorists threaten to undermine this progress.

Rauch (1993) is not entirely unsympathetic to the arguments of Matsuda (1993) and others. The libertarian model of intellectual exchange does not treat everyone equally. Those who are unwilling to participate in it are excluded, and those who do participate in it may find themselves confronted with ideas they find personally repellent. However, the attempts of the critical race theorists to excise hate speech from the collective conversation will only hinder the ongoing quest for knowledge. "Let us be frank, once and for all. Creating knowledge is painful, for the same reason that it can often be exhilarating. Knowledge does not come free to any of us; we have to suffer for it" (Rauch, 1993, p. 125).

Rauch's (1993) arguments center upon one central point: No centralized authority can reliably distinguish between the sort of speech that is useful, and the sort of speech that is truly devoid of any redeeming social quality. The liberal science method of gathering knowledge is a process in which all participants are responsible for checking the ideas of one another and no one person or

group gets the final say as to what shall be permitted. Ultimately, Rauch (1993) argues, speech may be ethically prohibited or regulated only when it genuinely interferes with someone else's rights. Such instances might include the speech involved in acts of fraud and extortion. It might also include defamation and copyright violations, but it would not include hate speech.

Rauch (1993) has been joined by many other libertarians who bristle at the notion of restricting any kind of speech. James Weinstein's (1999) *Hate Speech, Pornography, and the Radical Attack on Free Speech Doctrine* offers a thorough rebuttal to those who challenge the libertarian model. These critics, Weinstein writes, "ignore or trivialize the fact that current doctrine is largely a product of the failure of early cases to protect against governmental suppression of radical ideology at turbulent times in our nation's history" (Weinstein, 1999, p. 16).

Weinstein (1999) argues that free speech doctrine is more a product of experience than theory. He contends that critics overstate the benefits of excluding hate speech from public discourse while underestimating the costs. Hate speech is "already extremely marginalized" in modern society (Weinstein, 1999, p. 138). Experience has shown that all too often, restrictions on hate speech lead to unintended consequences.

In the United States, the government has too often used new powers of censorship against groups that the supporters of these powers want to protect, Weinstein (1999) notes. The experience of the Japanese-Americans interned during World War II is only one case in point. He writes that nothing has changed today:

> The prohibition against content discrimination peculiar to U.S. free speech doctrine is a conscious reaction to persistent misuse of various speech regulations against radical dissidents prosecuted not because their expression realistically posed any danger to interests that the laws legitimately sought to protect but because their ideas offensively challenged the status quo. In this regard, it is noteworthy that the only case in which a musical recording was declared obscene involved attempts to suppress the sexually vulgar music of a black rap group under Florida's obscenity laws. (Weinstein, 1999, p. 144)

These experiences are not unique to the United States. Weinstein cites several examples in other countries where broad hate speech laws backfired and were used selectively to prosecute minorities rather than the conduct and groups for which the laws were enacted.

Weinstein (1999) concludes that the best response to hate speech is a vociferous and spirited campaign of counterspeech on the part of both the government and individuals. Such a response is useful in demonstrating that the majority does not share these same views, making visible to others the possible harms associated with hate speech and injecting a much-needed voice to the debate. Sensitive to the claims of the critical race theorists that the playing field is

uneven, Weinstein goes so far as to call upon the government to subsidize those who otherwise do not have the resources to counter hate speech, and to begin educational campaigns to raise public consciousness about the possible harms associated with it.

Franklyn S. Haiman's (1993) book *"Speech Acts" and the First Amendment* is a another rebuke of the idea that certain kinds of speech are not really speech and therefore fall outside the scope of the traditional libertarian model. Haiman argues that this sort of reasoning threatens the distinction between word and deed that underlies the liberal tolerance for diversity of opinion. "Speech is not the same as action," he writes, "and if it were, we would have to scrap the First Amendment" (Haiman, 1993, p. 57). He carefully dissects the major rationales for treating offensive speech like a crime or tort. Haiman writes:

> What has converted speech into a speech act for those who choose to define it that way—be it fighting words, obscenity, racist slurs, orders, or threats—are the ideas or meanings that have been communicated to persons who understand them. One can call it an *act* if one wishes to—as Humpty Dumpty in Through the Looking Glass observed, you can name anything whatever you want to—but it is essentially a *symbolic*, not a *physical*, transaction. And though it is true that symbols can, and commonly do, arouse physiological as well as mental responses in their audience, the mental response comes first and mediates what follows. Without a response of the mind, nothing follows, for nothing has been comprehended. (Haiman, 1993, p. 68)

Here Haiman (1993) argues that hate speech is not only about words. The target of a racial slur has to understand the message being conveyed and react to it. The problem, he notes, is that not everyone will react in a uniform manner to the same insult. This is the underlying problem with punishing people for inflicting emotional distress: such damage can never be quantified or even proven.

Lee Bollinger (1986) is more sympathetic to the claims of the critical race theorists; he also has concerns about the effects of unbridled speech. In *The Tolerant Society*, he notes that only American society grants its members almost complete freedom to say whatever they like, no matter how dangerous or harmful their messages might be to the state or their fellow citizens. These hurtful expressions, he writes, contribute nothing of value to society. Yet Bollinger (1986) concludes that such speech should be tolerated, not only for the benefit of those who espouse the hateful message but also for those who are offended by it. Society is strengthened by displays of tolerance. By exercising self-control when confronted with hate speech, a healthy democracy affirms its ability to be tolerant in general. This tolerance of other viewpoints, however unpleasant, is essential for the maintenance of self-government.

Finally, Stephen Smith (1995) provides a point-by-point rebuttal to Stanley Fish's (1994) argument in his essay *There's Such a Thing as Free Speech: And*

It's a Good Thing, Too. Smith rejects Fish's contention that words can truly damage people, pointing to the lack of any tangible evidence. He also dismisses Fish's criticism of the marketplace of ideas, noting that this exchange of thought has been the basis for advancements made in Western science and art.

ETHICAL MODELS FOR CONFRONTING HATE SPEECH

The two general approaches to confronting hate speech—the libertarian model and critical race theory—are rooted in two different and often conflicting ethical systems. Libertarianism is a basically utilitarian system; it seeks to do the greatest good for the greatest number of people. Allowing total freedom of speech is meant to ensure that everyone who wishes to can contribute to an open exchange of ideas. This exchange will be frank and uncensored and at times uncivilized and offensive. Some people will be hurt by some of the messages. Utilitarianism accepts these hurt feelings as a necessary price to pay for the larger good of including all comers to the marketplace of ideas.

The communitarian approach, by contrast, primarily uses Immanuel Kant's (1797/1991) categorical imperative and John Rawls' (1972) theory of justice as its ethical lodestars. Kant's imperative, which he described as the "supreme principle of the doctrine of virtue," categorizes an individual's action as moral only if that action would be moral for all other individuals in similar circumstances. This idea is closely linked to notions of truth telling, in that a strict adherence to the imperative precludes the possibility of deception of any kind. Unlike utilitarianism, a Kantian ethical model views the individual as an end unto him- or herself, because the individual is a reasoning creature.

Rawls's theory of justice attempts to reconcile the principles of fairness and equality in a way that satisfies all concerned parties. Broadly stated, Rawls's theory posits that a just social contract is one that would be formulated if the parties did not know in advance where they might end up in the society that they would agree to. In this condition of ignorance, "no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength and the like" (Rawls, 1972, p. 12). From behind this veil of ignorance, the principles on which a just society would be based can be discovered, since in pursuing their own advantage, those behind the veil of ignorance must pursue the advantage of all. Rawls's social contract is ratified in a condition of perfect equality. Yet Rawls's theory ultimately privileges equality over fairness, as Robert Nozick (1974) points out, because it rests on the assumption that inequalities in society must be engineered to benefit the less fortunate. This assumption, Nozick argues, is morally arbitrary.

Despite the efforts of Rawls and others, the fundamental problem that confronts those who think seriously about hate speech remains: how to reconcile the seemingly opposed goals of freedom and equality. The sad truth is, there is no perfect balance to be struck between the two. Whatever decision one arrives at in this regard will be an uneasy compromise that will tilt to one way or the other. The intellectually honest critic must then carefully consider the arguments advanced by those on both sides of this debate.

AN ANALYSIS OF THE COMPETING APPROACHES TO HATE SPEECH

At first blush, the agenda of the critical race theorists appears eminently reasonable. Certainly, as many of these critics have argued, hate speech in and of itself contributes nothing of use to the larger society. What would it hurt society to simply remove it entirely? Yet a closer examination of this line of reasoning reveals its troubling but inevitable conclusion.

The foremost problem is that it fails the address the question of who decides. Who is to decide what is hateful and what is merely obnoxious? Who is to decide what is bigotry and what is justified criticism? The critical race theorists tend to elide this messy question altogether, but the unspoken implication in many of their works is: we will. This is a rather unsettling proposition for anyone who believes in the most fundamental principles of self-governance. These critics are unelected and unanswerable to anyone. Their only shared qualification is their membership in these historically beleaguered groups. As Rauch (1993) crudely but effectively states, "The fact that you're oppressed doesn't mean that you know anything" (p. 159).

In fact there is no means whereby anyone can reasonably sort out hateful speech from legitimate discussion. Thoughtful, reasoned criticism can also be devastating to its subjects, but that does not make it hate speech. The distinction between the two is in the speaker's purpose, something not always easily ascertained. This has not stopped authorities at universities and elsewhere from trying to determine the intent of a speaker's utterance. They are in effect placing the speaker's state of mind on trial.

The critical race theorists also err in their equation of words with deeds. The effect of hateful speech is undeniably powerful on the feelings of the speech's targets. Yet to suggest that such words are somehow equivalent to physical assault is sophistry of the highest order. These critics have been unable to demonstrate any objective evidence of the damage that hate speech is said to do to its victims. Absent this, the critics frequently retreat to the realm of metaphor and imagery: words that wound, assaultive speech and so on.

The line of reasoning that this supposed connection represents is fallacious. In responding to the words of a law school professor who equates words with bullets, Rauch (1993) writes: "My own view is that words are words and bullets are bullets, and that it is important to keep this straight. For you do not have to be Kant to see what comes after 'offensive words are bullets': if you hurt me with words, I reply with bullets, and the exchange is even" (p. 131). Even those critics who compare words to bullets cannot specify *which* words are offensive in which contexts, or how any outside party could ever make that determination. Ultimately, their arguments boil down to: these words are upsetting and offensive to me. But there is no right to not be upset or offended, nor is there a duty in any ethical system that stipulates that one must never give offense.

Some critical race theorists go so far as to claim that certain groups should be protected simply by virtue of the indignities and hardships they have faced in the past. That is certainly the view of Matsuda and her colleagues, who argue that any system of speech regulation must consider the historical power relations between the relevant parties. To embrace this belief, however, is to reject the most fundamental theme of Western intellectual and social progress: everyone is free to criticize everyone else, and that in the process of that exchange society is advanced, however fitfully.

The critical race theorists' response to this argument is that the real pain and suffering endured by the targets of hate speech cannot be justified by some hypothetical and abstract future. This reasoning conveniently overlooks the very real pain and suffering of the speaker who is ostracized, penalized, and in the most extreme cases jailed or even killed for having offended the sensibilities of a certain group. The libertarian model substitutes criticism for this violence, permitting the ideas of many to vie for supremacy rather than allowing the ideas of the few to be enacted by force.

Another argument that frequently arises is that of the uneven playing field: the minority groups who are the usual targets of hate speech have been so marginalized by society's dominant groups that they cannot compete equally within the arena of ideas. Without regulation, reasoned debate will become impossible. Some kind of accommodation is needed lest the "bad" speech drive out the "good." Such an assertion flies in the face of recent history. Even as the critical race theorists have grown more influential, the groups whose speech they seek to regulate have become ever less powerful. The ideologies of racism and anti-Semitism are thoroughly discredited in most of Western society. Even in cases where hurtful messages do not yet receive the same level of social opprobrium, for example, homophobic language, the very nature of the libertarian model suggests that such speech will eventually fall out of favor. Reasoned discourse is far more persuasive than thoughtless name-calling.

Words are undoubtedly powerful things; they can glorify and exalt or denigrate and shame. They can comprise brilliant novels and crass jokes. They are

the very building blocks of human intellectual achievement, but they are not weapons. They do not maim or kill. Instead they contribute to the complex and ongoing discussion that moves society forward. Removing part of that discussion, for whatever reason, hinders the debate and slows society's progress. Ideas become valuable when their worth is proven, and that occurs only when they are confronted by opposing ideas.

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