Campus Conversations

THE ROLE OF FREEDOM OF EXPRESSION IN A MULTICULTURAL AND DEMOCRATIC SOCIETY

VOLUME ONE: 2007-2008

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Willamette University
Salem, Oregon

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Preface

This collection of essays on the consideration of freedom of expression is the offspring of conflict. Conflict on a college or university campus is, most often, a good thing, for, as William Blake reminds us in his diabolically dialectic prose poem, *Marriage of Heaven and Hell (1790-93)*, "Without Contraries is no progression."

During the course of the academic year 2006-07, events on and off campus led to good and useful community debates about the limits of freedom of expression.

Two events are notable:

On Halloween 2006, several Willamette students organized, hosted and attended an off-campus party whose theme, "The Most Offensive Costume Party Ever," elicited many on-campus conversations and exchanges about diversity and social justice at Willamette. The organizers said that their purpose was to use satire as an aid to heighten awareness about diversity and social justice by turning familiar images of bigotry and hate on their heads. And yet the overwhelming majority of us encountered the party as a video—that is to say, as an artifact rather than as the thing itself—posted on YouTube™, the popular free video sharing Web site, which lets users upload, view, and share video clips. The video showed several Willamette undergraduates, posing, among many things, in black face, as Hitler, and other scenes and images that deeply offended some of those who viewed it, without a context in which to comprehend the ironic intent.

A second event occurred in March 2007 when an undergraduate student organization—sponsored, as we later learned, by the Office of Residential Life—created what it called 30 Days of Tension: a program that, according to its lead organizer, was to create a series of events on campus whose purpose would be to provoke the campus community to contemplate, according to the organizer, "issues of oppression." Its installation of lynched human figures hanging from trees near the academic quad conjured the horrific image of the lynchings of African-Americans and predictably ignited a spirited public debate—much of it electronic - among faculty, students and staff about the

educational value of the installations. Reactions were wide ranging: some argued that there are certain images and tropes so horrific and offensive to humanity that they should never be invoked, even with the intent of raising awareness of noble ideals; others viewed the installations as art, noting that some of the world's greatest art and literature has the capacity to elevate the mind to embrace enduring and universally human themes through shocking and powerful images that upset our sensibilities; and there were those who reacted strongly when the figures were taken down, arguing that their removal was emblematic of the "silencing" or muting of the voices of oppressed and socio-economically disenfranchised people.

In each instance students used satire with the intent to provoke the community to consider a variety of important issues. In each instance, the absence of a clear and unambiguous context in which to consider these images led to consequences that were neither intended nor anticipated by the organizers and those who participated in their creation. And in each instance, debates about social justice were co-joined—at times, even drowned out—with debates about the freedom of expression.

No doubt, each event tested the certainty of our understanding of freedom of expression within the context of the public satire and the complex dimensions of public self-expression and art—a test that I view as salutary for academic communities like ours.

Each awakened in our community questions about what Robert Frost called "big ideas," framed by compelling arguments that competed with each other in our understanding and allegiance to them: What, if any, are the limits of freedom expression beyond those already established by the courts? What happens when this cherished American right (is it a "right" or a "privilege") collides with the felt need to be protected from speech or expression that causes deep psychological hurt or emotional damage?

After the lynching installation, I received a lot of advice, much of it predictable and well intentioned. One person said, "Make it stop," and I wondered, of course, what is the "it" that I was to stop: The wonderfully provocative and thoughtful debate? The unsettled feeling and sense of dislocation that many of us felt? Or more to the point, should I stop the opportunity

for personal growth and moral enlightenment? Another person asked me to "weigh in" and take an official University position on an issue for which, in my view, there was no official position to be taken except to promote—rather than censor—the deliciously bewildering dialectic we commonly refer to as the "teachable moment."

For indeed, this was a 'teachable moment," if there ever was one.

It is commonplace for presidents of liberal arts colleges to remark on our collective responsibility to uphold the ideals of liberal learning—the substance of which consists in the recognition of basic problems that confront our world, in the knowledge of interrelations and distinctions in issues and subject matter, and the comprehension of ideas from diverse viewpoints - for the liberal arts is the education of free people.

On this latter point especially—the comprehension of ideas from diverse viewpoints—we note that the capacity to express oneself freely without the threat of censorship is foundational. For if the freedom to engage in exchanges of ideas—no matter how chimeral or downright offensive they might be—is suppressed, all of the other substantial values that nurture and sustain the educational process are without meaningful consequence.

And yet, these happy truisms are often more complex, nuanced, baffling and bewildering that we college presidents would publicly like to let on, especially when you throw into the mix healthy doses of youthful exuberance unchallenged by experience and historical perspective, smart and learned faculty, well-intentioned administrative staff, modern day satire and ironic humor as well as powerful electronic technologies that are instantaneous and asynchronous.

It was in this spirit that I invited faculty, staff and students to write discursive essays on the role of freedom of expression in a multicultural and democratic society. I have read each of the essays and am pleased by both the breadth and depth of the individual efforts. Some are finely researched; others reflect personal beliefs and experiences.

Taken together, they speak well of our commonwealth of learning.

The Dean's Council solicited, read and selected the essays that follow. I wish to thank them for taking on this assignment at a time of the academic

year when calendars are already crowded and over burdened.

This collection will be published both digitally and in book form during spring semester, 2008.

Because I have such great confidence in our intellectual community, I plan to issue an annual challenge to the members of our community to write about a theme, topic or question that bears on a fundamental aspect of our educational purposes. I have asked the Dean's Council to collaborate with faculty, students and staff to identify a worthy topic that will form the basis of a collection of essays to be published annually.

It is my hope that these several volumes will, over time, establish a historical record of a compelling vision of what we could be if we are truly open to what Matthew Arnold called the best that is known and thought in the world.

Lee Pelton
November, 2007

The Lion, the Scarecrow and the Looking-glass, darkly: Misadventures in the War of the Worldviews

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As many readers of these essays are aware, the impetus for this collection was the controversy on the Willamette campus during the 2006-7 academic year sparked by two student-initiated events. The first was the self-titled Most Offensive Costume Party Ever (MOCPE), a deliberate effort by a diverse group of students to deflate certain taboos through satire and ridicule. The second was an attempt at consciousness-raising that consisted of hanging effigies around campus with descriptions of specific episodes of social injustice attached "to represent those who are wounded, paralyzed, killed or 'lynched,' by those who fail to act at moments where we [sic] could speak out, but choose not to." The vocal condemnation of the MOCPE was most noticeably from a group which presented itself as Concerned Students for Social Justice and which demanded reforms on campus, including the formation of a Social Justice Council. The outcry elicited by the second event was precipitated by faculty and staff who demanded the displays be removed as they were "beyond the pale" and created "a hostile work environment." In both cases the University Administration acquiesced to the protestors, with the eventual formation of the Council for Diversity and Social Justice (CDSJ) in the first case and the immediate removal of the effigies in the second. Although, at first blush, the formation of CDSJ and the removal of the offending effigy displays may be seen as appropriate, enlightened, and morally commendable, on closer examination it may be argued that these decisions highlight the substitution of emotion for reason as the primary currency in our purported marketplace of ideas and, ultimately, undermine the integrity of the institution.

The metaphor of the university as a marketplace of ideas is a common, but not a trite, one and may have its origins in the ancient agora of classical Athens, where it is thought Socrates challenged his listeners to question everything they "knew" (including the veracity of their own worldviews).

However, a marketplace can only be effective if everyone agrees on fundamental rules for interaction and exchange. Although the specifics of transactions may vary, such as the currencies used or the exchange rates, all marketplace activities are based on a standard (e.g., gold) with specific attributes (e.g., purity) in line with a guiding philosophy (e.g., capitalism). Similarly, in the current intellectual milieu of the university, effective trade/transactions in ideas require all participants to accept the standard of reasoned discourse that is impartial and systematically consistent, as opposed to emotional manipulation, political bullying, or rhetorical trickery, conducted within the framework of freedom of expression. Ultimately, in all cases of disagreement and conflict, participants need to ensure that both their own arguments and those of their opponents conform to these conditions. Certainly, just as trade can occur within a different guiding principle, such as communism, the trade in ideas in the university could be bound by a different philosophy (perhaps a theocratic one). However, from history, experience, and communal values we have come to accept reason and freedom of expression as the most viable means of achieving our desired ends. Unless we are willing to change our trading practices, we are bound to abide by them.

Unfortunately, it seems that perhaps this marketplace of ideas has morphed into a customer-driven self-serving cafeteria where worldviews are selected based upon narrow personal interests and emotional reactions, much as hungry shoppers often opt for fast food and soda rather than more healthful offerings because the former are inherently appealing, readily available, and easily consumed. As more challenging fare supplied by the commitment to freedom of expression is routinely passed over because it is initially distasteful to our sensibilities, it is often subject to preemptive deletion from the offerings available. However, as is evident from the study of obesity and heart disease, not all things we find intrinsically attractive are good for us, nor are those things that are less palatable necessarily bad for us. British physicist Michael Faraday (1991) warned, "We receive as friendly that which agrees with (us), we resist with dislike that which opposes us; whereas the very reverse is required by every dictate of common sense" (475).

In the recent conflicts on campus a common justification for the

need to "redefine" the standards of intellectual commerce by limiting the expression of certain worldviews is the belief that the Willamette marketplace is artificially constrained. In effect, the argument holds that the inhabitants of the "Willamette bubble," by their very geography, are insulated and parochial and that any product they may bring to the marketplace of ideas will be necessarily so deficient as to be appropriately subject to preemptive recall. Often the designation is used to denigrate the apparent demographic homogeneity of the student body—white, wealthy, intellectually gifted— and is meant to emphasize a supposed lack of contact with the real world and the deficiencies that follow. According to a particular segment of the WU community these deficiencies are particularly evident in overt or covert prejudice and/or insensitivity to the plight of disenfranchised groups. For example, the MOCPE was seen as proof of, at least, the unevolved sensibilities and unenlightened or misanthropic worldview of the participants, and, at worst, endemic oppression at WU that could only exist in an environment of privilege and ignorance. Thus, given the Administration's support for the opponents of MOCPE and the hanging effigies, and the apparently inherent incapacity of "bubble" folk to express empathy for diversity, the call for reflections on freedom of expression in a multicultural and democratic society that has resulted in this volume of essays seems a useful pin.

However, framing the debate/discussion in terms of multiculturalism and democracy is an act of misdirection, a classic technique of illusion. Neither of these issues is pertinent to the fundamental dilemma: the place of freedom of expression in the university. Multiculturalism must be dismissed at the outset as a conceit and a red herring. Given our ever-evolving and increasingly complex multicultural world, inevitable clashes of sensibilities should come as no surprise. Nonetheless, even in less complex societies or much less heterogeneous cultures, or in culturally, racially, and ethnically homogeneous groups, there are differing opinions, values, notions, and behaviors which confront one another; the smallest homogeneous cultural unit, the intact traditional nuclear family, still experiences its share of disagreements (to use a mild term), conflicting values, behavioral issues, and divergent worldviews— as the parent of any teenager knows all too well. Indeed, the fact that both

protagonists and respondents of the two precipitating campus events are all members of the "bubble" population demonstrates at least binary worldviews within the "bubble." Thus, the belief that the demographic homogeneity of the campus community is directly reflective of a Borg-like mentality is simply incorrect, as is the idea that the challenges of freedom of expression are different, or more complex, in a multicultural setting. In analyzing the value and limits of freedom of expression, having 200 different worldviews is no more useful than having two.

Similarly, the inclusion of democracy in the discussion is moot as the university is not, in fact, a democracy (despite allusions to being so and the fact that in certain instances the wishes of the majority are sought and respected). It is variously a meritocracy, autocracy, bureaucracy, and collective bargaining unit. Moreover, as professor of political science and author Phillipa Strum points out, "democracy is not merely rule by the majority but, as important, formal protection of the rights of individuals" (1999, 49). In light of the Administration's failure either to seek a vote on supporting the demands of the MOCPE and effigy protestors or to protect the right of the creator of the effigy displays to "voice" his worldview, the consideration of democracy is clearly misplaced.

Thus, with the irrelevant distractions of multiculturalism and democracy removed, we return to the actual question under consideration: "In the university, who should be allowed to voice their worldview and under what circumstances?"

As noted previously, the purported disadvantages of inhabiting the Willamette bubble are well advertised for political purposes. Unfortunately, its benefits are rarely acknowledged, although they are important to both the function of the university and the intellectual growth of its inhabitants. One of the often unrecognized virtues of being in the bubble, and the source of considerable responsibility, is the opportunity to engage in the free exchange of ideas: to evaluate, rebut, analyze, advance, modify, commit to, or abandon worldviews, free of extraneous and irrelevant influences. This process should not be vacuous mouthing or mindless propagandizing but should rest on the careful application of reasoned argument, conscientious assembly of facts and

information, and clear commitment to overarching principles.

In discussing the social and educational upheavals of the 1960's, Jaroslav Pelikan notes in *The Idea of the University—A Reexamination* that the president of the University of Chicago at the time lamented the fact that many of those agitating for change tended to reject reason, "which is the way of education" for "personal qualities thought to be more than adequate substitutes." However, as the university has a "moral contract" with society, its duty to society transcends time and space and "as the ends of such a partnership cannot be obtained for many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born" (Pelikan 1992, 139). The end result should be a better society. For the university community to meet its obligations, it seems reasonable to support freedom of expression as a guiding principle, for it is difficult to imagine that social change can occur if only ideas of a certain demeanor are allowed in public.

Thus, the university community must necessarily take the long view and not be seduced by the tastes of the day, but always be cognizant of the importance of fidelity to the underlying principle. John Henry Newman in *The Idea of a University* argues that the university is "the high protecting power of all knowledge and science, of fact and principle, of inquiry and discovery, of experiment and speculation: it maps out the territory of the intellect . . . it acts as the umpire between truth and truth, and, taking into account the nature and importance of each, assigns to all their due order of precedence" (Pelikan 1992, 57-58). In this light, the fewer restrictions on freedom of expression, the more likely the good is to be achieved. Pelikan reiterates that the university can only maintain its place in the process of social change through the freedom of interpretation that only it "is able to provide on a continuing basis."

What is Freedom of Expression?

Although the initial response is often related to the First Amendment of the U.S. Constitution (i.e., a guaranteed right), the First Amendment is irrelevant to the issue at hand as, contrary to popular belief, the First Amendment does not apply to all aspects of American life. It is specifically

directed at restraining the government's interference with citizen discourse. It has no application to limits of expression placed by non-governmental institutions (such as private universities), although the arguments and results of First Amendment litigation can inform the debate in other spheres. Thus, there is no Constitutional guarantee of freedom of expression in the university, but there is a moral one derived from the commitment of the university to the free exchange of ideas in the pursuit of truth and the good life.

From the preceding argument it should be evident that freedom of expression is not an end in itself but rather a means to an end, that end being some conception of the good life (i.e., a social structure) that is better than one without freedom of expression. Although it is difficult to "define" this good life, C. Edwin Baker reports that noted First Amendment scholar Thomas Emerson identified freedom of expression as essential for furthering "1) individual self-fulfillment, 2) advancement of knowledge and discovery of truth, 3) participation in decision-making by all members of society ([including] the right to participate in the building of the whole society), and 4) achievement of a more adaptable and hence stable community" (Baker 1989, 47). As a means, it should be clear that freedom of expression cannot be an absolute good (i.e., not subject to restriction) because it is feasible that exercise of freedom of expression may clash with other fundamental principles, such as the prohibition on the unjustified killing of another, or may otherwise take society away from the good life to which it is intended to lead. Therefore, it is conceivable that limits may be reasonably placed on the exercise of freedom of expression. In U.S. law, examples include defamation, causing panic, sedition, obscenity, and incitement to crime. Similarly, in private contexts, freedom of expression cannot be absolute. The crux of the problem is to determine what limits are appropriate.

In the university, it should be clear that reasoned discourse with an understanding of the importance of a commitment to the principle of freedom of expression is the most suitable mechanism for determining (or at least proposing) appropriate limits. Unfortunately, the recent events on Willamette's campus, as well as incidents at other institutions of higher learning, have shown that rather than a commitment to the importance of

the principle, limitations on expression have been proposed, or imposed, for less than formidable reasons. Chief among these have been perceived slights to particular minority groups and/or personal discomfort resulting from being confronted by a differing worldview. Both of these responses are common in the current climate of the apparently self-evident value of visible diversity/multiculturalism and the focus on bruised personal sensibilities as valid criteria for limiting the expression(s) of others.

The *reductio ad absurdum* of this situation should be patently evident. If everyone shared the same worldview(s), there would have been no impetus to devise a principle of freedom of expression (or the First Amendment). The experience of life clearly demonstrates that differing (sometimes wildly divergent) worldviews exist even in the same society. As it is not possible to know at the outset which one(s) will lead to a new understanding of the world, or us, or the meaning of life, a commitment to the principle of freedom of expression has ostensibly been made by those who enter into the community of scholars. Thus, it is the responsibility of all participants to neither blindly accept nor summarily dismiss any novel commodity in the marketplace, but to subject it to scrutiny and quality control. Being mindful of one of the basic assumptions of science, that all knowledge is tentative, as new knowledge can alter current knowledge, we need to err on the side of caution in agitating for the suppression of worldviews that we find disturbing. If the standard for limiting free expression is whether the worldview expressed offends someone, then freedom of expression would cease to have any meaning, especially in the academy. Every limitation would take away more of its value, diminish its power to lead to the good life, and be one step closer to this means coming to its own end.

Indeed, the problem with the proposition that some worldview needs to be removed from the public arena because it is beyond the pale is that, in a reversal of the paradox of Zeno of Elea, it is often a journey of indistinguishable, infinitesimally small steps from the clearly intolerable to the blandly conventional, especially if the impetus is personal umbrage. Who is charged with erecting the fence obviously influences the scope of permissible worldviews. Challenges often posed to others to "get out of their

comfort zones" seem strangely irrelevant when it comes to our own. We have a propensity, especially in the university, to believe we have achieved the highest levels of insight, sensitivity, broadness of vision, tolerance—but this is principally a delusion. These are convenient justifications to avoid looking closely at our unwillingness to give freedom of expression any real meaning when confronted with personally distasteful, disturbing, or just plain alien worldviews. Few are qualified surveyors.

Thus, because of the dangers associated with *ad hoc* limitations on freedom of expression, the commitment to the principle as a fundamental responsibility (and virtue) of the academy, and the belief that within the university, more than the broader society, we are directed by intellect rather than affect, we must be willing to accept, and defend, the broadest interpretation of freedom of expression—even foreseeing the assault on personal beliefs that will occur. However unpleasant the circumstances that may occasionally result from this commitment, it ensures four important benefits: a) the meaningfulness of freedom of expression, b) intellectual honesty, c) institutional integrity, and d) the opportunity for intellectual and emotional growth.

It should be evident, the issues raised previously notwithstanding, that the free dissemination of differing worldviews would not necessarily produce dissention and distress, even if it they were distasteful to personal sensibilities. In the range of possible responses, we can ignore an offending worldview (because it's not particularly important to us), we can tolerate it (that is, examine it and allow it as an alternative view to our own), we can accept it (that is, be moved by it and change our own worldview), or we can censor it (because it clashes with some value(s) we hold dear or threatens our worldview in a presumably unbearable way).

It is interesting to note that the most passionate arguments about freedom of expression seem to be generated from skirmishes in the culture wars. In response to the disparate worldviews inherent in a multicultural society and the inevitable clash of sensibilities, the qualities most often advanced as necessary for achieving an integrated, fully realized social order are tolerance and acceptance, as these are presented as the means to ensuring the broadest range of worldviews. However, neither are appropriate standards. Tolerance

must necessarily have a limiting effect on freedom of expression (whether in art, literature, lifestyle, or cultural expressions of the meaning of life) because it is a malleable attribute subject to both intellect and affect and, as such, is only as robust as the highest threshold trigger a person is willing to abide. If, as is common in the current climate, every person's opinion is considered of equal value, then the lowest level of tolerance will ultimately dictate the limits of freedom of expression in society. Rather than leading to a flourishing of diverse worldviews, this approach will limit them to banalities that neither challenge nor enlighten. Similarly, the pursuit of universal acceptance, often seen as the Holy Grail of diversity, is as futile as the search for the Grail of legend because a universal worldview on anything (much less everything) is either not possible, or represents a world that is intellectually dead.

For freedom of expression to have significant meaning in the propagation and dissemination of diverse worldviews, greater emphasis must be given to developing resilience, a characteristic that represents the highest threshold of "distress" from an alien worldview that a person can endure. Just as the fatal limits of physical pain are well beyond the point at which we would voluntarily seek relief, so too is there a significant gap between the level at which we are inclined to censor and that which is philosophically or spiritually lethal. A real commitment to freedom of expression requires a willingness to "endure the unendurable." Fortunately, we possess the means to steel ourselves for the ordeal—resilience in the face of assaults on our sensibilities is bolstered by reason: the reasoning that the broadest interpretation of freedom of expression is preferable to a narrow one; that views that offend us may not be wrong; that if an offending worldview is wrong, analysis and discussion will expose its flaws; and that, in the final assessment, this process will be more potent in removing a flawed worldview from the public arena than simply trying to suppress it. Finally, to paraphrase Wendy Kaminer's (1999) defense of the First Amendment in *Sleeping with Extra-Terrestrials*, there is the fundamental reasoning that, to be meaningful, the right that freedom of expression provides each of us to give offense requires that we learn to take it.

Despite what I learned in kindergarten about the relative dangers of sticks, stones, and words, there is a current pervasive belief in the power of

words to wound as efficiently, deeply, and permanently as the roughest stick and the heaviest stone. If this concept is taken to heart, it is understandable that caring and compassionate people would avoid using words, images, behaviors, or other forms of expression, intentionally or otherwise, that could result in pain or suffering to others. In this situation, voluntarily withholding one's own worldviews to avoid causing disquiet in others seems perfectly reasonable as a matter of conscience. Unfortunately, an often advanced "logical" extension is the assumed moral responsibility to protect others from possible pain and suffering by preemptively suppressing potentially offensive worldviews of a third party. However, this position is flawed because, as argued previously, it must inevitably result in unreasonable restrictions on the scope of worldviews that could be publicly expressed. In addition, the limits on paternalistic interventions as regards morally autonomous equals are well known, including the most obvious objection that one cannot actually know what is in the best interest of another, so the "protection" of others cannot be the sole justification for censoring particular worldviews.

There is no doubt that words and other forms of expression from others can be emotionally devastating, and it would be unreasonable to expect that everyone could turn off their emotional responses. The quandary is in separating an initial emotional response from a lingering one, one that begins to fester and continues to disrupt the pleasure of life of the offended. The most obvious antidote is, again, reason. We espouse clear thinking to control our emotions and desires in all aspects of life and this circumstance should be no different. It should be evident that words can only exert an influence as long as one allows them to—they have no life other than that which the receiver gives them. It would be good to take note of the insight of Humpty Dumpty and actively assert our mastery over these polymorphic intermediaries.

Regaining control over unruly words and images (and defusing our destructive emotional responses to them) comes from striving to be what Paul and Elder describe as strong-sense critical thinkers, that is, those who treat all "thinking by the same high standards . . . who subject [their] own reasoning to the same criteria . . . [as that they] find unsympathetic. [They] question [their] own purposes, evidence, conclusions, implications, and point

of view with the same vigor as…those of others" (Paul and Elder 2001, 2). The foundation of strong-sense critical thinking is fairmindedness, which is an outgrowth of the interaction of intellectual "traits" including confidence in reason, intellectual courage, intellectual empathy, and intellectual integrity. It "implies adherence to intellectual standards (such as accuracy and sound logic), uninfluenced by one's own advantage or the advantage of one's group." Weak-sense critical thinking often employs sophistries or logical fallacies, including appeals to emotion. It is in resisting "appeals to [our] dearest prejudices' that the measure of our commitment to reasoning is taken. There is no doubt that conflicts over freedom of expression involve significant emotional capital (because the conflict would not exist if the "receiver" perceived the subject of expression to be trivial. It is the affront to the receiver's worldview that provokes a call for censoring). In the university it seems self-evident that all members of the community believe themselves to be strong-sense critical thinkers. Unfortunately, the recent events on campus demonstrated that, protestations to the contrary, there is a credibility gap for strong-sense critical thinking in relation to freedom of expression of diverse worldviews. Noted Professor of Law at Harvard University Alan Dershowitz brings the divide into high relief by arguing that an espoused commitment to diversity is often simply a method of populating universities with those who look different but think the same. However, in the university it should be the range of worldviews, not styles of dress, that drive discourse and discovery. In his view "the true test for diversity . .. is would people on the left vote for a really bright Evangelical Christian, who was a brilliant and articulate spokesperson for the right to life, the right to own guns…anti-gay approaches to life, anti-feminist views? Would there be a push to get such a person on the faculty? Now, such a person would really diversify the place. Of course not." (Horowitz 2006, xl).

A recently matched pair of incidents may serve to illustrate this problem further. Both caused widespread indignation and condemnation but in the university environment for seemingly intellectually and morally opposite reasons. In the wake of the September 11, 2001, attacks in the U.S.A., former University of Colorado professor Ward Churchill (2001) published a paper on U.S. foreign policy in which he used the phrase "little Eichmanns"

(coined by anarcho-primitivist John Zerzan in 1995) to describe World Trade Center workers as an extension of Hannah Arendt's conception of the banality of evil. However, the maelstrom over Churchill's language did not even kindle until 3.5 years later when it became the fodder for conservative news commentators subsequent to Churchill's invitation to debate the "limits of dissent" at a small northeastern college. Public indignation and outrage led to increasingly strident calls for Churchill's dismissal from his university teaching position. It was clear that his seemingly unconscionable assault on the sensibilities of the public merited such action and it was widely supported by members of the academy.

As the Churchill controversy was gaining speed, a different conflagration erupted in Europe. Following the publication of 12 cartoons of the prophet Muhammad in the Danish newspaper *Jyllands-Posten*, a world-wide outpouring of rage and grief by Muslims occurred. The controversy was ignited by two imams in Denmark, who cited the cartoons as a cause of "pain and torment" in their dissemination of a document detailing purported oppression of Danish Muslims. The general response in the West, especially in the academy, was full support for the publication of the cartoons in the name of freedom of expression and condemnation of the "excessive" emotional response that ensued. The dichotomy of positions in the academy is instructive because it is difficult to see the differences in these situations within a commitment to freedom of expression and clear, unemotional analysis.

Perhaps future inconsistencies can be minimized if we consider the value of utilizing the concept of the veil of ignorance presented by John Rawls in his influential work *A Theory of Justice*. Rawls posited that to effectively determine "a fair procedure so that any principles agreed to will be just" required that the participants in the discussion be behind a veil of ignorance. In effect, "they do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations" (Rawls 1971, 136). As with Paul and Elder's conception of fairmindedness, the veil of ignorance removes knowledge of one's status in society, possession of assets, intelligence, conception of the good, or even the "particular circumstances of their own society". This is

necessary because to "yield agreements that are just, the parties must be fairly situated and treated equally as moral persons" (Rawls 1971, 141). Ultimately, this approach "represents a genuine reconciliation of interests." This process seems to support freedom of expression as a preferred means of ensuring social justice and the good life and provides a way to anchor ourselves to the real standards of the marketplace no matter how volatile the trading may be. That being the case, arbitrary limitations placed on freedom of expression for reasons related to personal sensitivities, ambition, political ends, or a narrower conception of the good life are difficult to defend.

Of course, if the deficiencies in arguments presented to restrict some worldview were patently obvious, there would be markedly fewer instances of censorship. Unfortunately, the nature of these deficiencies, especially emotional appeal, is also their greatest strength and it takes significant intellectual fortitude to withstand, and dismantle, these seemingly unassailable justifications. However, it is our obligation as aspirants to strong-sense critical thinking to actively develop these skills.

At this juncture, it may be instructive to consider two examples of the beguiling power of such justifications, the cost of resisting them, and the lasting rewards for the effort. According to its 2005 Peabody Award citation (2007), the animated series "South Park" has, "in the process of unapologetically ridiculing individuals and groups, … [pushed] viewers to confront broader issues such as racism, war, mob mentality, consumerism, and religious fanaticism" (16). That its humor or slant on the world is not to everyone's taste is not in dispute. However, it was interesting to note that less than a year after its Peabody, "South Park" received extensive general media attention when Isaac Hayes, the voice of Chef and an original cast-member, opted out of his contract with the following statement: "There is a place in this world for satire, but there is a time when satire ends and intolerance and bigotry towards the religious beliefs of others begins. Religious beliefs are sacred to people, and at all times should be respected and honored. As a civil rights activist of the past 40 years, I cannot support a show that disrespects those beliefs and practices" ("Chef Issac Hayes" 2006). Certainly, in keeping with his work for social justice, Hayes makes a compelling case in what appears

to be an admirable stand on principle against a show that may be called an equal opportunity offender. In response, one of the show's co-creators pointed out that "in 10 years and over 150 episodes of 'South Park,' Isaac never had any problem with the show making fun of Christians, Muslim, Mormons or Jews" but "he got a sudden case of religious sensitivity when it was his religion featured on the show" and "wants a different standard for religions other than his own, and to me, that is where intolerance and bigotry begin" ("Hayes leaves" 2006). In light of the obvious lack of impartiality in Hayes' reasoning (and previous behavior) his pretext of principled action is laughable, but his position is typical of the hypocritical attitude evident in much of academe related to freedom of expression—in effect, the right to offend stops when it offends me. Despite Hayes' long association with the show and the centrality of the character, the creators let him go rather than compromise their integrity by acquiescing to his wish for the episode on his religion to be dropped. The cost may be seen by some as minimal but it warrants admiration, no matter what you think of the show.

A different and more compelling exemplar of moral fortitude is David Goldberger, the Jewish ACLU lawyer who found himself in what many considered the completely ridiculous and untenable position of arguing for the First Amendment rights of a group of neo-Nazis to be present in Nazi uniforms in a town comprised of a large Jewish population and, more specifically, a large number of Holocaust survivors. As Phillipa Strum recounts in her well-regarded analysis of the incident *When the Nazis came to Skokie— Freedom for Speech We Hate*, Goldberger was vilified, reviled, and threatened with physical harm for his work. Despite his extreme personal distaste for the plaintiffs and their case, personally and professionally, "he was appalled at the lack of support from individual lawyers and from the organized bar. He lamented what he saw as their failure to stand by two principles: the right to free speech and the obligation of attorneys … to represent parties even when a 'client or cause is unpopular or community action is adverse'" (Strum 1999, 68). As a result of accepting the case, the ACLU reportedly lost as many as 30,000 members. However, Goldberger understood the importance of not heading down the proverbial "slippery slope" by allowing various ordinances

instituted by the Skokie town council to prevent the neo-Nazis from appearing in the town to go unchallenged. Perhaps as much as his commitment to the fundamental value of the principle of freedom of expression, he saw that the law of unintended consequences would come into play, which, in fact, it did. Just as Justice Hugo Black had argued in his dissenting opinion in *Beauharnais vs. Illinois*, another First Amendment case 25 years earlier, the standard used to prevent the neo-Nazi appearance in Skokie (that is, speech offensive to the community) could "have been used by southern states to outlaw protests by civil rights activists in the 1950s and 1960s." In Skokie, Ordinance 996 (one of three devised by the village Council to prevent the neo-Nazi rally) prohibited "demonstrations by members of political parties wearing military-type uniforms" and, subsequently, prevented a group of Jewish war veterans from demonstrating in their military uniforms against the neo-Nazis. The consequent "interpretations" of the ordinances by the village council to permit marches they approved of made a mockery of the First and Fourteenth Amendments and clearly illustrated the dangers of trying to craft restrictions based on emotion and good intentions rather than adherence to a clear commitment to elemental components of freedom of expression. The ACLU prevailed in court—and in the public arena. As Roger Baldwin, one of the founders of the organization, pointed out in the immediate aftermath of Skokie, "the ACLU had survived over 50 years … because of the 'integrity' with which it emphasized principle rather than likable clients" (Strum 1999, 139).

Skokie has lessons for the Willamette community, particularly in relation to the actions of the Office of Residence Life in the hanging effigies incident. By acquiescing to the wishes of those offended by the displays and, in particular, for removing the displays because "the impact of our actions is more important than the intent" (email to faculty and administrative staff from Marilyn Derby, March 2, 2007), Residence Life has instituted prior restraint on any subsequent act of expression; that is, it is difficult to see how it can grant permission to any activity or advertising of art, literature, theatre, politics, etc., because it is not possible to know beforehand what the impact of such expressions may be. For example, having established that impact rather

than intent is paramount, especially if the impact results in the perception of a hostile environment for any member (or visitor) of the university community, it seems that Residence Life cannot allow any advertising for the annual production of the Vagina Monologues, or any notice of support for alternative lifestyles and so on, as these can assault the sensibilities of both politically and religiously conservative members of the university community, resulting in a perceived hostile environment. Of course it is easy to rationalize away such a scenario by arguing that these groups need to be more open-minded or more tolerant and less thin-skinned; that, in effect, their particular worldview has no standing. This type of patronizing justification is not uncommon in the realm of those who make or administer the rules, but it hides a major problem in the intellectual honesty of those who proffer it.

Strangely, the rationalization of Residence Life for its action in censoring the hanging effigies could also be interpreted to argue that it must approve any sign, advertisement, art installation, or other expression, no matter how seemingly heinous or offensive because the impact may be benign or even beneficial.

How many complaints justify action is, of course, an interesting sticking point. If, rather than standing on principle, the Administration responds to demands from the majority to stifle a minority worldview, then the very group(s) for whom freedom of expression was instituted are effectively silenced. Moreover, the claims of a place for diverse views rings hollow when those views are quashed (or marginalized). Equally disturbing is the reality that a minority (perhaps a single individual, under currently prevailing rationalizations) can dictate to the majority which worldviews are acceptable for general consumption.

Having the political authority to limit expression is not the same as having the moral right to do so—and few would agree they should be equated. The University Administration, and Residence Life in particular, has shown willingness to act in politically expedient ways in conflicts over divisive worldviews that are inherently antithetical to the foundational principles of the university, especially those that constitute the framework of the values and processes of the marketplace of ideas.

One point of departure for disagreement about the limits of freedom of expression is the context in which an act of expression is presented. Public versus private, forewarned versus ambushed, seem to many to be a reasonable dividing line for the permissibility of expressing worldviews that may be deemed controversial. Strangely, it is a position shared by artists as well. In an interesting coincidence, the May 14, 2007, edition of *The New Yorker* magazine had two articles dealing with controversial artists—the American conceptual artist Chris Burden and the British graffiti artist Banksy—who epitomize these opposing viewpoints. Chris Burden gained fame for such works as having himself shot, being nailed to the roof of a Volkswagen, and "slither[ing], nearly naked and with his hands held behind him, across fifty feet of broken glass in a parking lot." He quickly became to be regarded as "the most extreme and enigmatic of provocateurs," who had no sympathy for the distress he engendered in his audiences. Although he saw art "as a free spot in society, where you can do anything," art was not without its limits. In 2004, he resigned his position at U.C.L.A "to protest the university's decision not to expel a student who, in a class, had played Russian roulette with a fake but real looking gun, then had left the room and set off a firecracker in the hall." This act, he felt, contravened the "rules of speech and decorum" expected in a university. For Burden, there was "a cardinal difference between an act performed in an art space for an audience that had been warned [as with his early performance pieces] and one sprung on students in a classroom" (Schjeldahl 2007, 153).

By contrast, for Banksy, the unexpected encounter with his work in the public domain is necessary to "prod the popular conscience. Confronted with a blank surface, he will cover it with scenes of anti-authoritarian whimsy." The public space and the element of surprise are essential to the impact he is trying to create with his streetwork. He is not trying to disturb viewers of his work but to entertain them and to get them to think about social incongruities. According to author Laura Collins, "his most famous street paintings are a series of black-and-white stenciled rats, the majority of them slightly larger than life-size. Each different, but they all possess an impish poignancy that made them an immediate hit with London pedestrians." If

restricted to a defined art space, the impact of these works would be lost. It is the public discourse that is important. If Burden's view is accepted, then controversial worldviews (whether benign or caustic) will never have the broad dissemination that is necessary for them to have a meaningful impact or, indeed, for freedom of expression to have meaning. It seems obviously disingenuous to argue that freedom of expression exists if it is only permitted to exist in private. Minority worldviews only have meaning if they are expressed in the public domain.

In a 2003 article in the *Chronicle of Higher Education*, professor of public health Philip Alcabes took the profession of epidemiology to task for its role in generating the concept of a risk-free life. Alcabes argued that "the risk-free life is a mirage. If we stop thinking that we can avoid disease or escape death —if we recognize that most infectious diseases have not been conquered, that epidemics still happen, that disease always takes a human toll—we can stay calmer when epidemic disease does strike, whether it comes naturally or is produced deliberately by human hands" (Alcabes 2003, B11). The take-home message is that to prepare realistically for threats to our health we must be aware that they will always be present. Despite advances in medical research and safety legislation and changes in personal behaviors, people will continue to become ill or die unexpectedly. Similarly, belief in a world free of divisive worldviews is both counter-intuitive and counter-productive. Just as individual differences are the main source of variation, or exceptions, to our understanding of the risk of disease or death, so, too, will they continue to be the source of the eternal clash of worldviews. Unless we favor a perfectly operating Brave New World or Walden Two, we must be prepared to function in the face of the potentially distressingly diverse worldviews of a free society. Attempting to eliminate the risk by suppressing the worldview(s) each of us finds disturbing is intellectually dishonest and pragmatically impractical.

Moreover, just as our bodies need to be subjected to stressors to stimulate adaptation and improve function, we, in the university, hold that challenges to our intellect drive new insights and elevate our understanding of the world. In the absence of testing worldviews intellect is apt to calcify or atrophy. The temptation to engage in preemptive banishment of certain worldviews based

on questionable premises such as those derived from the conviction that "politically incorrect" worldviews are incompatible with enlightened analysis must be resisted. In defending Larry Summers, the former president of Harvard University, during the controversy over Summers' comments related to gender differences in the sciences that ultimately precipitated his departure from the presidency, Alan Dershowitz noted that despite allegations about "a presidentially imposed atmosphere of intimidation" the furor was "about substantive disagreement with Summers' view … about the innate differences between the genders. But what if he were to turn out to be right? Every factual issue, every scientific claim subject to proof or disproof, must be open to debate at a great university. This sounds like the trial of Galileo, including the pressure on Summers to apologize and to renounce his views" ("Harvard law professor" 2005).

History is replete with the vindication of worldviews that ran counter to widely held self-evident truths, despite sometimes deadly attempts to stifle them. The triumph of these unpopular worldviews was due to those who were willing to risk the death of their own worldviews by examining the new objectively, whether through the scientific method or careful philosophical inquiry. No matter the outcome, those who undertook the challenge were stronger, intellectually and morally, for the effort.

Conclusion

That the expressed worldview of others can push our buttons, inflame our passions, and corrode our self-control is so obvious as to be beyond dispute, but as members of the university community we pride ourselves on using reason to guide our actions. And it is when the perceived provocation is at its most powerful that we reveal the true measure of our intellectual and moral character. The test of our commitment to a principle is not when it involves issues that are of no consequence to us, or even in cases where there is discomfort and inconvenience, but in those circumstances in which there is a real price to pay—the willingness to forfeit one's reputation, livelihood, well-being, or life. Fortunately such instances are rare for most of us, which makes our inability to withstand unpleasant emotional responses, as demonstrated

by knee-jerk condemnations and calls for censoring offending worldviews, seem inconsistent with our mission in the academy. Despite the claims of the Red Queen that once you've said a thing, it is fixed and "you must take the consequences," as Henry Rosovsky points out in *The University: An Owner's Manual*, the value of being a part of the university community "is the opportunity—indeed, the demand—for continual investment in oneself. It is a unique chance for a lifetime of building and renewing intellectual capital" (Rosvosky 1990, 161). He goes on to argue that the professoriate should be "the very last to allow [itself] to act under duress and yield to pressure." It is clear that when the pressure is from outside of the academy, individual belief systems, or the intellectual boundaries the faculty have erected for themselves, resistance is high and offending arguments are meticulously disassembled and neutralized. The same vigor is rarely evident when a reexamination of one's intellectual capital is required by exposure of its own flawed logic. Surely we should be made of sterner stuff—and teach others how to be so as well.

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"To try things themselves":
Freedom of Expression in a Democratic Multicultural Polity

Sammy Basu, Ph.D.

"*What kind of a God is it that's upset by a cartoon in Danish?*"

Introduction

How should one regard a statement of this sort as a response to the 'Danish cartoon controversy'? That controversy began, you will recall, when on September 30, 2005, Denmark's largest circulation newspaper, the *Jyllands-Posten*, published a brief article on Islam and Western self-censorship, entitled "*Muhammeds ansigt*" ("The face of Muhammad"). The article, which referred to the difficulties in obtaining an illustrator for a children's book about Mohammed, was framed by twelve cartoons, drawn by members of the Danish editorial cartoonists' union, some of whom aspired to depict the Islamic prophet Mohammed. Elements within Danish Muslim communities protested, prompting the republication of the cartoons by newspapers in some fifty countries (though only in very limited ways in the U.S. and U.K.). The circulation of these cartoons, together with three additional crude ones, by the Danish Imams in the Middle East, in turn, sponsored a wider Muslim response in 30 countries from Denmark to Nigeria, of protests, violence, effigy—and embassy-burnings, and death threats, and resulted in an estimated 140 deaths. So should we applaud such a deflationary statement and the cartoons themselves? be amused? encourage such efforts? Or should we deem the statement inflammatory, and the cartoons evidence that something is rotten in the State of Denmark, and hence instead feel the anguish of Islamists maligned for their devout literalism and aniconism? Are such comments and cartoons vital or unfortunate features of public discourse within democratic societies? Is the freedom to engage in such expressions essential or anathema to democratic deliberation in a multicultural society?

It should be noted that the statement in question was made on Bill Moyers' PBS program, *Faith and Reason*, in 2006 by one Ahmed Salman

Rushdie, a writer not unfamiliar with causing offense.[1] Having in 1981 won the Booker Prize for his second novel, *Midnight's Children*, Rushdie (together with his translators and publishers) on Valentine's Day in 1989, went on to be selected by the Supreme Leader of Iran Ayatollah Ruhollah Khomeini for a *fatwa* for *The Satanic Verses.* Protests occurred in eight countries and some forty-five (beginning with India) banned the book. The *fatwa* survived the death of Khomeini but was officially lifted by the Government of Iran in 1998. By then a dozen individuals associated with publication had been killed. Recently, in July 2007, Rushdie was knighted by Queen Elizabeth for 'services to literature,' a decision which Britain's first Muslim peer, Lord Ahmed, pronounced appalling, and which led to various protests by Islamic communities in Britain. Abroad, the honor also prompted the Iranian Organisation to Commemorate Martyrs of the Muslim World to issue a new reward for Rushdie's death and one or two Islamic political leaders to do likewise.

The Rushdie Affair and the Danish cartoon controversy highlight some of the complexities in what is at stake when individual freedom of expression collides with respect for multicultural group differences. So, too, do the bombings of September 11, 2001, carrying out Bin Laden's 1998 declaration of a *fatwa* on Americans, an expressive albeit iconoclastic act of its own, directed against the White House, the Pentagon, and the 'symbols of economic might,' the Twin Towers of the World Trade Center.

In what follows I will not address legal regimes[2] other than to note that there is no such thing as absolute freedom of speech. As a legal matter, we already countenance various sorts of grounds for limiting expression, namely, child pornography, extortion, perjury, contempt of court, fraud, libel and defamation, noise pollution, and so on. Instead, the question taken up here is for the private citizen: what moral considerations ought one to bring to

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[1] Rushdie (2006). One might also feel that the Danes are being slighted. Rushdie's statement, it might be noted, echoes an earlier similarly flippant but self-referential one (2003, 217): "if there is a god I don't think he's very bothered by *The Satanic Verses*, because he wouldn't be much of a god if he could be rocked on his throne by a book."

[2] Legal reasoning might invoke Article 19 of the Universal Declaration of Human Rights, Article 10 of the European Convention on Human Rights, the First Amendment of the Bill of Rights to the United States Constitution, and Sect.77 of the Danish Constitution.

bear in evaluating public expression in liberal-democratic regimes given that the public in question is a 'multicultural' one (be it fragile or robust, ancient or new)? To ask the question differently, what sorts of expressions, if any, ought we—liberal-democrats in a multicultural society—to find morally intolerable? Or again, by what criteria would a minority cultural group be morally justified in condemning an expressive act as opposed to merely criticizing, or otherwise conveying their disagreement with it? I am also interested in understanding why humorous expressions sometimes elicit the strongest objections, and also conversely, how or why artistic and humorous expression might claim greater immunity from such criticism, how or why art might be entitled to autonomy, and humor to irreverence.

This paper consists of four parts. First, I try to affix meanings to 'freedom of expression,' and 'multiculturalism,' before offering examples of the complexities involved. In part two, I worry briefly about the tropes that often figure in standard arguments for and against free speech. Part three is a lengthy elaboration on a historical exemplar of the sort of inspired adhoccery needed today. Finally, in part four, I apply this model and argue that the contemporary democratic and multicultural polity is best construed as a working draft dependent on freedom of expression.

I. What do these words mean?

We might begin by reflecting on what is to count as an act of 'expression,' recognizing that 'speech' and the 'word' are the most paradigmatic of several modes of expression that include the fine arts, performances, installations, and so on. I follow Bahktin in taking the communicated word to be a triadic drama: "The author (speaker) has his own inalienable right to the word, but the listener also has his rights, and those whose voices are heard in the word before the author comes upon it also have their rights …" (1986, 121-2). Put more mundanely, the generic expressive act can be parsed into three elements: 'intent,' 'consequent,' and 'content.' Intent encompasses the author's intended meaning. Consequent reflects the various reader responses and audience effects that arise. Content refers to the message conveyed in some medium, and is dependent upon the wider linguistic and symbolic context of usage.

With the full process of communication in mind, what is meant by 'freedom of expression?' I do not think it is merely being free to express or to speak, nor also being able to act on the intent to do so. Human beings are literally free to speak under all sorts of circumstances, provided they have vocal chords and a tongue, including being alone, in the shower, in prison, and so on. Freedom of speech, in the sense that matters to us, in a liberal democracy, as the freedom to engage in potentially meaningful communicative acts, also places requirements on both the content, namely that the speaker have a real possibility of being meaningful because they have access to the available languages and media, and the effect, namely that some among the potential audience are willing to listen and to try to understand.

What is multiculturalism? A multicultural society, as an empirical and demographic matter, is one in which a majority culture shares jurisdictional space with indigenous groups, subsumed minority cultures, and/or recent immigrants, some or all of whom may bear the historical consequences of domestic subjugation, colonialism, displacement by war, and globalization. When liberal-democrats express a willingness to affirm multiculturalism, what is it that they are affirming? We might, drawing on Fish (1997), O'Neill (1999) and others, distinguish the following variants of prescriptive multiculturalism: 'sentimental,' 'boutique,' 'weak,' 'strong,' 'very strong,' and 'really very strong.' Sentimental multiculturalism hopes that we really can all just get along on all matters, even the most fundamental ones, all of the time. Boutique multiculturalism involves aesthetic sampling but little else of what are the mostly pleasant but, finally, incidental differences between people otherwise united by shared capacities for 'rational choice.' Weak multiculturalism calls for secondary forms of inclusion such as curricular expansion, but little direct transformation of *status quo* norms. Strong multiculturalism maintains that cultural groups ought to be given enough room in public to act unmolested on their own distinct conceptions, even if this involves expressions critical of secular liberal capitalist norms (though presumably not of other cultural groups). Very strong multiculturalism is strong multiculturalism, as above, that also allows groups to express their disapproval of other groups. Really very strong multiculturalism defiantly requires differential citizenship rights

for multiple cultural groups that are out of power including even those that make explicit that, given the opportunity to wield political power, they would be mono-cultural, suppress difference, and deny citizenship on the grounds that they are sullied (in their own eyes) by the stain of others left dirty, if not damned (in the eyes of God) for permitting others to remain defiled.

As such, to which of the three parts of an expressive act might limiting moral criteria on multicultural grounds be affixed? Some would argue that if speech is to be limited it is because of the morally dubious intentions of the speaker. The problem with using intent as the basis for delimiting expression is the lack of access to the allegedly negative subjective states of the author. Conversely, the author's claim that his or her expression is benign, or 'only aesthetic' or 'only joking' cannot be clearly verified, may be disingenuously manipulated, retrospectively invoked, and so on. Consider the following examples, presented chronologically rather than in any necessarily moral order.

In response to the temporary ban of the Nazi Party in 1927, Joseph Goebbels in his *Der Angriff* (*The Attack*), sought to discredit Berlin's Deputy Police Chief, a war hero but a Jew, Dr. Bernhard Weiss, in part by effectively dubbing and depicting Weiss as an 'Isidor,' a pejorative nick-name and hence staple of anti-Semitic mockery of the day (Bering 1993). However, Weiss's libel suits were unsuccessful because Goebbels argued that Weiss was, in fact, Jewish and that what was objectionable was only cartoons and that he was, in any case, 'only joking'.

Rushdie (2003, 66), a self-described "writer with satirical intentions," nonetheless maintains that his *Satanic Verses* is not a satirical denunciation of Islam but rather a series of reflections on metamorphosis, migration, and how newness enters the world (188).

Flemming Rose, though culture editor of a politically conservative newspaper often critical of immigration policies, nonetheless maintains that his cartoon article was not intended to be gratuitously provocative, but rather an exercise in egalitarian politics to generate debate:

> We have a tradition of satire when dealing with the royal
> family and other public figures, and that was reflected in the

cartoons. The cartoonists treated Islam the same way they treat Christianity, Buddhism, Hinduism and other religions. And by treating Muslims in Denmark as equals they made a point: We are integrating you into the Danish tradition of satire because you are part of our society, not strangers. The cartoons are including, rather than excluding, Muslims (Rose 2006).

The producers of the 'Bumfights' videos, in which nominally paid drunken homeless men fight and humiliate one another in front of cameras, insist on the website that sells this apparently popular and lucrative footage that:

The purpose of these videos, through satire and sensationalism, is to call attention to the global epidemics of poverty, violence, addiction, and lack of education. Fighting and violence of any form is ignorant and pathetic. Although the images we capture are often shocking, we do not believe these aspects of society should be kept hidden or ignored. You'll see grown men trade blows on the streets, chick fights, stunts, sick pranks, crime caught on tape, crackheads, supermodels, and the most hardcore ruckus ever filmed. But please do not miss the point of these videos! Educate yourself. Help those who are less fortunate. Spread love not hate.[3]

Three students at Willamette University, a small Pacific Northwest college, organize an off-campus Halloween party with the theme "the most offensive party ever," at which attendees (some of whom are minority and/or otherwise socially conscious students) apparently enjoy donning costumes including 'black-face,' and 'raped Indian,' and enacting historical figures such as Hitler. The organizers subsequently post a video of the event on the video-sharing internet site YouTube™, but maintain that their satirical intention was to call attention to the excesses of political correctness.

At the same seemingly hapless college, another student who happens to be African-American, employed by the Office of Residence Life as a Coordinator

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[3] http://www.bumfights.com/ accessed 19 December, 2006, though now defunct. I thank Amanda Helfer for bringing this to my attention.

of a program called 'Conscious Tension' (alluding to Martin Luther King Jr.'s notion in *Letter from Birmingham Jail*), organizes an installation titled 'Lynched by Silence,' intended as "a representation of the outcome of silence and inaction when it comes to issues of oppression," consisting of five lynched black-robed figures accompanied by explanatory text and an illustrative story of someone killed in a hate crime. The installation is taken down by the same Office, amid growing consternation and criticism, on the grounds that, as the Director of Residence Life put it, "the impact of our actions is more important than our intent" (Derby 2007).

In each instance, neither the impartial observer nor society at large nor those adversely affected by the expressions in question can irrefutably know the author's intentions. Short of an authorial confession of malice, or circumstantial evidence such as a high degree of vehemence, then, it would be difficult to reach a burden of proof. One may very well criticize the author/ artist, as Parekh (2006) does both Rushdie and Rose, for "intransigence" in sticking to whatever their intentions were, and also for lacking "good sense" in not anticipating all of the likely consequences (to which we turn next), but neither charge quite rises to the status of a moral wrong (*pace* Shearmur 2006).

What about the prospect of limiting speech on the basis of the consequences of the expressive act in question? This is a plausible strategy, especially in democratic societies that are becoming more 'multicultural.' Put positively, respect for religious and cultural freedom and diversity requires moralized and perhaps politicized protection of group particularities from adverse representation, criticism, and ridicule.

Two sorts of claims might be made about the way in which speech is morally problematic as a matter of effect: directly and cumulatively, or in the idiom of communication studies by 'transmission' and by 'ritual' (Carey 1989, Calvert 1997). The objection to transmitted harms is that some specific acts of offensive expression target specific persons producing in them more or less immediate and conspicuous mental and emotional anguish and even physiologically induced physical symptoms. Ritualized harms are problematic to the extent that the expressions in question, through repetition

rather like commercial advertising, exert the profound cumulative effects of internalization (of inadequacy) and normalization (of degradation), and ultimately the social construction of an experienced reality of mistreatment. Parekh (2006) expresses this latter concern well:

> in a society where different communities enjoy unequal economic and political power, there is always the danger that some communities may never be touched while others remain constant targets of uninhibited freedom of expression. This leads to a deep sense of injustice and discontent. All communities therefore have a common interest in uniting in a spirit of solidarity and ensuring that equal sensitivity is shown to all.

Limiting expression on the grounds of demonstrably intolerable consequences to specific persons or groups is not unproblematic either, however: victims of such speech may be silenced, may choose appeasement, or may not recognize their disparagement. Others (with better attuned sensitivities) may, of course, strive to anticipate or articulate the pain of those hurt. But how does one distinguish such genuine efforts to give voice to the relatively voiceless from political entrepreneurs promoting a 'New Behalfism,' as Rushdie (2003, 60) mischievously dubs it? Whether minority Muslim immigrant communities, coming as they have from many parts of the world with distinct ancestral languages (Arabic, Bengali, Farsi, Hausa, Hindi, Serbo-Croat, Swahili, Turkish, and Urdu among others), have been reliably represented is an open question. Parekh (2006), who was Deputy Chair of the British Commission for Racial Equality at the time of the declaration of the *fatwa* on Rushdie, seems quite confident in reassuring that *The Satanic Verses* was about "the integrity of Islam as a religion, and posed no obvious threat to Muslims' self-respect and interests," whereas "the cartoons challenged not so much Islam as a religion but Muslims as a people and questioned their presence in Denmark." How does he know all this? There are certainly articulate critics who find more specific harms in *The Satanic Verses*. Ismail (1991), for example, notes that that the text speaks sympathetically of Westernized and hybridized South Asians at the expense of more conservative identities, while Jussawalla (2001, 971) maintains that "the whole stance in

the book is that of the Rugby-educated Rushdie looking down on the crude Bangladeshis of East London."

Victims or their representatives may also mistakenly or willfully mistake the expression, as Rushdie feels the Iranian mullahs and Islamic opinion-makers did, "quoting and reproducing decontextualized segments of *The Satanic Verses*" (2003, 235). Along these lines, assuming that one could reliably measure psychological and emotional harms caused by speech, might one not find fault with a good deal of religious speech and advertising that induces negative self-perceptions, e.g. awareness of one's fallenness and inadequacies (Kateb 1996)?

Moreover, with consequentialist analysis, so much turns on the time frame. In the case of compounding harm from broad cultural stereotypes, how does one calculate the contributory harm of a specific speech act? Alternately, a given expressive act may offend or otherwise hurt the feelings of some individuals or members of groups in the short run, but nonetheless redound to their benefit in the medium and long-term. Rushdie (2005) has himself noted the irony that his "secular work of art energised powerful communalist, anti-secularist forces." Similarly, if the student party organized to offend proves so successful that it thereby galvanizes campus-wide attention to the issues of race and social justice on an unprecedented scale and sets in motion real shifts in institutional priorities, and the party organizers also claim that they intended as much with their satirical event, then are they moral degenerates or salutary dissidents?

One might also argue on consequentialist grounds that it is better to allow morally obnoxious views to be aired, so that they can be met with more countervailing speech and corrective educational efforts rather than driven underground where they continue to be articulated and rationalized without rebuttal among adherents.

Now, it is also sometimes argued that expressions should be especially unlimited when the content is 'art' or 'humor.' In this view, art is entitled to its aesthetic autonomy because it is special, transcendent, even sacred and spiritual, and conversely that humor warrants playful immunity because it is slight, trivial, even silly and stupid. Put tersely, art is above politics and humor

beneath it. I think this approach is wrong. Though Leni Riefenstahl went to her grave insisting that *Triumph of the Will* (*Triump des Willens*, 1935) was 'only art' and that she was a political innocent (even though she read *Mein Kampf* in 1931), her evocative use of the aesthetics of classicism and Weimar-era Romanticism in cinematically rendering (and arguably staging in the parade grounds designed by Albert Speer) the 1934 Nuremberg Nazi Party Convention (and re-staging of certain moments in a Berlin studio to better film them), ranks as one of the 'greatest' political films of all time. Likewise, Charlie Chaplin's *The Great Dictator* (1940), a comedy of mistaken identity in which Chaplin plays two roles—Adenoid Hynkel, autocratic dictator of Tomania who holds Jewish people responsible for all societal evils, and his identical counterpart, a Jewish Barber—was also a pointed satire of the early political agenda of Nazism and Adolph Hitler, albeit one that concludes, departing the illusionist parameters of art, with a six-minute plea by the barber for world peace and a renewal of humanity. It is not that art and humor are not political or do not want to be taken seriously. Quite often both do. Rather it is that, in contrast to other forms of speech, neither is to be taken literally, superficially, at face value, at first blush, and so on. The content of neither is to be treated as a 'proclamation,' 'exhortation,' or statement of pre-interpreted essentialism. Artists and humorists are finally unlike, even if they sometimes create and ape, "The speaking subjects of high, proclamatory genres—of priest, prophets, preachers, judges, leaders, patriarchal fathers, and so forth — …" as Bahktin (1986, 133) rightly stresses. They strive, and according to Kundera do so together in the genre of the novel, to dwell in the presence of existential ambiguity and the absence of final meanings, to expose and revise the 'pre-interpretation' of reality, as if repeatedly pulling back curtains: "A magic curtain, woven of legends, hung before the world. Cervantes sent Don Quixote journeying and tore through the curtain. The world opened before the knight errant in all the comical nakedness of its prose" (2007, 92). In Rushdie's idiom (2003, 67) art, and humor too, speculatively contravene "epic consistency" and presumptions of infallibility. To recognize that an expression is art or humor is, thus, to know that its meaning is not only or adequately or primarily literal, nor hence to be read as an aggregation of truth-claims or

data.[4] Rather, meaning emerges from the symbolic, polysemous, unfinished excesses, which must be interpreted. The novel, for example, isn't reasoned discourse but rather "part social inquiry, part fantasy, part confessional … [that] crosses frontiers of knowledge as well as topographical boundaries" (Rushdie 2003, 52). One might even say that it is always, magical realism or not, 'otherworldly' (Teverson 2003). Likewise, humor depends upon volunteering something completely different, typically the formulation of an unexpected juxtaposition, that produces in the receiver pleasures, variously, of 'incongruity' resolution, physiological 'relief,' affective 'release,' and evaluative 'superiority.' Indeed, a measure of humor and irony may be required precisely to cope with the existential ambivalences, multivalences, irregularities, and uncertainties revealed by art.

I think it may even be risky to base the protection of art on claims that it is transcendent or deep, namely because this allows critics to draw distinctions between high, great or serious art and low, small, and trivial art. Parekh (2006) makes just this move, in accepting *The Satanic Verses* because of Rushdie's apparently unquestioned "literary caliber" but rejecting the Danish cartoons because "they served no artistic or moral purpose" (cf. Laegaard 2007).

Crucially then, even that which mobilizes compelling imagery and symbolism, the reader/viewer/receiver exerts some control over its effects. S/he subjects the expression to a hermeneutic process oscillating between parts and whole, content and context, and hence must also take some responsibility for his/her interpretation. Indeed, in art and humor, if not in all speech genres to some degree, the audience aids and abets the possible meanings through dialogic interactions (Bahktin 1986, 68ff, 117ff).

Thus, for example, Rose (2006) maintains that taken collectively the cartoons painted a complex picture open to multiple and divergent interpretations:

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[4] At the heart of what is problematic in *The Satanic Verses* is Rushdie's fictional extrapolation of certain notorious lines within a historical account of the Prophet Mohammed's life, according to which he was tempted by Satan disguised as the archangel Gabriel to recognize three idol goddesses then worshipped in Mecca in the new monotheistic religion he was proclaiming. These li(n)es of Gabriel/Satan, repudiated by traditional Islamic interpretation, are, in effect, the "Satanic Verses" which Rushdie (2003, 230) uses in his fable of a prophet named Mahound misled by the Devil. For some Muslims, the cover images and title are enough to arouse ire. Others fix on the insults of calling Mohammed and contemporary leaders including Khomeini a *haramzada*, i.e., bastard. Others complain of the derogatory treatment of Mohammed's wives.

The cartoons do not in any way demonize or stereotype Muslims. In fact, they differ from one another both in the way they depict the prophet and in whom they target. One cartoon makes fun of *Jyllands-Posten*, portraying its cultural editors as a bunch of reactionary provocateurs. Another suggests that the children's writer who could not find an illustrator for his book went public just to get cheap publicity. A third puts the head of the anti-immigration Danish People's Party in a lineup, as if she is a suspected criminal. One cartoon—depicting the prophet with a bomb in his turban—has drawn the harshest criticism. Angry voices claim the cartoon is saying that the prophet is a terrorist or that every Muslim is a terrorist. I read it differently: Some individuals have taken the religion of Islam hostage by committing terrorist acts in the name of the prophet. They are the ones who have given the religion a bad name. The cartoon also plays into the fairy tale about Aladdin and the orange that fell into his turban and made his fortune. This suggests that the bomb comes from the outside world and is not an inherent characteristic of the prophet.

Contrast this with Parekh's (2006) reading that:

The cartoons had a clear political basis and orientation. They and the subsequent discussion presented Muslims as backwards, barbarians, unfit to live peacefully in a civilised society, and as sexually motivated seekers of martyrdom (as seen in the silly reference to running out of virgins in one of the cartoons).

It seems, then, that if one is going to morally delimit expression it must be by specifying unacceptable content more or less without reference to the ascribed intentions of the author or the subjective states of some subset of the potential affected audience, and especially so of art and humor in which (re-)interpretation by that audience is invited. Moreover, specific content must either be limited on the grounds that it undermines the democratic values that justify speech in the first place, or on the grounds that in the case of such content the values that justify free speech are superseded by other democratic values.

II. Support our tropes

What are the democratic values that justify keeping speech as free as possible? And conversely, what democratic values might warrant enhanced regulation? To bolster himself against accusations of arrogance, intransigence, and subsequently ingratitude, Rushdie leans for support, as many contemporary defenders of maximally free speech are wont to do, on J.S. Mill and the French Enlightenment *philosophes* who gathered around Voltaire. Accordingly Rushdie (2003, 214) seconds two of the three paradigmatic arguments in *On Liberty*, that a silenced opinion if right is lost to the world, and if wrong, truth nonetheless is dulled for want of friction, and might be said in his novels to practice the third, namely that truth is best construed as many-sided and, hence, reflected in many perspectives. Similarly, Rushdie invokes Voltaire because he sympathizes with the latter's satirical skepticism towards religious dogmatism and its alleged crippling cognitive effects.

I have a worry about each of these sources. First, the defense of free speech often plays out by analogy (with more or less metaphoric weight) to the 'free market,' be it the 'marketplace of ideas,' "the so-called doctrine of Free Trade, which rests on grounds different from, though equally solid with, the principle of individual liberty asserted in this Essay," as Mill (1989: 95) puts it, "the rough-and-tumble bazaar of disagreement" that Rushdie (2003, 288) affirms, or more grandiosely as an ocean of creative possibilities. In *Haroun and the Sea of Stories*, the first novel he published after going into hiding, Rushdie reflected ably on the origins of story-telling and the nature of the imagination and offered a nimble allegorical defiance of censorship along the latter lines (Teverson 2001).

These are, in my view, nonetheless problematic and telling metaphors. Speech does not occur in a vacuum. We do not all operate stalls. We do not all live by the ocean. Precisely in waxing romantic there is concealed a degree of naiveté about the socio-economic and historically located context within which actual speech occurs. Are there any actual markets that are not, to some degree, facilitated by infrastructure and regulations provided by state power, that do not have some barriers to entry, and some 'sunk costs' affecting exit, and in which no suppliers and/or consumers affect price, and

disequilibrium is not the norm? Aside from the local marketplace of nostalgic memory, often, perhaps typically, industries operate under various degrees of oligopolistic supply, demand is manipulable through heavy investment in repetitive advertising informed by scientific focus group analysis that is then both demographically targeted and widely disseminated, and large or otherwise collectively mass consumers can cause dramatic shifts in demand. What the attempted analogy of free speech to the free market ought to call to mind, then, is that we do not all have the same material access or opportunities to bring our speech, ideas, and expressions into the public sphere, that we cannot afford to see those ideas disseminated and repeated and reproduced at the same frequencies, that the idiom or vernacular in which public discourse occurs may be manipulated by the media, and that insofar as some of our ideas may be more upsetting or offensive, we do not meet a consuming audience with the same level of willingness to listen and to try to comprehend.[5] My objection, to be clear, is not to the notion of free trade but rather to the ideological use of the idealized notion to justify actual markets that are not free and moreover to the naïve metaphoric extension of that ideological usage to the realm of cultural production given the extent of media consolidation. Freedom of expression is too readily co-opted to and constrained by commercial and consumerist idioms and ends.

Second, I am not as convinced as Rushdie (2003, 141-144, 215, 231-2, 341, cf.229, 307) sometimes appears to be that religion is the problem and 'secularism' entailing not only indifference and "a total separation between Church and State" (239), but unbelief and even overt hostility towards religion the solution. Voltaire's *Candide* and Diderot's *La Religieuse* are models of sorts for Rushdie. However, is their avowedly blasphemous stance essential to modern culture (Habermas 2005)?

While there is much to recommend in the spate of recent books by public intellectuals affirming science and reason as against religion and revelation, still, and E.O. Wilson notwithstanding, I am struck by their mono-cultural

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[5] One does not have to be either an avowed Marxist (like Roberts 2003) or a neo-Puritan to notice and be alarmed by the pervasiveness of commodity aesthetics or the fetishistic pleasures taken in consumption. See Lindblom (1977), Schiller (1996).

or at least mono-epistemological excesses. They are, that is, too quick (and ironically, as such, unscientific) to over-generalize from a historical record of murderous programs that religion must hold its adherents 'spell-bound,' 'deluded,' 'poisonous,' and 'terrorizing,' while ignoring or dismissing as outlier cases instances in that same history of mad, mechanistic, utilitarian agendas that were driven by science and staffed by scientists.[6]

Moreover, is it possible that the modern liberal individual, the self as agent and bearer of moral rights, such as the right to free speech, may be more of the cultural residue of a particular religious belief system, namely Calvinism, than we realize? If so, 'secularism' may itself be the privileging of one set of ontological assumptions over others, a 'leap of faith' in one direction not another, but an act of faith all the same.

What of the democratic values invoked to restrict speech? To what sources do such views appeal? The modern 'public sphere' or 'civil society,' involving the public use of reason in rational-critical debate, and operating independently of, while mediating between, private interests and state institutions, emerged in 18th century Britain. The formative spaces of newspapers and journals, as well as the venues for actual discursive interaction such as open congregations, theaters, literary salons, political clubs, pubs, and coffee-houses, all came to be frequented by an increasingly literate and articulate politicized public. Dramatic social and political mobility meant that Britain could not rely upon traditional static and essentializing notions of vertical superiority to regulate social relations. Rather, it needed behavioral norms that might be available to a much wider range of persons —in religious, socio-economic, gender, and even ethnic and racial terms — arrayed relatively horizontally, and flourishing or declining over time. Crucially, then, Shaftesbury, Hume, and others developed normative conventions to facilitate yet regulate this newly robust public deliberation under the rubric of 'politeness,' and to a lesser extent 'civility' and 'sociability' (Klein 2004). In effect, contemporary deliberative democrats strive to reformulate the imperfectly stylized possibilities of that 18th century historical moment through their conceptions of the optimal or 'ideal speech situation.'

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[6] I have in mind Dawkins (2006), Hitchens (2007), Dennett (2007), and Harris (2005). Cf. Connolly (1999).

According to deliberative democrats, such as Habermas (1984, 1989, 1990, 1996), the outcome of a public deliberative process can be understood to be just if the conditions, parameters, and rules that shaped that process were just. Thus, for example, Steiner *et al* (2004), on the leading edge of empirical measurement of deliberative politics, offer a discourse quality index (DQI) comprised of the following Habermasian criteria: participation, level of justification, content of justification, respect toward groups, respect toward demands, respect toward counterarguments, and constructive politics. Deliberative democrats presume that deliberation is about serious matters, that discussants will be able to speak about such matters using generalizable reasons in the available shared vocabulary, and that this vocabulary or some judiciously pruned and policed variant can be made and kept transparent and free of hostility.

In navigating this controversy we should be wary of relying on such metaphors, the 'marketplace of ideas' equally with the 'climate of hostility.' Bumper stickers that proclaim that one must 'Support our Troops' have a much more insidious linguistic corollary in the notion that one must 'Support our Tropes.' Not everyone gets to participate in setting these terms of the debate, and yet they construct reality and question-beg in ways that affect everyone. Rather, then, as Taylor observed in reflecting on the issues, "We are going to need some *inspired adhoccery* in years to come." (1989, 121). In what follows, I want to recall the precocious *adhoc* genius, by turns pragmatic and principled, of the mid-17th century English 'Levellers'.

III. Inspired Adhoccery

To take seriously the notion of "the unfettered republic of the tongue" (Rushdie 2003, 250), free speech needs to be justified by a political, and not merely epistemological, set of values. It is in pursuit of those values that I propose to take a historical excursion back to the decade of the 1640s, variously known as the Interregnum, the Puritan Revolution, the English Civil Wars, and the English Revolution. Each of these labels carries some truth. To royalists, the decade was a series of disgusting hiccups cast up from the bowels of the body politic, before monarchy and hierarchy were properly

restored. To the Puritans, their brief period in power was the divinely wrought culmination of many years of religious activism against what they took to be the catholicizing tendencies of Charles I and Archbishop Laud. To the many who remained lukewarm, the bloody conflicts made the decade one of considerable pain and suffering exacerbated by economic dislocation and poor harvests. It was also, from the coign of vantage of the present, a revolutionary decade, that occasioned an epochally new public sphere in England. That is, the mass public emerged as a literate, legitimate political force aware of itself as such (Zaret 2000). The onset of elite tensions between the Royal Court and substantial critical factions within the Lords and Commons disrupted the prevailing institutions of control. Before long, elements of the middling and lower orders felt free to gather conspicuously, yet 'without control,' in separatist congregations, in outdoor crowds, at state entrées and executions, and on the steps of Westminster to assert themselves. Furthermore, if not crucially, King and Parliament went public engaging in a 'paper war.' This publicity, together with the collapse of effective press regulation, allowed authors of all religious persuasions and ideological stripes to cultivate a reading public and involve it in deliberating upon the religious and political shape England ought to take.

My historical turn to the mid-1640s is, as social scientists say, 'over-determined.' Ironically, in protesting *The Satanic Verses*, one of the legal strategies of British Muslims (represented by The Muslim Council of Britain) was to appeal to a duly modified version of the 'Act for the more effectual Suppression of Blasphemy and Profaneness' of 1698, which stipulated that denying trinitarianism, monotheism, the truth of Christianity, and its Holy Scriptures was punishable by exclusion from political and economic offices and trusts, and for a second offense with imprisonment.[7] That Act revised the dormant 'Ordinance for the Punishing of Blasphemies and Heresies' of 1648, which had set a penalty of death for such denials, as well as for repudiating the doctrines of the Resurrection and Day of Judgement.

Mill (1989, 11, 69, 83, 86-87, 90-91) detected, in the contemporaneous

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[7] The archaic Law had been successfully invoked most recently in a 1977 British legal case. The Danish Cartoons were also briefly considered under Section 140 of the Danish Criminal Code, known as the Blasphemy Law, unsuccessfully applied in 1971, and successfully last in 1938.

19th century secular moralizing emphasis on public health and the reformation of manners, "engines of moral repression" (16) that were fueled either by hierarchic ambition or the spirit of Puritanism, just as the mid-17th century English justifications of enforcing orthodoxy and persecuting heresy had been.

Kundera (1993) may be right that the pre-history of the novel avant la lettre, begins with Boccacio's *Decameron* and continues through Cervantes and Rabelais, but in name, the novel—that genre-bending, border-crossing, curtain-tearing, novelty-seeking hybrid form celebrated by Bakhtin (1986, 1994), Kundera (1993, 2007), and Rushdie (2003, 52ff, 131, 250-1, 373) alike in the face of others who pronounce it or wish it dead—first appears, so far as I am aware, in the condemnation of it by Presbyterian religious authorities in the 1640s. In his *Gangraena*, a compendium of the rapidly multiplying sectarian heresies that threatened the body politic, the prominent Presbyterian herisographer, Thomas Edwards, warned that numerous unrepentant adherents were taking advantage of the temporary collapse of censorship to advance dangerous new words and ideas. Many of these 'Independents' and 'Sectaries,' it was reported, are "wanton witted men who are conscious to themselves of singularities and novelties" (1646, I:125). By the second edition of *Gangraena*, they had become a character-type: they were "Novellists" (1646, II:172).

The dubious heresies and novelties of the 1640s ran the gamut of genres and possibilities, from an illustration—depicting an erect penis, perhaps the first in English popular print (Cressy 2000, 263), intended as a slander against the behavioral norms of independent sects, including the fictive Adamites and later the Ranters, to a constitution—designed to erect a liberal democratic polity, by political activists, principally John Lilburne, Richard Overton, and William Walwyn, pejoratively styled by their critics, the 'Levellers.'

Indeed, just over three and a half centuries before our September 11, 2001, on September 11, 1648, the Levellers submitted to Parliament, *The humble petition of divers well-affected persons inhabiting the City of London, Westminster, the Borough of Southwark, Hamlets and places adjacent*, dubbed the *Large Petition* because it bore perhaps 40,000 signatures, amounting to

perhaps a quarter of London's adult population, and aimed to demolish the edifice of monarchical absolutism.[8] In many ways the Petition was the high-point of a political movement that began reluctantly as a defence of freedom of conscience but would rapidly come to formulate the world's first liberal-democratic constitution, *An Agreement Of The Free People Of England* (1649), before being outmaneuvered by Cromwell and repudiated by sectarian leaders. It consisted of 27 demands pertaining to popular sovereignty (requiring an unicameral legislature filled by annual election, and no conscription); freedoms of worship, petition, press and speech; legal reforms (transcending the ancient constitution, including equality before the law, protection against self-incrimination, trial by jury, and reparations to the victims of the political status quo); and egalitarian economic rights to subsistence and welfare (involving bans on oligopolies, on enclosure of commons, on tithes, and on debt-imprisonment, and requiring payment of soldiers and veterans what was promised them).

The crucial pragmatic lesson of the 1640s, drawn by the Levellers and other radical tolerationists, was that no religious sect—acting on its specific fundamental behavioral norms and beliefs—could be counted upon to handle the power to regulate such matters in the lives of everyone any better than others. In contemporary idiom, 'really very strong multiculturalists,' regardless of the stripe, are tender consciences while marginal but become monoculturalists when in power. The fundamentalist Protestants of the day, dubbed 'Precisianists' or 'Puritans,' horrified that Protestant England was degenerating into an ugly synthesis of paganism and 'Popery' (Catholicism), demanded that their doctrines (notably on the Sabbath and against the swearing of oaths) be honored and respected by the polity. In response, Charles' regime visited vicious public corporal punishment upon representative dissenters. In 1642, once wielding enough power in Parliament to affect policy, the Puritans, or more precisely the Presbyterian variant, pressed for the closure of the theaters, and incidentally for the abolition of Christmas festivities, and instead enforcement of what might be characterized

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[8] It is a coincidence noted and ably discussed along similar lines by Linebaugh (2002). See also Sharp (1998), Wootton (1991).

as a perpetual Sabbatarianism or unlimited Lent. The Presbyterians, in turn, soon found themselves outmaneuvered by the Independents, who by 1647 had gained control of the Parliament's New Model Army, and subsequently of Parliament. The Independents, too, though they endorsed the notion of local relatively self-governed congregations, whence their name, nonetheless, also sought to enforce various theologically informed restrictions on 'doctrine and discipline.'

The Levellers lost the support of conventional religious groups, and also most of the persecuted minority Puritan sects, in arguing as a general matter in item No. 4 of the *Grand Petition* for "exempted matters of religion and God's worship from the compulsive or restrictive power of any authority upon earth" (Sharp 1998, 135-6), and likewise in No. 23:

> That you would not have followed the example of former tyrannous and superstitious parliaments in making orders, ordinances or laws, or in appointing punishments concerning opinions or things supernatural, styling some 'blasphemies', others 'heresies', whenas you know yourselves easily mistaken and that divine truths need no human helps to support them — such proceedings having been generally invented to divide the people amongst themselves and to affright men from that liberty of discourse by which corruption and tyranny would soon be discovered (Sharp 1998, 138).

To be sure, the Levellers and some few sympathetic religious radicals did strive to draw upon various notions within the broadly shared Protestant theology in justifying the separation of state and church. They argued that conversion was God's work, that man's obligation was to suffer the tares to grow with the wheat, i.e., the behaviorally aberrant and heterodox with the godly and orthodox (pointing out that these categories have varied from age to age, and during the 1640s, literally, each year), and that eschatological fulfillment required that God might yet grace, correct, and save the ungodly even in the 'eleventh hour.' Those of us who really are the godly can take some consolation if we need it (though if we were godly would we really need it?) that the ungodly will be punished or at the very least 'left behind.' However,

'in the meantime' human beings ought to wait and settle on institutional arrangements that leave open the possibility of them finding God, or of God reaching out to them.

The argument for separation of church and state was not that religious notions were too irrational to be used to turn the wheel of state, but that they were too important, too precious, too integral to one's present fate and future deliverance, to risk letting them be managed at all coercively by others. As devout and as certain as one might be about what God required of humanity, one ought not dare empower politics to rule on such matters because if this power fell into the wrong hands, the wrong sect, their control over these areas of one's life could very well be calamitous. Though the leaders of the Levellers were relatively well-educated—Lilburne read Coke and extended the logic of available legal arguments; Overton, though a playwright, probably also dabbled in the new mechanical and chemical philosophies of the day; and Walwyn was not ashamed to admit that he had read Montaigne—they were also still believers.

Two implications in order of importance follow: first, while we may continue to disagree about the nature of the *summum bonum* (in this life and more so the next, and hence also of the claims of the latter over the former), let us agree that the *summum malum* in this life is to suffer premature involuntary physical suffering and death at the hands of another. This requires that we not tolerate actions that physically hurt, maim, or kill, or expressive actions celebrating and enjoining that one do so. Notice that this is less than the elliptical phrase 'to be tolerant of everything but intolerance itself.' Rather, it is a determination to tolerate the fullest range of experiments in living, including even misanthropic ones to separate from and avoid select others or all others. It requires that we 'tolerate' everyone in their respective discipline and doctrine, not that we like or even respect everyone in their particularities, nor refrain from contravening their sensibilities in living our lives. This is a principled stand, and though a relatively minimalist ethical foundation on which to build a political arrangement, most definitely not a neutral one (and liberals ought to refrain from saying so). If you do not agree then you are not part of the 'us' constituting this liberal-democratic regime. Some people, then

as now, did not agree. Many thought it was too little ethically speaking, others thought it was too much or just plain wrong, i.e., that it was better to torture or kill others if one thereby saves them. Some, like Edwards, also argued that their own fates and futures were dependent on such acts of correction, so that if they did not labor mightily to save sinners, not only would those sinners suffer but so would they and London (the New Jerusalem) and England (the New Israel).

Second, while we are waiting, and talking, we must behave with 'civility' and 'politeness' towards one another. It is here precisely that I think 18th century philosophers, and the deliberative democrats who rely on an idealization of the public sphere of that century, go astray, namely in conflating ethics with 'propriety' and 'civility,' i.e., with the paying of superficial respects and the enactment of condescending chivalry. The Levellers, by contrast, had in effect fixed on the root intuitions in these terms. To treat the other civilly is to acknowledge that s/he is entitled to participate in the *civitas*, no matter how strange or obnoxious his/her behavior and beliefs may seem. To treat the other politely is to accept that s/he has a place in the polity. Conversely, and crucially, it would be not merely uncivil or impolite but morally obnoxious to act as if or argue that such persons are unfit *in toto* for inclusion in the *civitas* or polity. This may well sound strange but the Levellers were more morally offended by the *status quo* presumption and belabored propaganda that certain categories of persons— religious minorities, the poor, manual workers, women, the Catholic Irish— were not entitled to political consideration nor eligible for political participation than they were about charges of heresy, accusations of indecency, and other more superficially impolite treatment. They objected most strenuously not to criticism of their specific beliefs and social behaviors, not even to expressions of hatred *per se* directed at them, but rather to proclamations that denied basic political membership on such bases. To repeat, they argued that the only considerations for withholding such membership from an individual or group ought to be a demonstrable commitment to injure, maim, or kill others (or to mobilize the power of the state to do likewise).

Thus it was, that in the course of the Putney Debates of 1647 on the

future shape of the English polity, the Levellers ignored class status and property qualifications in arguing for the fullest extension of suffrage:

> … for really I think that the poorest he that is in England hath a life to live, as the greatest he; and therefore truly, Sir, I think it's clear, that every man that is to live under a government ought first by his own consent to put himself under that government; and I do think that the poorest man in England is not bound in a strict sense to that government that he hath not had a voice to put himself under … (Woodhouse 1986, 53).

Likewise, while critics denigrated the 'Petticoat Petitioners' or 'Levelling Ladies,' as lower-class rabble and loquacious busybodies, the Levellers nonetheless involved women in civil and political life in litigation, petitioning, pamphleteering, and demonstrations (Davies 1998). The Levellers sought to sever the link between royal and familial authority, characterizing the latter as parental rather than paternal, and readily spoke of the protection of "his or her life, liberty or goods" (*An Appeale*, Overton 1647,165). Subsequently, in anonymous petitions such as *A remonstrance of the shee-citizens of London* (1647) and *To the Supream authority … humble Petition of divers wel-affected women* (1649), for the release from prison of the Leveller leaders, women argued: "Have we not an equal interest with the men of this Nation, in those liberties and securities contained in the Petition of Right, and other good Laws of the Land? Are any of our lives, limbs, liberties or goods to be taken away from us more than from Men?"

Finally, the Levellers conceived of the birthrights of all Englishmen to freedom—the status of *liber homo* in the *Magna Carta*—as the consequences of a civilization extricating itself with difficulty from arbitrary hierarchies of power (in this case, Norman villeinage). They are, as such, the historically particular enunciation of universal human rights *per se*: "It is but the just rights and prerogative of mankind (whereunto the people of England, are heires apparent as well as other Nations)" (*An Arrow*, Overton 1646, 5).

The Levellers were moved to lobby, successively, for freedom of conscience, freedom to petition Parliament, freedom of the press, and ultimately for the freedom to consent to the political conditions under which one lived.

What then of free trade? Though the Levellers are sometimes claimed as progenitors by adherents of free market doctrines and libertarianism, they not only argued against state-identified monopolies and oligopolies that crowd out and bar small producers, suppliers, and traders from markets, but also more fundamentally for rights of access to the means of making a livelihood and ultimately to rights of subsistence, including the state provision of work, education, and healthcare.

Appositely, the Levellers' arguments for free press were of a piece with their arguments for state-funded public education and literacy, and legal reforms to gut judicial process of Law French and other legalese, namely that all individuals *qua* individuals or *qua* members of sorts, sects, and societies should genuinely have the capacity to speak (on par with to subsist) in the deliberative processes that affect them. When the theaters were closed, Overton in particular became an unlicensed printer, in order to publish and distribute his own words but also the radical tracts of others, evading authorities by hiding out in the liminal fugitive suburbs, known incidentally as 'the Liberties,' beyond the walls of the City of London. When caught and imprisoned for his efforts, as happened repeatedly he, like Lilburne, Walwyn, and others, also sought to publish, publicize, and protest what was at stake in these imprisonments.

The Levellers took the "*liberty of printing, writing, teaching*" (Overton 1645, 25) to be vital to an open public ethos, and indispensable if self-possessed individuals were to be politically aware and make themselves understood (Curtis 2000). Not unlike Milton, they called for 'liberty' while repudiating 'license,' in both of the latter's semantic meanings. The political licensing (and hence also censoring) of speech should not be required. At the same time, however, private license (or licentiousness) should not gratuitously exceed the civil bounds of friendship. The point of human beings speaking to one another was not to be mechanically "litigious and vexatious," but to find a consensually "just way" (Overton 1646, 15, 13).

The Levellers believed that disputed issues could be resolved through public debate and deliberation, between free and equal minds, willing to convince or be convinced, and prepared to accept the outcome of that

deliberation. Pointing to the epistemological and political productivity of tolerant disputation, they argued that disputants'

> feares and jealousies one of an other, which puts them in a continuall posture of war both offensive and defensive would be at and end; their Controversies would be of an other kind, faire and equall Disputes, and it is better and farre cheaper to provide words for Argumentation, then instruments of war for blowes and bloodshed, and would conduce I am sure more to the common good and safety; the one doth encrease knowledge, the other nothing but rage and revenge (Overton 1645, 30).

Free discussion need not to have magnified dissension, provided the participants observed some minimal dialogical ethics of civility. What was particularly objectionable, in this regard, about the status quo regime of the King and Lords was its unabashed unresponsiveness, its unwillingness to grant ordinary citizens petitionary access to the Parliamentary political process. It bears repeating that Parliament at this time was not a public forum. It was under no recognized obligation to acknowledge petitions, and was consistently disinclined to see its proceedings publicly reported. Thus, Overton objected: "if you lock up your selves from hearing all voices; how is it possible you should *try all things*" (1646, 13). What was needed was precisely an open public ethos: "I wish the people to try things themselves" (1645, 31).

Though the Puritan campaign for lamentation and against laughter spanned multiple decades, it reached its zenith in the mid-1640s, in someone like Edwards who felt overwhelmed by his contemporaneous generation of scoffers at Religion. He diagnosed four sorts of mundane horrors, each accompanied by its own perfidious laughter: "damnable heresies, strange opinions, fearfull divisions, loosenesse of life and manners" (Edwards 1646, I:125), in effect, pointing plausibly to the pleasurable excesses of, respectively, humorous release, incongruity, superiority, and relief. The Levellers, by contrast, defended their use of humor precisely on the grounds that it enabled the hearer to entertain all opinions, try all things, and engage in *pro* and *con* reflection (Basu 2007).

Earlier, I stressed that this way of conceiving of liberal democracy,

originating with the Levellers, is not neutral. It might be objected accordingly, that liberal-democracy is also, finally, a mono-cultural regime, too, and, moreover, that it is one redolent with sectarian Protestant individualistic assumptions. While I actually do think that to a greater extent than we (and even Mill) realize(d) the behavioral norms involved in constituting the modern individual secular subjectivity through self-disciplining and self-employment are, in fact, the sublimated cultural residues of Calvinism, it does not seem to me that the two organizing principles the Levellers fixed upon—tolerance of everything except violent exclusion, and the liberty to debate and try all things—could only be arrived at from Protestant premises. Put positively, these principles are closer to being generally or universally recognizable than most any other ones available (Habermas 2005. Cf. O'Neill 1999, Modood 2001, and Dossa 2002). Furthermore, although the human relationship to God was viewed as an ineradicably individual and terrifying one, namely that one's life would be recalled and read on the Last Day, not unlike a student interrogated closely about his/her apparent plagiarism by an Associate Dean, the limitations on the state the Levellers envisaged were not only for individuals, but also for the associational lives of membership in non-coercive 'sorts, sects, and societies.'

The Levellers emphasized that for democratic citizens to be committed to trying all things, they would have to engage in genuine *pro* and *con*, even when what was at stake are the very beliefs that bolster their own particularistic (group) identity. It bears noting in this regard that this proposal for an open, discursive, consensual public sphere was already a practical feature of some few dissident Sectary congregations, such as the General Baptists. The individual discretion to voluntarily enter into a congregational relationship to God entailed adult baptism (a prodigious heresy in itself), while the spiritual equality of all believers (a view that undermined the notion of the Elect) required that participating members seek consensus through open discussion. To Edwards this deliberative democratic practice was abominable: "in this Church 'tis usual and lawful, not only for the company to stand up and object against the Doctrine delivered when the Exerciser of his gifts hath made an end, but in the midst of it, so that sometimes upon some standing up and

objecting, there's pro and con for almost an hour, and falling out among themselves before the man can have finished his Discourse" (1646, I:93).

The English pamphlet wars that preceded and accompanied the actual civil wars of the 1640s prompted two great political statements. Thomas Hobbes conjured up *Leviathan* (1650), his defence of a fear-inducing political absolutism, in which government exercised tight control over education, print, and discourse, thereby producing outwardly conforming political subjects who were, at best, left inwardly free to worship God as they saw fit. John Locke drafted anonymously the *Two Treatises of Government* (1690), his defense of an income-generating property absolutism, in which government was limited to entrepreneurial and imperial agendas, thereby permitting outwardly free subjects provided, crucially, that they demonstrated that they were inwardly 'rational and industrious' Protestants. Although inexorably in the Modern Age, a perversely symbiotic combination of Hobbes and Locke, the divine right of kings/sovereigns/states and the divine right of property/ CEOs/corporations, has come to be ideologically identified with the globalized advancement of human freedom, otherwise known as 'liberalism,' for a brief revolutionary moment things might have been otherwise (Wood and Wood 1997).

IV. Working Draft

So what is the relevance of the Levellers' combination of pragmatism and principles for the contemporary controversies between free speech and multiculturalism? Should there be moral limits placed on expression? In fending off appeals to 'hate speech,' Rushdie invokes the distinction that one ought to "*defend people but not their ideas*" (2003, 287), that ideas should not be immunized "against criticism, irreverence, satire, even scornful disparagement" (287-8). This might work for literary texts but proves more difficult to apply in the graphic and performing arts, or when what is being satirized are ideas embodied in cultural practices and conspicuously associated with race, ethnicity, language, accent in the dominant language, hair, clothing, and ritually meaningful behavior (Slaughter 1993). Put differently, with much expression, the criticism of ideas shades all too easily into criticism of

the persons for whom these ideas are integral to their self-conception. Hence, what people are to be protected from needs to be more clearly specified.

There should be moral limits set on the content of speech that is clearly exhorting violence, as well as for what are characterized as 'fighting words' that are targeted at and continue to be spoken even though they transmit direct injury (Scanlon 1972). To this familiar pair meriting moral criticism I would propose to add speech that insists that any group or target is *in toto* ineligible or unworthy to participate in the polity. This exclusion, from a liberal democratic perspective, is more ugly than hate speech *per se* unless the vilification explicitly asserts that implication (Brink 2001, 140, 152). The hanging of the lynch noose today, whether relatively symbolic or realistic in its graphic effects, recalls the approximately 5000 African-American men (and the few women, and white men) lynched between the 1880s and 1960s, and the photos and postcards commemorating if not celebrating these murders (Allen et al. 2000). It is an emblem of domestic terrorism. As such, and though unintentionally to be sure, the lynched representative human figures on the Willamette campus discussed above join the three nooses hung from the 'white tree' at the Jena High School in Louisiana, in September 2006, and the dozens of reported noose incidents since then on other campuses, at work places, and in public spaces, in conveying racial intimidation that thwarts the socio-economic mobility and political participation of African-Americans. The contemporary meaning of the hanging noose is unequivocally malign and merits moral condemnation; even more so, arguably, than the swastika.[9]

Objectification and even bestialization of specific individuals and groups, though sometimes (intentionally) hurtful, are not necessarily so. Moreover, such speech acts involve metaphors open to interpretation and reinterpretation. However, to the extent that such statements reduce specific categories of human beings to the presumably non-political status of objects or animals, they ought to be closely morally scrutinized.

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[9] In January 2005 after Britain's Prince Harry was seen at a friend's birthday costume party in a uniform bearing a Nazi swastika armband, German MPs lobbied unsuccessfully for a Europe-wide ban (opposed by the UK and Italy) on the gratuitous use of the symbol, as part of a campaign to criminalize holocaust-denial and the dissemination of racist extremism. Germany tried again at the onset of 2007 not realizing apparently that in concocting an Aryan lineage the Nazis misappropriated the swastika in both appearance and name from the *svástika* of Hinduism. For five millennia, in both right and left facing forms and often red in color, the latter has been a revered and auspicious symbol, second only to the *Om*. It remains widely-used in Dharmic religions

Now, on the other hand, unless it also engages in political exclusion, that this or that statement demeans and thereby causes offense must be tolerated even if it is superficial, irrational, or plainly empirically wrong (Fish 1997, Tripathi 2006, Kamm 2007). Blasphemy, likewise, should afford no general grounds for moral limitation whatsoever (though members of religious groups are free to morally condemn fellow adherents *qua* group members).

As many critics have argued, excessively formal versions of deliberative democracy assume dispassionate, disembodied, detached, and not especially disagreeable discussants. In doing so they risk theoretical unreality and practical repression. Ideal speech is unfair insofar as "language competency is a skill which, like other forms of symbolic power, is unevenly distributed" (Kohn, 2000:412). Precisely because there is no neutral speech genre and the liberal-democratic polity is a provisional endeavor, or 'working draft', then, deliberative democrats need to be pluralistic towards what counts as meaningful discourse. Allowing the widest latitude to free expression, including artistic and humorous speech that is odd, evaluative, transgressive, and/or shocking, attends to the failings of those versions of deliberative democratic theory that assume that language can always be transparent and 'correct.' More specifically, humor (involving the seeming idiocy and irrelevance of buffoonery) licenses reflection for critical purposes (which may sound or be cynical and even cruel), including entertaining thoughts that cross taboo boundaries and forging connections that appear normatively unnatural (at the risk of boorishness and bawdery), and even presses these efforts upon others (to the extent that it is infectiously hysterical).

In fairness, Habermas's preoccupation with transparency is itself a reaction against the rhetorical excesses, such as those of Riefenstahl, which made Nazism seem profound and beautiful (Dahlberg 2005, 133). That the Nazis were able to co-opt the arts (and humor) on behalf of a banal aestheticization of fascist politics is undeniable. The artistic and the humorous can sponsor interpretations that bear no necessary relationship to moral

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[9] (cont'd from previous page) (notably Hinduism, Buddhism, and Jainism) around the world on buildings, thresholds, flags, religious books, wedding invitations, and so on. What does respect for multiculturalism warrant in this instance? Hinduism by some accounts is the third largest religion in the world, with 1 billion adherents, and there are sizable Hindu populations and communities in Europe and America.

principles or empirical realities. Nevertheless, in the absence of the freedom to engage in aberrant expressions, to what untold, because untellable, extent does respect for the *status quo* idiom produce mechanical sociopolitical loyalties in its users (Butler 2000)?

If one values free speech on liberal democratic grounds in America today, then what differential moral considerations, if any, should one place on discursive public space? The answer ventured here is 'very strong multiculturalism.' One should not save discursive space only for expressions that conserve or complement the hegemonic majority (be it secular humanist or religious fundamentalist) and *status quo*. One ought to be concerned about legislative efforts to ban flag-burning, and likewise of the role allotted to the Commission on Presidential Debates, a private organization staffed by representatives of the two dominant political parties, in managing the form, content, and participation of the televised Presidential debates (cf. Boyd 2006).

Likewise, it would be undemocratic to offer special protection to speech that denigrates minority religious, racial, ethnic, linguistic, and cultural groups (especially if it thereby ritually reproduces, or enlivens deeper pre-judgments, in that majority and/or nostalgically recalls a prior history of actual mistreatment and political exclusion). On the contrary, if one knew that such speech acts oppressive to particular groups were occurring, one would be morally obliged to respond with countervailing and even pre-emptive speech and art. Thus, for example, Carl Zuckmayer's remarkable stage comedy based on an actual historical episode, *Der Hauptmann von Köpenick* (*The Captain of Köpenick*, 1931), in which a military uniform was a central character, present in every scene, effectively satirized the banality of the mindless submission to the Weimar symbols and apparatus of authority that would subsequently shift to Nazism.

By the same token, it would be wrong to morally censure a minority group that expressed its disapproval of a view implicating them on the grounds that the expression was culturally unconventional, such as for example the Muslim book-burning response to Rushdie (Jussawalla 2001). Rather, as a democratic citizen, one must make space for, what Mill (1989, 11) characterizes as, "the *odium theologicum*, in a sincere bigot," and hence tolerate both majority and

minority groups when they express their disapproval of another group's beliefs or behaviors.

Conversely, it is also not appropriate to morally condemn expressions that fail to insulate the sensibilities or trumpet the achievements of minority cultural and identity groups, as 'political correctness' and some campus speech codes arguably do. Again, respect for the political legitimacy of the members sharing a group identity does not entail abiding by all of that group's taboos, or observing all of its behavioral expectations in public. Instead, those who sympathize further with the transmitted anguish claimed by this group and who want to acknowledge and ameliorate the ritualized cumulative harms done to its members ought to write and communicate the histories of those harms, support the regular participation of group members in public space, express solidarity with them, translate if necessary, and, as a last resort, speak on behalf of the group.

What of universities? Setting aside the extent to which American public universities must conform to the First Amendment, how should the space of the university be conceived? Although universities are gates through which those who pass successfully are more likely to participate effectively and flourish in mainstream society, this role in the social reproduction of the *status quo* should be broadly construed. That is, liberal democracies in general would do well to allow campuses to be liminal spaces, or 'Liberties.' Contemporary America has few genuinely open spaces of assembly and expression left. The open marketplace of old has been replaced by the privately developed shopping mall, where those who venture out of suburbs beset with codes, clearances, and regulations to visit it will find themselves hemmed in by owner policed rules. Hence, while we should be mindful of the fact that an university campus is frequented not only by faculty, staff, and students but by impressionable children (my own among them), prospective students, paying parents, potential donors, and the general public, the university should not aspire to be as bland as the typical suburban landscape. If necessary, instead, warning signs might be posted on the various thresholds of the campus: 'Proceed with Caution: freedom of expression at work' (Varlotta 1997). Beyond this, to worry about how every expression might offend some

potential individuals and groups would be paralyzing. Almost any statement or aesthetic experiment might plausibly leave someone feeling victimized. Such sensitivity would require warnings on every program, and, likewise, on every public statement, course syllabus, and classroom door.

The university should be an ivory tower in this sense, not secluded and rarefied, but viewing from a critical distance, and engaging along novel tangents; not mono-cultural and defensive but multifarious and exploratory, and the liberal arts college in particular ought to provide opportunities for the cultivation of the plural arts that liberate. Both ought to permit the widest possible range of expressions (that do not exhort violence or disenfranchisement) while making clear that it does not necessarily endorse any single view. Along these lines, however, the university that aligns itself with democratic free speech should disassociate itself from private spaces and institutions that are avowedly exclusionary (e.g. certain sorts of private 'country clubs') or that under the guise of public information promote narrow formulations that advance industry interests (e.g. certain sorts of 'world centers').

The university ought to contribute to the fuller incorporation of members of historically oppressed and traditional under-represented groups and identities into the discursive spaces of America, and it ought to expand the curriculum sufficiently and pluralistically so that the traditions, narratives, and symbols which might appeal to as wide as possible a range of speakers, are available and recognized in the content of potential communication. Presently, not everyone gets to write history, and not everyone gets written into the history where they belong. As Gary Okihiro and many others have pointed out, so much of the apparent coherence in the grand narratives of America was, in fact, contingent and constructed, forcing binaries of race, class, gender, sexuality, and geography upon "the plenitude of America's past" (2001:136). Rushdie, who is rather taken by the notion of 'the frontier,' would not disagree that Turner's 1893 frontier thesis advanced the triumphalist myth of rugged individualism by falsely minimizing the presence of Native American tribes, regional differences, and variously oligarchic, corporatist, and federal socio-political relations and institutions (2003, 361ff).

Students and faculty alike, regardless of their demographic location, ought to regard both familiarity with the fuller historical record and the cultivation of inter-cultural competence as integral to their roles as democratic citizens. They should remain optimistic about the gains from crossing intellectual frontiers, even as they realize, as Rushdie has demonstrated, that stepping across lines sometimes involves stepping on toes.

Conclusion

Responding to the emergent modern predicament of a denatured freedom without an eschatological end to history, Hobbes ordered: 'in the mean time, be quiet,' Locke calculated: 'in the mean time, be rational and industrious;' and the Levellers volunteered: 'in the mean time, separate if you must but talk to one another.' Imprisoned in the Tower of London on Cromwell's orders, the Levellers began one of their last collective efforts, *A Manifestation* (1649), by affirming and drawing fresh implications from the Stoic maxim, which Willamette University aspires to hold dear, "No man is born for himself only" (Sharp 1998, 158). In the spirit of the Levellers, and in agreement with Fish and Rushdie, we should try to accept and talk to one another about our shared 'dirty' 'polyculture,' or 'multifaceted culture' rather than insist on 'multiculturalism,' inasmuch as the latter involves multiple purist mono-cultures disgruntled to be co-habiting, like poorly matched roommates who disagree markedly about what counts as 'clean' yet have to share a bathroom. We should, that is, welcome historicism and hybridity provided the former is not all-excusing and the latter does not become assimilation in fancy dress. We are all, in one way or another, migrants and mongrels with much to talk about.

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Expression and Identity:
Collected Voices on "Freeing Space"[1]

Arminda Lathrop, M.A.

Part I: "Have You Seen My FOE?"

Shifting slightly in his chair, Aflodis pauses and places his thumb and forefinger on his chin thoughtfully. "The debate and discussion helps us to free space for expression," he says[2]. I can tell that this is something he says often in interviews like this and wish that I would have thought of this phrase, "freeing space." In fact, as I am talking with Aflodis, I realize how important this idea of creating a space for expression is. Aflodis is a representative of a Non-Governmental Organization (NGO) in Rwanda that focuses on teaching the youth of Rwanda that they are "the actors of their future—the decision makers," as he puts it. Aflodis continues to explain that, after the horrendous genocide that occurred in his country only thirteen years ago, it remains important to instill a sense among the Rwandese people—particularly the youth—that they can influence their own futures and the future of their country by learning peaceful methods of decision making and conflict resolution and healthy ways of self-expression.

We have met for this interview between sessions at the International Debate Education Association's (IDEA) annual Youth Forum in the Czech Republic. As a representative of IDEA, I'm admittedly looking for tidbits from my interview with Aflodis that I can use to demonstrate why IDEA is an important and worthwhile organization. And, Aflodis has similar motivations: He's hoping to draw continued partnership and support for his own NGO in Rwanda.

Though we're exchanging terms that float nicely about the air in democratic righteousness—"peaceful conflict resolution," "free discussion," "democratic values," "open expression," "the free exchange of ideas—" that

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[1] Poster made by participants at IDEA International Youth Forum on the topic of Hate Speech. July 30, 2007.

[2] All quotes by Aflodis in this essay are taken from an interview with Aflodis Kagaba. August 1, 2007.

both of us regularly insert into grant proposals and promotional materials,this language is accompanied by recent experience. We've seen the benefits of debate, expression, and idea exchange over the past week. Students from thirty countries, ranging from Israel to Mongolia to Croatia, have been debating the resolution, "Hate speech should be a crime." At an international Youth Forum with an astonishingly wide range of perspectives and experiences, this resolution draws a great amount of response.

When participants arrived at the Youth Forum earlier in the week, they received a handbook of essays and materials on Freedom of Expression with a big label on the front, reading, "FOE." Throughout the week, I have heard the repeated question, "Have you seen my FOE?" more times than I can count. As Forum continues to move forward, we all continue to search for— and understand—this concept of FOE. Among the FOE Packet materials is J.B. Bury's, *A History of Freedom of Thought*, in which Bury writes, "For knowledge is advanced through the utterance of new opinions, and truth is discovered by free discussion." Bury continues by quoting Milton: "If the waters of truth 'flow not in a perpetual progression they sicken into a muddy pool of conformity and tradition.[3]'" Engaging in "free discussion" is the students' purpose at Forum, yet defining the concept proves difficult.

Getting at the core of what "freedom of expression" means, students have spent the last week studying and debating about the limits of this principle. Aflodis and I watched Jewish students from Israel debate about expression in relation to Holocaust denial, students from Bosnia/Herzegovina discuss genocide and territorial disputes associated with expression, and Muslim Arab-Israeli students examine the question of limitations on religious freedom of expression. The implications of the answers that come along with examining the question of freedom of expression begin to surface in a context in which these implications have taken family members, destroyed homes, and defined the direction of lives. Aflodis, along with many Forum participants, understands the complications involved in regulating freedom of expression from firsthand experience.

As the Forum nears its end, I find it interesting that after a great deal

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[3] J.B. Bury, *A History of Freedom of Thought* (New York: Idebate Press, 2007), 78.

of research and discussion about diverse locations, cultures, and events, most students begin their debate rounds with a resolution focused on the U.S. The original resolution of "Hate speech should be a crime" must be narrowed down to be arguable. Students must define the term "hate speech," and they must define where it should be crime—most teams choose the U.S. as a location. The topic suddenly becomes, "Violent video games should be banned in the U.S.," or, "The U.S. should ban the existence of the KKK."

I'm not sure why the choice of the U.S. occurred so commonly. Perhaps it is because the U.S. is a location that most of these students have had to study and understand, or maybe it's because there is a great amount of easily accessible research material about the U.S. Admittedly, I was disappointed to learn that an event so internationally focused had circled around to debating about U.S. policy. I wanted to learn about what was going on in many of these students' countries and cultures; I wanted to hear about how they viewed laws and the process of government regulation in countries other than the U.S.. Compared to many of the intense situations I had heard about over the week, the U.S. seemed to have a firm grasp on boundaries of expression.

But, something strange happened once the debating began. As I listened to secondary school students from thirty other countries talk about freedom of speech and expression in the U.S., I began to think about and understand the complexities that surround these freedoms in our diverse and open society from a different perspective—one of people living outside of the country. It's clear that these students view the U.S. as a country of freedom and opportunity, but it also became evident that they believe the process of passing laws that limit or regulate freedoms is done quickly and simply.

One Estonian girl proposed, "The U.S. ought to ban all organized groups whose agendas can lead to violence." Her primary example was the KKK, and the proposal initially seemed like a fair idea—until her opponents began questioning who would determine which groups had "violent" agendas and what "can lead to violence" really means. Could a group that was protesting for equal rights be counted as one whose actions could lead to violence? What implications did this have for all organized groups, especially minority groups?

Considering the U.S.'s violent and complex history and the multicultural makeup of the country, the question of where boundaries are appropriately placed on expression is still quite relevant. Though I believe that many of the international students at Youth Forum chose the U.S. as a location for their resolution because it is the country most of them know the most about next to their own countries, their debates exposed the issues and problems in the U.S. that are ultimately rooted in the question of limits on expression. Whether discussing violent video games, graffiti, or the KKK, boundaries on expression are the underlying theme, and in a diverse, democratic society, an obvious resolution surfaces neither quickly nor clearly.

Part II: Expression Profiling

Having spent six weeks reflecting on the complexities of freedom of expression in a multicultural context outside of the U.S., I returned determined to explore the question of what shapes an individual's understanding of freedom of expression in our democratic and multicultural context. I wanted to explore how an individual's understanding of expression shapes identity—both personally and communally. I was also particularly interested in how boundaries on expression are set and transformed throughout people's lives, as well as what kinds of agents set these boundaries—and the extent to which these agents vary from person to person. It is my hope that this examination of experiences in expression serves as a canvas, displaying voices and stories in raw and rich form and providing a glimpse into some of the complexities that exist when examining the role of freedom of expression and how the concept of it develops in a larger societal context in the U.S.

The voices that follow are diverse and unique; they display the beauty and importance of expression in a multicultural society. I sought to find both trends and differences in the development of expression and attempted to display voices of people from different areas, cultures, and backgrounds. Their voices demonstrate the extent to which expression both contributes toward an individual's sense of self and is a product of this individuality.

Voice 1: Kent and the Theme of Trails

To get to Skagway, Alaska, one must fly into Anchorage and then take a puddle-jumper another two hours to Skagway. The little town is about six miles from the Canadian border. Its name means "place of wind" in the native language, Tlingit, as Skagway is located in a valley between two mountains. In the winter, the wind rips through this former gold rush town harshly, its biting, brisk whistle chilling Skagway's 725 residents.

Kent Fielding is an English teacher at the tiny high school in Skagway. He is also the school's track and cross country coach, drama teacher, and debate coach. I expected him to add that he is mayor as well, but he apparently hasn't taken on this role…yet. Kent describes Skagway like this: "Skagway is a place of trails. Trails up into the woody mountains. Trails to mountain lakes. Trails through the ghost town of Dyea. Hunting trails. Skiing trails. Running trails. Blueberry picking trails. Bear trails."[4] As Kent and I continue our conversation, I consider this idea of trails as it relates to our travel through our own expression—all of the inclines, blockades, rocks, and occasional watering holes that shape direction and destination.

Kent's trail has been shaped by diverse experiences, influences, and locations. He relays his experiences vividly and emotionally. Though the first impression of Kent can lead one to believe he is quiet and reserved, he quickly dispels this notion when he describes his passion for students, theater, global studies, his family, and running—subjects he can discuss for hours. Kent is a storyteller.

As a child, Kent had very few limits on his own expression. He recalls, "My mother didn't even tell me not to draw on the wall. It was like one giant coloring book. We had few toys, so I was able to beat pots and pans and sing like a maniac. I remember one Saturday marching around the neighborhood

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[4] All quotes and information in this section are taken from an interview with Kent Fielding. August 13, 2007.

with my friends, banging pots and singing, 'We got short shorts'—bang, bang, bang—'We wear short shorts'—bang, bang, bang—You got short shorts—bang, bang, bang…I don't know how I remember these words. I was only four." Now thirty-six, Kent laughs about how he had the freedom to run and play around the neighborhood and in the forest as a child, as long as he walked out the door with his mother's prayer, "Lord, keep him safe."

Though he had few limits on expression, Kent recalls hearing hate speech as a child and being restricted from using it. "There was one African American family on the block, and they had a girl, Vanessa, my age. One day I remember Vanessa crying. She told me that someone had left her dad a note that said, 'We don't want any niggers in our neighborhood.' I think this was 1977. It was the first time I had encountered racial hatred…My father, in explaining the situation told me that the word 'nigger' was like saying, 'I want to see you dead. I'd like to kill you.' One time I got in a fight with my brother and said, 'you nigger.' My father grounded me for a week and made me split firewood. But, first he asked, 'Do you hate your brother? Do you wish he was dead?'"

"Later—in high school—there was a group of guys who would brag about how they would hang out on 'fag hill' and beat gays with bats," Kent remembers. "It scared the hell out of me. We saw the people who hung out on that hill—just people hanging out in the park enjoying themselves…It was easy and acceptable to use the word 'fag' when I was growing up, but reading people like Allen Ginsberg helped remind me of the hate involved in the expression."

"As far as my own expression, I was usually encouraged to write, to draw, to play a musical instrument, but my parents forced me into sports. We must remember that 'sports' is perhaps the biggest expression of self in America. I started playing tennis when I was five and by age eleven, I was entered into tournaments with an expectation of winning…By high school, I had quit all sports but running and basketball. But running became my expression. I mean, how you could end a race with a kick or sprint a hill, or turn a corner and disappear from your opponents? These were expressions. I could take the guts out of my opponent on the last 400 sprint and that sprint

said, 'I'm strong. I have muscles in my legs that can scream louder than the blue sky.' I realize that sports was reinforced in my family. Other forms of expression, while encouraged, did not get the same passionate reinforcement, and therefore, they were seen as not as equal. My father did state, when I was in college, that my poetry would not make me any money."

Now, as a teacher in a small town, Kent encourages his students to find their own ways of expressing themselves. But, at the same time, he feels the pressure of community restricting his own free speech exercise. "In our society, teenagers are marginalized," Kent says. "Adults fear them. They hang out on street corners or in coffee houses late at night—or all night. They listen to strange music. They use sexually filled language or obscene language. They perform forbidden dances that look like sex rituals. All of this, I believe is normal…we must remember that teenagers will always look for new ways of self-expression, and the more avenues we limit, the darker the avenues they discover."

"As a teacher in a small community, everything I do or say is watched. I can't express some of my more radical views of U.S. society. They'd run me out of town." He laughs. "In certain arenas, we've placed limits on what we say. These limits even reach the press, which fails to report certain things or events due to their negative impact or nature…Our news channels report the same thing and they all seem to be biased and opinionated. We must look to art and independent documentaries to get the real news." Kent adds.

We finish up the interview with the question, "Do you think that there should be limitations on freedom of expression in our multicultural and democratic society?"

Kent doesn't pause to take a breath before responding. "No. You start limiting expression and you start limiting ideas, experiences, and arenas of debate. In a country that still marginalizes groups, we need as many voices as can be found."

Voice 2: Mercedes—Education is Accompanied by Freedom and Confidence

Mercedes' words pop out of her mouth quickly and precisely. She is on the phone with her daughter, one hand on her hip: "Don't you make me come over there. I will… No. No. You get your homework done and then we'll talk about it. Nope. Nuh-uh." Pause. "Okay, love you baby." She hangs up the phone and sighs. As she continues her discussion, words come out of her mouth quickly and crisply and seem to pop in the air. Her Bronxy, Puerto Rican accent carries a strong element of assertiveness that would carry weight in any argument.

Mercedes is thirty-one years old, though she looks closer to twenty-five. She is Puerto Rican and a student of Creative Arts and Technology at Bloomfield College in Newark. She is also a single mother, actress, videographer, and foot model. Yes, an actual foot model. Mercedes has a perfect size six foot—perfectly measured, shaped, and pedicured. "I thought about taking insurance out on my feet," she says, "because, you know, these are my bread and butter. This is how I pay the bills."[5] She spends many long days on those perfect size sixes on the sales floor at Kenneth Cole in New York City, modeling shoes and assisting with fittings.

"Is it difficult to manage being a mother and full-time student while holding down so many jobs?" I ask.

"Yeah. But, growing up, I had the same situation wit [sic] my parents each holding down more than one job. They were hardly involved because they had to work more than one job. Just so they could provide for us." She folds her hands together. "I mean, I've always lived in all black and Spanish neighborhoods. And, that's the way it is there. Most families are single parent households who always work more than one job and raise their kids on their own."

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[5] All quotes and information in this section are taken from an interview with Mercedes Pagan. August 15, 2007.

Mercedes is the youngest of five children and the first person in her immediate family to graduate from high school. As a child, she always seemed to have steadfast determination, but she was incredibly shy. In fact, when I asked her about the earliest time in her life she could remember being reprimanded for expressing herself, she couldn't remember a time when she expressed herself prior to adolescence. In a family of seven people, one had to fight for words, and Mercedes chose not to fight this fight. It's difficult to believe that the woman on the phone moments earlier is the same person as this child.

In fact, Mercedes isn't quite sure when she made the decision to start expressing herself or what exactly influenced this decision, but she believes it is a result of her education. With education came confidence. "Education has helped me to remain open to new people and new ideas," she says. "I feel like I have a right to express myself and say what I need to say."

For her personal boundaries on self-expression, the line stops at degrading, intimidating, or inciting violence or prejudiced action against a specific person or group. "There's a difference in targeting a topic or problem. There shouldn't be anything wrong wit [sic] voicing what I want to say. Now, like I said, when you start to target a specific person, that begins to be a problem." We discuss the idea that, in a multicultural society, hate speech that targets specific groups is a very real problem. "Well, we should continue to address the harmful effects of certain speech," Mercedes says with resolve.

As a parent, Mercedes is determined to encourage her daughter's expression, while guiding it at the same time. She understands parental influence on thought and expression. She wants her daughter to feel more freedom to express herself than she felt as a child, but she also adds, "Now, there are times my daughter may comment on something and I just worry that she may not be prepared for other people's response, so I do give her a warning on with who, where, and when she should talk about certain topics." Mercedes also seems to put the same boundaries around her daughter's expression that she uses to guide herself, adding that she encourages her daughter to be respectful of other people. Mercedes smiles and shrugs: "It's all about that respect."

Voice 3: Juan Garcia—"An English-Only State"

His official title is "Specialist, Garcia, Juan," though, in the past, he's also been "Squad Leader," "Team Leader," and "Driver." He's sitting on a heli-base right now in northern Idaho, which is in vivid contrast to Iraq, where he was recently stationed for two years. This summer, he is serving on a fire crew, and his official job is "crash rescue," which he explains as extinguishing a helicopter fire and preventing it from spreading, should one of the machines crash while landing or taking off. "But, it's pretty much just sitting around playing cribbage, reading, and watching the occasional movie,"[7] he explains.

Specialist Garcia, now a student, lives near Boise, Idaho. He tells how making the transition from Compton, California, where he was born, to Idaho as a child was difficult. But, after the L.A. riots in 1992, his mother felt she had to move Juan and his brothers north. "At that time, the Hispanic population was very low in Idaho," Juan says. "People actually told me, 'This is an English-only state.' The school had some stupid system of testing Hispanic kids on ancient computers…the whole ESL thing threw off the first years of my education. My mom only speaks Spanish at home and the English thing was difficult to pick up. I've noticed—with me and my little bro anyway—that there's lag time in the first couple years of an ESL child's school. They need to play catch up to learn the new language before *anything* else."

Juan's transition into English as a child was accompanied by the usual boundaries and exploration of language that many children have. "I remember some girl had kicked my basketball away from the basketball court and I called her a slut. Little did I know that the vice principal, who happened to be on duty that day, was standing right behind me when I said it. She took me into the office and asked why I had called Jennifer that and if I even knew what it meant. I assured her that I knew what that meant. She wrote me up, sent me home with a note, and received a forged note back the next day…Also, there

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[7] All quotes and information in this section taken from an interview with Juan Garcia. August 21, 2007.

was this one time in 6th grade science camp. We were on our way back from some field trip and I was sitting in the back of the bus and we decided it'd be funny to write 'Bomb on Bus' on a piece of paper and put it in the back window. As you can imagine, it was only a matter of time before the local Police Department and bomb squad pulled over the bus…landed me in the county jail for a few hours…apparently, the whole 'freedom of speech' doesn't cover disrupting public safety." He laughs.

"I don't know if it was ever explained, but at some magical age, it was okay to say certain words. My older brother cusses in front of my mom and she rarely has a problem with it. She'd have a big problem with my little brother or sister using grown up words…My parents need to work on listening to their kids. I often felt that I couldn't really express myself because it would just be brushed off. My little brother will tell them that his feelings are being hurt or something, and they'll tell him that he's being too sensitive."

"But, outside the home, you run into a different issue. The problem shifts from what you say to how you say it. When I was in grade school, it was often frowned upon to speak Spanish. The teachers would say that we needed to speak English and used lame excuses to justify it. They would say it was unhealthy for us to continue speaking Spanish and they would continue giving me stupid tests and sending me to immersion and later transition classes because they felt they needed to show the Hispanic kids certain attention. I felt like an animal in a zoo being prepped to be released into the wild. I often hear the whole 'We are in America. Speak English.' I still think that people around here think this is just a 'phase' that the state is going through. They still think that one day they will wake up and all the Hispanics will be gone like a bad dream."

Juan jokes about being the "token Hispanic" guy in his squad, but no one is allowed to talk about it. "In the military, we're told what to and what not to say. Not only is there the whole OPSEC thing…"—He pauses—"Operational Security. But, there's also the whole 'We're doing great!' attitude that's forced on us. The military likes everyone to think that the troops are all doing great and happy to be doing whatever it is that the President deemed right…The military has liaisons, these guys all trained in sugarcoating everything. The

government does a great job of cutting out a whole lot of dumb crap that starts happening when you get a bunch of guys together. I've gotta say that the tighter ship the military runs is probably a little more 'appropriate,'" Juan says, making quotation marks in the air with his fingers.

A veteran of the war in Iraq, Juan's perspective on the necessity for freedom of expression was reinforced during his tour of duty: "I think that freedom of speech is one of the greatest things that can happen to Iraq. I now see how fortunate we are to be able to express ourselves. I'm happy that I can say whatever the hell I want." He pauses and laughs. "See that, I said 'hell.' I've now seen the two extremes. Americans can say and express about anything while those in Iraq can hardly express anything. Some of the basic rights that we don't even think about, like criticizing the government or religious leaders can result in imprisonment or death there. It makes me wonder how things would be if our freedom of speech was restricted. I guess that all in all I think that people should have the freedom of expression and that there isn't really a way to set boundaries. I love the fact that this country allows people to express themselves publicly—may it be gay pride or anti-war."

Voice 3: Kate—"All my life, I have been at war with this line of what is acceptable."

"When I was seven, my father died. I remember very little from the time, but the images are strong. Stained glass windows from the funeral home. The dashboard of the black car that transported all five of us kids

to the gravesite at the cemetery. I was really angry. Not sad. Angry. Yet, I had no way to express that anger, that raging fury that left me speechless and tearless. One of the few memories that stays with me is the morning I returned to school. I told my teacher, Miss Hoffman, 'My daddy died on Wednesday.' Her response was, 'Oh, that's too bad.' She never even looked up from the chalkboard. She just kept on writing. I had no outlet. No way to express what was bottled up inside. My ultimate expression

for this rage was my overeating, which developed very quickly into childhood obesity. And, at that time, kids weren't punished for calling me 'fatty Kathy,' but I was punished for responding to the fat comments."[8] Kate exudes an air of confidence and security, and it's difficult to believe—as she articulates her feelings and memories—that she has ever had difficulty with expression.

"When I was twelve, my brother died—suicide response to Vietnam, long story…I remember that I wanted to make some sort of statement, you know, to try and take his idea forward even after his death. So, I wore black in some aspect of my clothing…oh, not the goth look of the '90's, usually just a choice of black t-shirts or turtlenecks with my jeans or overalls. The school was stressed about it and it was suggested that I be given counseling. (Pause) Hmmm, war protest and counseling, how does that figure?" Kate grins and winks.

As a teacher in the Midwest for many years who now lives and works in France, Kate says, "Social pressures control human expression. Attitudes on compassion, charity, body image, nationalism, and yes, patriotism are formed—or framed—for us. The pressure may move a person in a direction of conformity or non-conformity, largely depending on past experiences and feedback received from the various social groups that the person values. You know, sometimes it's fashionable to challenge your government, sometimes it's not."

"All my life, I've been at war with this line of what is acceptable. Fortunately, or unfortunately, each battle lost or won in the war changed my life. The theater program that was my passionate realization of free expression needed to be taken to the next level…society doesn't have many acceptable outlets for this kind of change, so I took a long-term leave of absence and was pretty much denied the opportunity to return…the boundaries and lines for expression have always been fuzzy for me. As an adult, I choose to ignore a lot of those boundaries. But, that being said, I think many adults say they're less restricted, but in reality, they're equally restricted. They just use different words to identify their pressures."

"There is always the conflict: When does freedom become license?

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[8] All quotes and information in this section taken from an interview with Kate Hamm. August 20, 2007.

Our society values—or says it does, anyway—freedom of expression because democracy depends on an educated people. John Stuart Mill explains why the "free marketplace of ideas" is so important in his book, *On Liberty*. There's a lot to his thesis, but briefly, all ideas need to be heard or seen so that they can be challenged and either reinforced or struck down. If an idea is bad or evil, it must be exposed for what it is. If not, the bad or evil can spread like a silent disease and have the same deadly effects on society. If an idea is good, exposure can strengthen the effects of the idea…Hate speech is not something that I particularly like, nor do I think there should be a right to evil. *But*, I do recognize the value in exposing this hatred. *But*, there's also a corresponding obligation for society to say 'stop' to the hate and strengthen laws that punish behavior that hurts another human being."

On the differences in freedom of expression between American and French societies, Kate says, "Since I arrived in January, I've been struck by the mixed messages of French society. Suprisingly, there aren't a lot of official differences. The French are huge on political philosophy. The motto of "Equality, Liberty, Fraternity" permeates almost all policies and laws—on paper—just like the laws and policies of the U.S.. Just like in the U.S., France has a problem with racists, intolerance, and discrimination. Because this is more of a socialist system of government, there seems to be more social pressure to change actions that express this. In the U.S., this pressure is less apparent."

Part III: Picturing the KGB

"We glory in flowering," Kent writes thoughtfully, making a reference to a quote by Rilke from *The Duino Elegies*. Kent is referring to the way people universally learn and grow from new experiences, perspectives, and influences—the various stimuli to which we react. Demonstrations of expression are often a reaction to these stimuli, as individuals' development of self is connected to their reactions. As Kate says, "Everything that we say, do, dress, stand, is part of the message that we send to the world that says, 'Hey, look at me. Listen to me. I exist. This is who I am. This is what I feel, what I believe.'" In the "expression profiles" of Kent, Mercedes, Juan, and Kate,

each person's expression development is closely tied to her or his identity development.

Kate identifies her first memories of self-expression as an angry reaction to her father's death—and then to her brother's death—as her demonstrations of free expression were closely tied to tragic moments in her childhood and adolescence. Her demonstrations of expression helped shape the identity of a woman who continues to refer to herself as someone who pushes boundaries and ignores the dictates of the status quo. And, similarly, Kent, Juan and Mercedes identify factors or events in their childhoods, whether education, sports, or language—or a restriction thereon—that spurred or inhibited their expression and helped shape their identities.

If one's understanding of self-expression and subsequent exercise of that expression is naturally connected to identity, what can our development of expression tell us about the development of our identity and the understanding of self? Environmental, societal, familial, and governmental influences carve our paths of expression, informing identities and influencing our actions. Thus, when we discuss placing boundaries on freedom of expression, we're talking about placing boundaries on the freedom to react to these influences and steering identity development.

Kent, Kate, Juan, and Mercedes have the freedom to react and to express in the way they want; their voices and identities are vividly different and expressive. When this freedom isn't granted, voices are inhibited and identities are constrained. Throughout the interview process, I continued to come back to a conversation I had with Katechka, a university student from Belarus, about the topics of debate and journalism. Over a meal of cold cafeteria pasta with tomato sauce, Katechka and I discussed her work in the field of debate at the university. "I am eager to teach debate at my university," she explained. "It is necessary for my country." She paused and lowered her voice. "You have to understand. This is a privilege. It is a privilege to learn…we have to be very careful. We have to watch what we do and watch what we say at the university if we want to continue. They say we are free to discuss, but there is this ceiling that no one is to exceed. And I…I am caught in this place of deciding, do I try to encourage students in my country to learn and to speak out against

injustices we are experiencing? By doing this, I risk my life, you know. Or, do I try to leave the country? Do I try to go to America for school—to stay and to try to live in America?" She took a bite and shook her head. "I keep thinking, 'At least I have to keep trying here…If I don't, who is going to?'"[9]

According to Katechka, the government of Belarus had just passed a law making it illegal to say anything negative about the governments of Belarus or Russia. Belorussian citizens who are caught breaking the law face a jail sentence. In fact, Katechka's close friend and leader of the debate society had recently been expelled from the university for holding debates about the topic of decisions made by the Belorussian government. All of Katechka's actions were under close watch. She had been approached by the local officials on several occasions and was forced to answer questions about her involvement in discussions and debates that were deemed potentially anti-government. She was used to the monitoring of her expression. "We are definitely not in control of our own destinies. There is always someone watching, someone to worry about." Katechka told me, frustrated.

After our discussion, I kept picturing Katechka and her interrogation as I considered the limitations placed on her freedom to say what she wants and to be who she wants. Facing the threat of expulsion or imprisonment, she continues to fight, with the goal of living in a truly democratic country serving as her motivation. And, like Kate, Kent, Juan, or Mercedes, Katechka's fight for expression has been a significant part of forming her identity. Still, there is that invisible ceiling regulating her decisions and direction. She relayed the urgency for gaining the freedom to express herself and the care with which this right must be handled.

It is the space for expression to which Aflodis referred that Katechka is fighting so diligently and carefully for—a space that it seemed necessary for Kent, Kate, Mercedes, and Juan to free up as well. The need is universally human; the freedom clearly is not. The space for expression we are constantly attempting to open and keep open is elusive, intangible, indefinable, and ever-changing, as boundaries surrounding this freedom are set up and broken

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[9] All quotes and information in this section taken from an interview with a Belorussian student who wishes to remain anonymous. July 2, 2007.

down. It is a delicate space, one which must be celebrated and used, as freedom of expression goes hand in hand with freedom of thought and freedom of identity. Just as we celebrate this space and continue to fight for the right to inquire, to express, to expose, it is important to acknowledge the power that accompanies expression—power that can build or destroy, unite or divide. Or, as Aflodis said during our interview, "The people have to understand that words are powerful. Thoughts are powerful. If you are able to use these as powerful things, then you can respond to what is happening around you."

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Speech that Offends: The Treatment of Transgressive Expression and Hate Speech in the United States

Chris Hanson

In the United States, war has been frequently justified on the basis of ensuring freedom for American citizens and to secure the American way of life. Memorial Day and Veterans Day are set aside as holidays meant to honor the sacrifice of soldiers who fought for these principles. The concept of freedom is used frequently and loosely to justify conflicts, many of which seem largely unrelated to this concept. However, it has remained a powerful ideal around which to rally support for military conflict and an effective argument against those who do not support such a conflict. The ideal of freedom is such an apparently universal desire that those who question the use of force to ensure it for America are often thought of as "un-American." That is not to say that popular support has never wavered for conflicts that are intended to ensure freedom, but it seems to be commonly believed that the primary method for securing freedom is through the usage of military might. Certainly with nearly half of all U.S. government spending going to defense, one would have to assume that we must be literally swamped in freedom. Perhaps this is why the U.S. is currently so busy exporting this glorious freedom to countries like Iraq. Sarcasm aside, the current international climate does seem to suggest that freedom may not be best spread through force and that is better secured through different methods. So, what would these methods be exactly?

Freedom of expression, in particular, is one of the most fundamental and cherished rights in the United States, established in the First Amendment. Significantly, it has rarely been secured through war or violence. The reality of freedom of expression is more difficult to glorify than the idea of going to war to "defend freedom." It is unlikely that any stirring Hollywood films will be produced about the American Civil Liberties Union suing to allow neo-Nazis to have a rally for their cause, but this is often the nature of modern conflicts over the freedom of expression. The basic ideals of the First Amendment are

widely supported enough that conflicts over free expression tend to occur on the fringes of free expression, in cases involving pornography, alleged hate speech, and very strong obscenity. However, this circumstance does not mean that those who stand up on the side of free expression should be any less honored than the nation's war heroes, although they rarely are. Additionally, just because freedom of expression is often secured in somewhat extreme cases, it does not make a victory for this freedom any less significant. In fact, it is these extreme cases that truly test whether the United States stands by its ideals of free speech. Free speech is only guaranteed when there are people willing to test its limits: like many of the other rights ensured to people, it has to be strongly fought for and defended through the continued free expression of ideas.

Defining Transgression

It may first be useful to define the idea of transgressive expression to firmly establish a framework for discussion. Transgressive expression, while intended to be offensive to a set of sensibilities, should not be confused with what is commonly considered "hate speech." While there are certainly some who would argue that certain examples of transgressive expression are considered extremely personally hurtful and dangerous to society, this does not necessarily make them hate speech. Conversely, shouting a racial epithet at someone on the street does not count as transgressive expression. Certainly it would be offensive, but without any intended meaning beyond threatening someone, it could hardly be considered transgressive in any meaningful way. In his book, *Transgressions: The Offenses of Art*, Anthony Julius discusses the definition and roots of transgressive art. He notes that the idea of transgression is of "outrages that can liberate" (Julius 2002, 17). This definition provides a useful distinction between hate speech and transgressive expression because, although there will inevitably be disagreement about the exact distinction, they have opposite purposes and little in common beyond being offensive. One seeks to liberate the audience while the other seeks to control and cause fear. I will be returning to the idea of hate speech later in my essay, because it is fraught with its own issues related to freedom of expression, after further

discussing the idea of transgressive expression.

Having separated the ideas of hate speech and transgressive expression, one might wonder whether anything offensive can be considered transgressive. The answer is very clearly "no." Just because something is offensive, does not mean that it is necessarily transgressive. No, it needs to be extremely and widely offensive to be transgressive. Julius calls transgression "a sin, a super-crime, an offence against God" (Julius 2002, 16). Indeed, the idea of transgression is fraught with evocations of religious sin, owing to the word's origin in Christian scripture. Although it has since become associated with general rule-breaking as well, the religious weight of the term remains because of its usage in relation to the breaking of a society's most strict taboos. As such, transgressive expression is not accidental. The extreme degree of the offense separates it from that which is incidentally offensive. One certainly does not take a picture of a crucifix submerged in urine and title it "Piss Christ," as Andres Serrano did in 1987, by accident. It should go without saying that transgressive expression is not known as an avenue for subtlety.

Additionally, transgressive expression, to varying degrees, displays a certain degree of knowledge about a subject and an intention to spur discussion on it. There is always an intention to confront a certain aspect of society and one must be educated about this subject to effectively offer criticism. Largely, this purpose is what allows one to differentiate between that which is transgressive and that which is merely offensive. Offense is certainly part of it, but transgressive expression couples offense with an invitation to the audience to reconsider the subject of the work. Having challenged the audience with an uncommon or offensive viewpoint, the transgressive artist seeks to spur further discussion in the wake of their ideas. The power of transgressive expression lies in its ability to both demonstrate an understanding of the subject but to frame the dialogue in a way that is rarely allowed in everyday culture. The creator's transgression is intended to force the audience to reconsider the subject matter in light of the creator's rejection of the traditional portrayal of the subject.

Why Transgression is Important

Now with an idea of what constitutes transgressive expression sketched out, it is worth elaborating on just why exactly it is such an invaluable form of speech that has served a significant role in securing free speech rights. As was touched upon in the introduction, transgressive expression in the United States actually tests the laws of free speech, which theoretically give the right to unfettered expression. While it is commonly accepted that one can say anything ones wants in the U.S., provided it is not a direct threat to anyone, this is certainly not always true. The language of the First Amendment would appear quite clear, sweepingly declaring that "Congress shall make no law […] abridging the freedom of speech" but its practical application has led to innumerable disputes over the exact meaning, not to mention the true intention, of its inclusion in the Bill of Rights. Even the most adamant free speech supporters accept that this right does require the exception of certain cases to ensure free expression for all people. Thus, it is clear that the actual application of the right to free expression is much more complex than the wording would imply because the practical interpretation differs from written law. As the various interpretations of the First Amendment illustrate, the law means nothing until it is applied, and it is through this application that the degree of freedom allowed by the law becomes evident.

The practical application of the First Amendment reveals the true nature of freedom in this democratic and multicultural society. It is not sufficient to simply say that freedom of expression is important or integral to society. This point is obvious. What is important to realize is that it is the very basis for societal advancement. Freedom of expression is not an ideal that merely requires pledged support. It requires constant action to secure. There is a reason that the dictionary of George Orwell's *1984* is constantly pared down every year, removing words that are deemed unnecessary. To take away the means for free expression is to take away freedom itself. Future freedom is ensured only through the practice of free expression in the present. Orwell demonstrated how intangible limitations on expression can become manifested in very real ways, as the removal of words causes the citizens of Oceania to be unable to even express their thoughts and emotions. Thus, a

limitation on free expression should never be viewed as an isolated incident; it has an effect on all forms of expression.

Without the ability to question aspects of society and voice unpopular opinions, change could rarely occur. It goes without saying that many of the most important and influential ideas in history were often first seen as foolish, offensive, and sometimes downright heretical. However, it is those who have dared to say that which no one else would who have gone down in history as some of our greatest writers, artists, and thinkers. It is not war heroes who have strengthened the right to free expression, it is the offenders and transgressors. This is not a group of people who are easily romanticized and it is typically only in hindsight that their contributions are truly recognized for the impact they have had on society. America, perhaps owing to the Puritan influence of the country's founding, can be particularly loath to celebrate the transgressive speech that ensures free expression for others.

One might think that free expression has never been more guaranteed, with new media forms such as the internet, which allow widespread global communication and a seemingly more tolerant atmosphere than in any recent decades. Yet, the ways in which free expression are limited also change with the times. Overt forms of censorship are often replaced with more subtle, but still dangerous, forms. In the last two decades, debate over the concepts of political correctness and hate speech has come to the forefront in the discussion over freedom of expression because of an increased cognizance of the multicultural nature of our society. The establishment of laws against hate speech and the promotion of politically correct terminology have both been well-intentioned attempts to ensure that minority groups in society are able to fully utilize their own right to freedom of expression, but they remain controversial. There is a potential for these laws to be used to silence transgressive expression. Additionally, it seems there is movement toward treating offensive epithets as a form of action, rather than speech, that has potentially disturbing consequences for free speech in general, not just of the transgressive variety. The potential for limiting free expression is important to consider because modern disputes over free speech often occur around issues of political correctness.

The Real Problem that Political Correctness Poses

During the 1990s and until today, "political correctness" has come under attack by many conservatives for its perceived limiting of free speech. It has been often mocked for offering wordy substitutes for what were previously thought to be simple, appropriate terms. As a writer who vehemently supports the actions of artists and writers who break social taboos, one might assume that I would strongly oppose political correctness on the basis that it is a very limiting force on these people. However, I think the issue of political correctness and its relation to transgressive speech is more complicated. Certainly there are cases in which ideas and terminology supported in the name of political correctness have caused more confusion than good, but it seems that those who feel the most scandalized by the widespread adoption of more culturally sensitive terms are actually just reacting to their bigotry being pointed out more than anything. Unfortunately, it is largely conservatives who have controlled the popular perception of political correctness and given it such a bad name. They feel that they have to unfairly tiptoe around sensitive issues and that previously clear terminology is being replaced by obfuscating bureaucratic jargon. Certainly there are legitimate concerns to be raised on the issue, but they frequently seem raised more out of anger and exasperation toward the idea of one needing to alter their word choice than out of a legitimate concern for freedom of expression. Many conservatives assert that political correctness is the liberal threat to free speech, when the reality is that discussions on the issue have tended to create more heat than light. The real problem with political correctness is the atmosphere it has created in discussions related to minority issues, in which debates about language choices often eclipse the actual issues that are being discussed. The perception is often that these issues are so sensitive that it is better to avoid them rather than running the risk of offending someone.

In her essay "Teaching the N-word," Emily Bernard encounters an example of the way in which political correctness, or more accurately college students' perception of political correctness, can have a chilling effect on expression in the classroom. Bernard, a black professor, describes a discussion in her classroom, which is composed of all white students, over the use of the

term "nigger." Specifically, she notes the way her students "say 'the n-word'" or, if they do actually say it, use it within the phrase "the word 'nigger'" (Bernard 2006, 31). She jokes about her students' inability to say the word but most of them refuse to budge, one even asking "What exactly is lost [by not saying 'nigger']?" She says she does not know, but the answer is clear. The experience of saying and hearing the word is at the heart of the discussion and cannot be removed without losing a critical aspect of the dialogue. The word becomes the proverbial elephant in the room when students refuse say it out loud, even in a strictly academic setting. Bernard is particularly cognizant of her race as the discussion turns to the question of whether the students would be able to say "nigger" if she were not in the room. The students seem to believe that certain words are completely taboo, which has a harmful, chilling effect on open discussion of subjects, such as the etymology of offensive terms and their usage in society. How, exactly, is one supposed to hold an effective discussion about a word, when most people try to skirt around having to actually say it? Is there not a time when and place where even the most feared words can be said in an academic setting without the risk of being accused of being a bigot? While some might view the reticence of the students to say "nigger" as a positive sign of increased sensitivity toward racist language, one has to wonder how many potentially illuminating discussions have been hindered by the idea that such words can absolutely never be uttered. The fear of using prejudicial language in any setting is so high that students are more likely to simply avoid these discussions than try to work their way around them without saying the words that are actually being discussed.

Words as Violence?

This treatment of certain words as taboo is indicative of a trend in modern thinking that equates physical violence with specific kinds of language, creating a rather dangerous precedent. As a justification for censoring these words, it is argued that since they are not actually speech, but violent acts, it would not be a violation of the First Amendment to control their usage. While this certainly provides a convenient justification for exempting this words from typical, free speech protection, it is an argument that makes

little sense for its relative prevalence. Catherine MacKinnon, a conservative feminist scholar subscribes to this notion and is largely responsible for the idea's dissemination in the feminist world. As she writes in her book *Only Words*, a collection of lectures:

> There is a relation, for example, between the use of the epithet "nigger" and the fact that a disproportionate number of children who go to bed hungry every night in this country are African-American; or the use of the word "cunt" and the fact that most prostitutes are women (MacKinnon 1993, 74).

This strict view of word usage, suggesting that words can cause inequality has become popular among more conservative scholars of social injustice and has led to some of the most ridiculed developments in politically correct speech (the use of "womyn" instead of women, based on questionable etymological justification, etc.). Jonathan Rauch, a writer and defender of free speech, gives numerous examples of this mentality, from Toni Morrison arguing that "Oppressive language does more than represent violence; it is violence," to a University of Michigan law professor who calls racial epithets "bullets" (Rauch and Rushdie 1997, 32). It almost sounds as if those making these arguments had just recently discovered the power of language in affecting human emotions. Yes, language is powerful and can be used to invoke strong emotions in individuals. This does not, however, mean that words or expressions that offend somehow transcend the bounds of speech. Unless they function as direct threats of violence against someone (a type of speech which is, understandably, not protected by the First Amendment), these offensive terms are simply the mechanism by which someone conveys a message, whether it be bigoted or not. The title of MacKinnon's book, *Only Words*, mocks this argument, because she feels it minimizes the impact that words can have. However, to say that offensive terminology is only words is not to say that words cannot cause shock, pain, anguish, or any other emotion. It is to say that the words themselves are not weapons, but are vehicles of meaning that has been given to them in that specific context. Furthermore, the definition of what is even considered "assaultive," and to

whom, becomes a thoroughly confusing affair because of the context of how the words are used.. Of course, the idea of "speech as violence" attempts to ignore this pesky aspect of language by asserting that the words themselves are oppressive, whenever they are used. This approach is foolish.

The "speech as violence" argument is based entirely on the assumption that words are always fixed in their meaning and cannot evolve. The reclamation of epithets as a form of empowerment is an important example of the way in which the meaning of previously offensive words has been completely altered. The idea that society is at the mercy of violent, offensive words that must be eliminated looks ridiculous when one takes the example of "queer," which has been reclaimed as a word of empowerment. In fact, it has become so widely accepted in this role that an entire field of study now falls under the mantle of "queer theory" and is represented on college campuses across the world. This example is not merely a unique case of a word overcoming its negative connotations. By turning what was once an insult into a mark of pride, reclamation returns power to the group against which the epithet was used and changes the connotation of the word. This is a much better method of controlling the use of a word than informal attempts to the ban use of epithets.

Rauch argues that the "purist" argument, which says that "society cannot be just until the last traces of invidious prejudice have been scrubbed away," leads to futile fights over prejudice (Rauch and Rushdie 1997, 29). In the realm of language, this approach is represented in the efforts to "ban" certain words, such as bigoted epithets. In the last year, there have been increased efforts to expunge bigoted terms from the modern lexicon, as a result of numerous incidents in which offensive epithets were used, such as Michael Richards' infamous tirade at the Laugh Factory. In particular, this incident became a rallying point for movements that sought to eliminate the usage of the word "nigger" in modern society. Civil rights leaders such as Al Sharpton and Jesse Jackson decried the incident and later sponsored a symbolic funeral for "the n-word," and pushed to have the word removed from use in the entertainment world (Blanchard 2007). The Laugh Factory, the club at which Richards was performing on the night, banned the use

of the word from its club, fining comedians a whopping twenty dollars for each use of the word (Salkin 2006). While the intent behind these responses was largely a symbolic gesture, intended to display a climate of resistance to the use of racial epithets, they are a short-sighted and ultimately misguided. Not only does this approach continue to give the banned word power, but it fights against racism in a completely superficial manner. Rather than focusing the discussion of racism around the ways it is institutionally supported in society, it becomes focused solely around the issue of specific words while the larger issue is completely obscured. Instead of talking about racism, discussions revolve only around the issue of who can say the word and who cannot. A potential dialogue on race in the United States, thus, turns into an inane discussion of who's "allowed" to say what. Like Catherine MacKinnon's quixotic crusade to ban pornography, which has eclipsed her fight against rape and sexual discrimination, the effort to ban "nigger" is bound to fail because it is focused on a reflection of a social ill, not the problem itself. The question that should be asked is why racial epithets, such as "nigger," continue to carry such potency, because this would lead to an analysis of the ways in which Black Americans still suffer from injustice (MacKinnon 1993).

The Problem with Controlling Speech

Among supporters of banning offensive epithets, there seems to be no consideration given for the ways in which the word could be used in a clearly non-racist capacity, especially in an ironic manner in which its usage actually mocks racism. With zero-tolerance policies on offensive epithets, it is often the members of a minority group who are punished for breaking these rules, which ends up defeating the original point of the policies in the first place. In the aftermath of the Laugh Factory incident, the first person to be fined under the new policy against using the word "nigger" was Damon Wayans, a black comedian (Salkin 2006). As Rauch notes of policies that punish the use of offensive epithets:

> Recall the Michigan student who was prosecuted for saying homosexuality is a treatable disease, and notice that he was black. Under that Michigan speech code, more than twenty

blacks were charged with racist speech, while no instance of racist speech by whites was punished. In Florida, the hate-speech law was invoked against a black man who called a policeman a "white cracker"; not so surprisingly, in the first hate-crimes case to reach the Supreme Court, the victim was white and the defendant black (Rauch and Rushdie 1997, 32).

The conservative would look at this argument and say it proves that it is actually the minorities who are more discriminatory than members of majority groups but this would be a foolish assumption. Today, offensive epithets are likely to be used by the very minority groups the terms were intended to harm, rather than always being used as a form of intimidation. Blatantly obvious forms of racism have generally disappeared from everyday society in favor of more subtle incarnations, meaning a ban on these obvious forms accomplishes very little. Perhaps if this symbolic ban had been made in the first half of the 20th century, it would have had some impact, since this was a time in which the term "nigger" was still widely used by whites. The reason the incident at the Laugh Factory garnered such a large amount of press coverage was the fact that Richard's racist comments were so incredibly blatant at a time in which that level of vociferous racism is rare to see.

What the enforcement of these policies shows is that limiting the freedom of all people, without actually addressing the underlying disempowerment of minority groups in society, will cause this restriction to be disproportionately used against minorities. Since there is no consideration for context in these sorts of policies, it may continue to be minority groups that feel the brunt of their application. Additionally, by codifying offensive epithets as all being equally evil, it supports the notion that all groups in society have an equal claim to discrimination. Rather than addressing the inequalities between groups in society, such policies suggest that no one group has any right to complain about discrimination any more than another because there are epithets for all manner of groups in society. These policies really only guarantee that majority groups are further protected from any perceived sort of discrimination and that minority groups can continue to be put under scrutiny for any perceived prejudices.

The focus on language and word choice ultimately obscures the real issues of civil rights behind a largely irrelevant issue that, while it is reflective of inequality in society, is certainly not the *cause* of inequality. While some race theorists such as Richard Delgado would argue that epithets are always degrading, regardless of their context, this approach ignores the possibilities for reclamation as a method for minority groups to reassert power, as well as the relationship between the power of an epithet and the social status of the group to which it refers (Delgado and Stefancic 1997, 9). A litany of other legitimate offenses, such as murders, rapes, and other crimes, are being associated with epithets and then the terms are being blamed for these offenses. This method was pioneered by Catherine MacKinnon, who in describing accounts of rape and sexual assault, decided that it is not so much those incidents that are the problem but pornography, which nebulously spreads values that supports these actions. Her arguments are very extreme, but they have attracted enough attention to wield a certain amount of influence over the sociological and feminist theory. How the argument that the problem with rape is not so much rape, but pornography, has gained any sort of legitimacy is certainly beyond me. This sort of argument runs entirely counter to the ideals of the First Amendment, which has never allowed for censorship based on the demands of any group that disagrees with a certain form of speech.

Coming back to the idea of transgressive expression, it is important to realize the difference between speech that is legitimately dangerous, the example of falsely yelling "fire" in a crowded theater comes to mind, and speech that is merely offensive. Arguments that some forms of speech, such as pornography or racist expressions, create an environment of disrespect toward some groups in society are simply insufficient as evidence of their need for restriction. The point of the First Amendment is that it is not making judgments on the value or goals of different kinds of speech, it simply protects free expression. Nowhere is there a guarantee that one should never be offended while living in a democratic society. We do not have to agree with a given type of speech to realize that it is still worth protecting. The title of a book by Richard Delgado and Jean Stefancic exasperatedly asks *Must We Defend Nazis?* as if defending someone's right to free expression is an

endorsement of their views. It seems the best argument of those who wish to censor free expression is to conflate the ideas of respect for ideas and support for them. Respect does not mean agreement, support, or any other judgment of value beyond what should be afforded to all forms of expression. Respect is, as Salman Rushdie puts it, "a mixture of good-hearted consideration and serious attention" (Rauch and Rushdie 1997, 26). Certainly we should all have respect for others' right to free expression, but we do not have to agree with the ideas they express. Rushdie notes the change in thinking that has occurred in regard to the issue of respect:

> Religious extremists demand respect for their attitudes with growing stridency. Very few people would object to the idea that people's rights to religious belief must be respected—after all, the 1st Amendment defends those rights as unequivocally as it defends free speech—but now we are asked to agree that to dissent from those beliefs—to hold that they are suspect or antiquated or wrong—that, in fact, they are arguable—is incompatible with the idea of respect. When criticism is placed off limits as "disrespectful" and therefore offensive, something strange is happening to the concept of respect (Rauch and Rushdie 1997, 26).

Indeed, when the idea of "respect" becomes "endorsement," it is easy to see why there are some who would wish to silence views they find offensive, but this mistaken conflation needs to be corrected. Few would know better the effects of this new treatment of the concept of respect than Rushdie, who had a death sentence put upon his head by the Iranian government for his book *The Satanic Verses*, which supposedly "exhibit[ed] flagrant prejudice against Muslims and outrageously slander[ed] their beliefs" (33).

Ideas Are Not Dangerous

What much of the debate over freedom of expression seems to boil down to is whether ideas should, in some cases, be treated as dangerous and, thus, worth censoring for the safety of society. While actions based on certain ideas would, in many cases, be reasonably made illegal, what of simply the ideas themselves? Those who wish for stronger censorship of what they consider to

be offensive forms of speech seem to believe that since ideas lead to action, limiting some ideas would lead to a safer society. For those who subscribe to the idea of certain terms, such as offensive epithets, being themselves a form of action, this logic appears to be even stronger. However, this is a mistaken notion. "Bad ideas" do not automatically lead to "bad action" as Thomas Storck insists in his article "Censorship Can Be Beneficial," and such simplistic logic should not be considered justification to censor certain ideas (Storck 1997, 21). The fact that ideas are not normally considered illegal in the United States is one of the things that distinguishes this country from Oceania, of *1984*, where thought-crime is a crime unto itself. The mentality of those who support this notion suggests that there are some ideas that are so overpoweringly convincing that they completely short-circuit one's normal logical processes. Reading a copy of the *Anarchist Cookbook* does not make someone throw Molotov cocktails at passersby any more than watching "Birth of a Nation" makes one a racist. They present ideas and information. They do not force action. Unless censors know something that the rest of the world does not, there is not something inherently more convincing about prejudicial or discriminatory ideas over those that are not. Censorship would suggest this is the case, implying that banned speech is somehow more powerful than speech that opposes it. If a normal person is not allowed access to a certain idea, does it not seem that the reason must be that it is too convincing to be allowed to spread? The best way to show that an idea makes no sense is to let people decide for themselves that it makes no sense, in a society that supports open discussion.

In fact, fear of an idea tends to lead to exactly the opposite of the intended effect when the idea is censored. This phenomenon has been shown over and over, from the increased sales of 2 Live Crew's *As Nasty as They Wanna Be* after it was deemed obscene to the canonization of controversial authors such as Henry Miller and William S. Burroughs. Censorship empowers that which it is attempting to squelch because it assumes an idea is too powerful to be fought against through reasoned debate and discussion.

Conclusion

Freedom of expression should not be thought of as merely a goal or an ideal in the United States but as the *means* of ensuring a free society. The more uninhibited the exchange of ideas in this country, the more free its people are. Only through a constant process of testing the limits of free expression can First Amendment rights continue to be secured. Obviously, this is not a process that always occurs within the view of polite society, but that does not mean we should have any less respect for those who have fought for the right to offend in America. As Salman Rushdie says of the necessity of ensuring this right, "Without the freedom to offend, [freedom of expression] ceases to exist" (Rauch and Rushdie 1997, 33). As such, the battle over free expression in America hedges largely over this issue of what types of offense can be allowed. Increased sensitivity toward offending minority groups in society is certainly a good thing, in the sense that there is cognizance of societal power structures that disempower members of these groups. However, tampering with the right to free expression is not the correct avenue of action to ensure these groups' First Amendment rights are respected.

Released in 1934 in Europe, *Tropic of Cancer* became one of the most notoriously banned books in the United States, deemed too obscene for publication for nearly thirty years. Its eventual publication in the U.S. led to an obscenity case in which its classification as obscene was overturned. In the book, Henry Miller states that "side by side with the human race there runs another race of beings, […] the race of artists who, goaded by unknown impulses, take the lifeless mass of humanity and by the fever and ferment with which they imbue it turn this soggy dough into bread and the bread into wine and the wine into song" (Miller 1961, 254). It is a tragedy that Miller's words were censored in the United States for nearly thirty years, but it points out an important aspect of how the "race of artists" he speaks of are often subject to censorship, even in societies that claim to uphold the ideal of free speech (Rembar 1968).

As a country that prides itself on its principles of freedom, it should not be forgotten that those who have secured the right to free speech are, to the say the least, an interesting grouping of people from whom society can learn much.

Transgressive expression is certainly not celebrated throughout society, but it has yielded a brave crop of experimenters who have dared to say that which no one else would. In modern society, even with the ever-increasing speed at which ideas can now be shared, there are still those who wish to silence views with which they do not agree. This is not to say that their reasons may not be sympathetic, such as with the issue of prejudicial language, but it is important to keep separate the ideas of offense and hate speech. Undoubtedly there are cases in which speech that directly threatens a group or an individual must be limited, but ideas and beliefs should never be considered to be immune from criticism. Living in a multicultural and democratic society often means having to grapple with ideas and expressions that can be shocking, offensive, and generally unpleasant but that does not necessarily make them wrong. Salman Rushdie aptly describes a free society, saying, "You must have free play of ideas. There must be argument, and it must be impassioned and untrammeled. A free society is not a calm and eventless place—that is the kind of static, dead society dictators try to create (Rauch and Rushdie 1997, 27). Rushdie's experience of having a death sentence declared against him serves as a strong reminder that this idea is still not shared around the world. The "race of artists" that Henry Miller speaks of in *Tropic of Cancer* is an integral part of American society that helps to ensure freedom of expression for the rest of us and they should never be afraid that their right to express controversial ideas will not be protected. Limitations on free expression create a chilling effect on the practice of transgressive expression and bankrupt society's artistic, intellectual, and literary development. The tragedy is that there is no way to measure the cultural loss suffered by constraining the range of expression available to citizens of the United States, but it is simply a risk that is not worth taking.

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"Forgive me if I am forthright"– or, Conversational Freedom

Tobias Menely, Ph.D.

Traveling on a train in the Netherlands this spring, I listened in on a conversation between two biology students at one of Utrecht's universities. They appeared to be mere acquaintances who had never had a substantive conversation before and who found themselves passing time together on a train ride home. With seriousness and sophistication, they were debating the moral legitimacy of experimentation on animals for medical research. Their discussion was motivated by deep disagreement, which led them to probe each other's positions even as they acknowledged the insufficiency of their own premises. The tone of their conversation was at once confrontational and amiable, as if a space for friction, for a heated exploration of different opinions, had opened within the everyday codes of politeness. Although it is surely the case that Dutch culture exhibits its own forms of compulsory concord and polite silence, I saw the intensity of their disagreement as striking evidence that I was no longer in the United States. Ian Buruma has observed that such candor is actually an element of the Dutch national character: "The insistence on total frankness, the idea that tact is a form of hypocrisy, and that everything, no matter how sensitive, should be stated openly, with no holds barred, the elevation of bluntness to a kind of moral ideal; this willful lack of delicacy is a common train in Dutch behavior" (Buruma 2006, 94). With its aggressive examination of different points of view, their conversation surprised me, especially when I compared it with the more circumspect chitchat that prevails in American public spaces.

My focus in this essay is not on the clearly liminal examples of expressive freedom, the test cases—a dubiously educative mock lynching on the Willamette campus; Chris Ofili's infamous Virgin Mary painting splattered with elephant dung, which caused such a furor when it was shown at the Brooklyn Museum of Art; the publication of satirical cartoons featuring Muhammad in the Danish newspaper *Jyllands-Posten*—that define

which acts of expression may be included and which ought be excluded from the public realm. These limit cases, I believe, distract us from much more complex questions of everyday free expression, questions about the subtle social imperatives that direct conversation toward certain subjects and away from others, about the choice to begin a discussion with a stranger, about the tonal codes that underlie expectations of conviviality and politeness. I am interested in those forms of expression that call forth self-censorship rather than institutional censorship, that offend not only social but also sociable sensibilities. The normative codes of politeness, I suggest, do far more to restrict expression than the threat of institutional censorship or the funding decisions of the National Endowment for the Arts. Censorship, this essay proposes, occurs every day, in every conversation.

In other words, there is an outside to any conversation, an edge beyond which one can or ought not go, and this outside is preserved as such not only for epistemological reasons (it is difficult or impossible to talk about such things within a given idiom) but also for normative reasons (it is uncouth, or uncool, or impolite to talk about such things). These reasons, the vast fabric of conversational norms, comprise a central facet of *culture*: subtly communicated or implicit rules of discussion, which discipline and delimit what we might say to one another. Culture is lived on this subtle and quotidian plane; culture is lived in conversation, in what we do and do not talk about. Thus one can envisage an anthropological approach to conversation, as is intimated by Buruma's remark on the Dutch, which would ask: to what extent do given cultural codes permit forthrightness? In a specific social interaction, how much space is there for disagreement? On which subjects might members of a culture politely disagree, and which are altogether taboo?

In American society, breaking these cultural rules—bringing up sensitive subjects or vocally disagreeing in the wrong setting—is an affront to tact. Tact serves a purpose: it softens the edges of our difference, of our diverse motivations and values. After all, a primary role of conversation is maintaining social harmony by cultivating and sustaining relationships. Noticing this function of conversation, the linguist Roman Jakobson defined the *phatic* as a type of speech act meant to establish or maintain a social

connection rather than communicate a particular idea. When a person is asked, "How are you?" and he or she replies, "I'm fine," the purpose of the dialogue is not to exchange information but to reestablish a relationship, to say, in effect, "I still care about you." Phatic communication, or small talk, is about connection rather than content. It operates as a kind of social adhesive, and it does so by directing conversation to the least controversial topics: the vicissitudes of weather and season, the minor indignities of institutional life, the fate of favorite sports teams. Only when we are certain that we fully agree on more fraught topics does phatic exchange extend into the realms of politics, religion, and ideas. To break the rules of conversational tact, to veer away from phatic exchange in inappropriate venues, is to risk serious disapprobation.

Despite the ubiquity of small talk, its opposite, free conversation, has inspired great optimism among intellectuals, who contrast the harmonizing role of phatic exchange with the salutary effects of open debate among the diverse constituents of the body politic. In his sixteenth-century essay "On the Art of Conversation," Michel de Montaigne writes confidently about conversation's dynamic potential. Humans are social animals, he observes, which is why conversation is "the most delightful activity in our lives" (Montaigne 1991, 1045). Talking with others is so satisfying that Montaigne claims he would prefer to lose his eyesight than his ability to speak and to listen. While he defends conversational conviviality, he is no apologist for politeness, reticence, and small talk. He conceives of conversation as an intersubjective, reciprocal space in which differing opinions may be explored: "In conversation, the most painful quality is perfect harmony." Conversation must boldly examine, rather than simply express, difference—testing, probing, and unsettling instead of confirming. "Contradictory judgments neither offend me nor irritate me," he writes, "they merely wake me up and provide me with exercise" (1046). For Montaigne, politeness is the enemy of open conversation. Because of the danger that we will be lulled into mental sleep by the pleasantries and ease of social harmony, we must "fortify our ears against being seduced by the sound of polite words." Considering that Montaigne wrote in the absolutist society of *ancien-régime* France, his defense

of free conversation, his argument that society's well-being is generated "by discord not by harmony, by being different not by being like," is particularly significant as an anticipation of Enlightenment ideals.

Two centuries after Montaigne, the Scottish philosopher David Hume proposed a significant role for conversation in a free society, suggesting, rather hopefully, that people experience "an increase in humanity, from the very habit of conversing together" (Hume 1985, 271). For Hume and other Enlightenment intellectuals, the "conversible world" was a place where people could debate, learn about one another, and examine their differences. These thinkers saw conversation as one of the foundations of civil society, the collective realm wherein private citizens come together to constitute a public. Following this model on a conceptual level, philosophers of the period often presented their ideas in the form of the Platonic dialogue. Hume himself wrote a scandalous work on theism, *Dialogues on Natural Religion*, which features a three-way debate on the knowability of God; such was Hume's commitment to serious, open-ended conversation as an ideal that commentators have never been absolutely certain which voice in the *Dialogues* represents the philosopher's own beliefs. In our own time, the German political philosopher Jürgen Habermas has argued that rationality—humanity's capacity to know something of the truth about itself and the world—comes about not so much through a single mind's cogitations as through continuous and fallible dialogue with others. In his *The Structural Transformation of the Public Sphere*, Habermas looks back to the coffee houses of Hume's era as the first modern fora for free conversation, public spaces in which individuals could come together to talk openly on the subjects of the day, to test ideas, and contest each other's beliefs. By participating in reasoned, open-ended conversations in public space, Habermas writes, "private people" came "together to form a public," and so "readied themselves to compel public authority to legitimate itself before public opinion" (Habermas 1993, 25-6). Democratic society begins with free conversation—"rational-critical debate"—the aim of which is neither simple consensus nor fragmented multiplicity (51). In Habermas's idealized realm of open communication, participants aim toward, and yet never fully achieve, total agreement. They participate in a dialogue assuming

the possibility of mutual intelligibility and of mutually valid claims at the same time that they remain skeptical about the truth or justice of any specific claim. In present-day America, *dialogue* is a much invoked and celebrated panacea for intolerance and injustice. We often imagine that conversation will generate inclusivity and understanding, even that conversation will bring about concrete social change. This faith in the power of dialogue surely explains our enshrinement of the First Amendment as the *sine qua non* of American democracy.

To believe that free conversation functions as a motor of historical progress requires a great deal of idealism—in both the philosophical and psychological senses of the term. Most of us have only to consider our own family in order to realize how often relationships are built on strategic silences, implicit agreements not to discuss certain subjects. In a family, as in society, taking advantage of one's freedom to say anything is usually a recipe for bitterness. In practice, actual dialogue is difficult. Even Montaigne remarks on the numerous impediments to free conversations. We fear correction and insult, and we worry about being wrong. We speak with little self-knowledge, and we often aim only to coerce. We argue for the sake of arguing, losing sight of truth. Our interlocutor may be an idiot, or may speak in bad faith. We tend toward solipsism, an inability to consider any ideas beyond our own. Piercing conversation inspires a melancholic doubt and fallibility in its participants, whereas untested "stubbornness and foolhardiness fill their hosts with joy" (1063). We are considered rude and indecorous when we articulate our opinions too loudly, or question another's beliefs too severely. Modesty is valued more highly than outspokenness. Simply to celebrate free expression is to overlook such difficulties. To casually defend expressive freedom is to ignore the extent to which we live in a culture defined by tacitly agreed upon silences and, thus, the costs of speaking up, the way in which making noise may produce hostility and resentment. Speaking freely requires determination and self-consciousness, as well as a willingness to offend others.

The hazards and the rewards of communicative freedom become clearer when we consider *conversation* in the place of *expression*. As a term, *expression* puts the emphasis on the speaker, whereas *conversation* reminds

us that speech acts have an audience, indeed they become meaningful only insofar as they are interpreted by another. To speak of free expression is to abstract communication from its reception, to imagine that we speak in a vacuum. Conversation aims toward the reciprocal transformation of belief, as Habermas suggests, while expression merely announces belief. It takes an individual to express; it takes two to converse. Along these lines, the political philosopher Carl Schmitt defines discussion as "an exchange of opinion that is governed by the purpose of persuading one's opponent through argument of the truth or justice of something, or allowing oneself to be persuaded of something as true and just" (Schmitt 1985, 5).[1] Discussion produces change in its participants, and it aims toward a never-realized horizon of mutuality. Expression does little more than broadcast the *status quo*, which is why "express yourself" remains the crucial catchphrase of American popular culture and advertising.

My case study for thinking with more specificity about the problem of conversational freedom is a philosophical novel, J.M. Coetzee's 2003 *Elizabeth Costello*, which explores the pitfalls and prospects of open conversation. Coetzee's novel interests me because it avoids a facile celebration of communicative freedom at the same time that it defends the imperative to talk on difficult and discomforting subjects. The novel's eponymous protagonist is an Australian writer who earned international repute for her fourth book, *The House on Eccles Street*, a rewriting of Joyce's *Ulysses* from the perspective of Molly Bloom. Over the course of the novel, Elizabeth Costello—a stand-in, on some level, for Coetzee himself—travels around the world, accepting an award from a college in Pennsylvania, lecturing on a cruise ship, visiting her sister, a nun, in South Africa, and delivering speeches on animal rights and censorship. The novel is a recounting of difficult conversations and intellectual disputation. It is rife with debate and contention. Characters in *Elizabeth Costello* argue about human nature and racial difference, about the origin of human cruelty, about our ethical duties toward others, including animals,

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[1] Schmitt, a fascist, was deeply skeptical of the possibility of politically meaningful discussion in modern liberal democracies, where conversation is channeled through mass media, and actual political decision-making takes place among partisan elites. He referred to "public discussion" in liberal society as an "empty formality," which justifies a democracy that is never truly achieved (6).

and about censorship. They debate whether religious faith or humanistic skepticism is a better source of existential guidance, and whether literature has any redeeming value in the modern world. As the instigator of many of these disputes, Costello does not come across as a likeable character. She is terribly serious, often astringent, and entirely unafraid to articulate her own moral discomfort even as she challenges the beliefs held by others. According to her son, John, her novels reveal cruel truths about human desire and motivation. Rather than comforting their readers, her books tend to unsettle, and in her public talks and private conversations, Costello is a discomforting presence. She has a habit of asking the "odd question, presumptuous in its intimacy, even rude" (Coetzee 2003, 56). The word she uses to describe herself is "acidulous": sharp in speech (37).

At the center of the book are two chapters describing Costello's visit to the small college, Appleton, where her son is a professor. There she is expected to lecture on literature but instead animadverts on humanity's mistreatment of animals. This is a sensitive topic, of course, and the acrimony it inspires is thematized through Costello's relation with her daughter-in-law, Norma, a scholar of the philosophy of mind, who considers Costello's opinions on animals to be maudlin. Their disagreement only rarely percolates to the surface, to the domain of conversation; it tends to manifest, rather, in rude asides and subtly dismissive gestures. The familial disharmony is felt mainly by John, the novel's representative of polite discretion. During Costello's visit to Appleton, the novel's readers are positioned nearest to John, who is embarrassed by his mother's upsetting "death talk." He wishes only to "keep the peace," which he does by steering conversations toward "appropriate," which is to say, non-controversial, topics (Coetzee 2003, 82). Throughout Costello's lecture, John is discomforted equally by his mother's disturbing subject matter and by his wife's skeptical sighs and snorts. Easily mortified, he is divided between respect for his mother and anxiety about the way her polemic disturbs the peace.

When she lectures before the college, Costello is explicit about her position as one who says what ought not be said. She acknowledges that her address is an affront to tact, that her topic is one about which it is

generally thought best to disagree in silence. (I personally have found that just mentioning that I am a vegetarian at a dinner table, if only to explain a selection from a menu, may be taken as a hostile comment; such is the power of anthropocentric ideology.) She begins her talk by comparing herself with Red Peter, an educated ape in a short story written by Franz Kafka, who lectures before a learned academy, and she remarks that the comparison is not meant to be taken as a light-hearted aside, an opening anecdote to put her listeners at ease. "I say what I mean," she tells the audience. "I am an old woman. I do not have the time any longer to say things I do not mean" (Coetzee 2003, 62). At the heart of the lecture is a notorious and yet still startling comparison. Costello argues that our exploitation of nonhuman animals, above all through experimentation on living creatures and industrial meat-production, comprises an ongoing Holocaust, different only from the Nazi death camps in its extensive scale and duration. In proposing this likeness, she calls attention to her own explicitness, to the fact that such an analogy is unseemly: "*Let me say it openly*: we are surrounded by an enterprise of degradation, cruelty and killing which rivals anything that the Third Reich was capable of" (65, my emphasis). Allowing that such talk "polarizes people," she returns, not only in her lectures but also at a convivial campus dinner and in her tense interactions with her skeptical daughter-in-law, to a subject that provokes "acrimony, hostility, [and] bitterness."

John is grievously afraid that someone at the faculty dinner following Costello's lecture will ask his mother about her vegetarianism, prompting her to respond with memorized lines from Plutarch's essay "On the Eating of Flesh," as she has in the past: "You ask me why I refuse to eat flesh. I, for my part, am astonished that you can put in your mouth the corpse of a dead animal, astonished that you do not find it nasty to chew hacked flesh and swallow the juices of death-wounds" (Coetzee 2003, 83). Always attentive to the economy of conversational decorum, John observes that this quote "is a real conversation-stopper: it is the word juices that does it. Producing Plutarch is like throwing down a gauntlet; after that, there is no knowing what will happen." The actual dinner party conversation never reaches such a boiling point. It is at once polite and substantive, as if Costello's

polemical lecture produced a space for an unusually frank discussion. The conversation continues amiably even after Costello proposes, provocatively, that human beings invented religion so as to justify their instrumental use of other animals (in fact, a reading of Genesis substantiates her point). John's colleagues seem to find the conversation interesting and worthwhile, making the reader momentarily respect Costello's outspokenness and wonder whether John's discretion is overzealous and weak-kneed, if not a kind of censorship. This formal and still somewhat cautious dinner table conversation presents conversational freedom at its most ideal, even when Norma challenges her mother-in-law, calling vegetarianism a form of elitism. Norma's frank comment precipitates a "certain amount of shuffling, . . . unease in the air," and the debate turns prickly, although never quite hostile (87). A signal from John keeps Norma from asking a final provoking question. Even as this scene reveals the possibility and productivity of conversational openness, it also shows how challenging it is for intellectually serious and ethically self-conscious people to comprehend each other, even to hear each other.

As much as they are about forthrightness, these chapters depict the strain and circuitousness that underlie uninhibited dialogue. At the faculty dinner party, John noticed an empty place-setting, and the next morning they discover that a poet, Abraham Stern, skipped the dinner after hearing Costello's lecture. Learning this, Norma—somewhat disingenuously, given her own argumentative nature—observes that Costello crossed a line in her talk, that she should have censored herself: "She should have thought twice before bringing up the Holocaust. I could feel hackles rising all around me" (93). Stern writes Costello a note explaining his absence from the faculty dinner as a protest against what he considers to be an outrageous and morally offensive comparison between animal slaughter and the slaughter of Jews. Like Costello, Stern observes, and seeks to explain, the explicitness of his letter: "*Forgive me if I am forthright*. You said you were old enough not to have time to waste on niceties, and I am an old man too" (94, my emphasis). Forthrightness appears obliquely, in an impolite absence and in a letter justifying that absence. It even seeks to excuse itself.

A similar case of indirect directness characterizes Costello's final activity

at Appleton College, a formal debate with a philosophy professor named Thomas O'Hearne. Costello fails to answer O'Hearne's questions with any sort of directness. Conversation, even when formalized as debate, is imprecise and disjointed. Like most of the conversations depicted in the novel, Costello's debate with O'Hearne appears closer to what the Russian literary critic Mikhail Bakhtin describes as polyphony: a "plurality of independent and unmerged voices," which articulate incommensurate positions and immutable differences, than to Habermas's idealized public sphere, in which rational discourse negotiates and even aims to overcomes difference (Bakhtin 1984, 4). In a world of polyphony, we each speak a different language. Costello herself seems to recognize such fundamental difference, difference incapable of being diminished or even fully recognized, when, near the end of the debate, she describes reading the work of an analytic philosopher (not O'Hearne, but perhaps a surrogate for him) who argues that animals, lacking concepts, lack meaningful experience. Outraged by such "reasoning," Costello observes that "[d]iscussion is possible only when there is common ground," and, noting the obvious absence of such shared assumptions, Costello says that she would choose not to talk with this philosopher. She ends the debate, then, by marking the limits of debate, by conjuring up an interlocutor with whom she would refuse to converse. The narrator remarks that it is on this note that the college dean "has to bring the proceedings to a close: acrimony, hostility, bitterness" (67).

In the novel's fifth chapter, Costello visits South Africa, where her sister Blanche, a nun, is set to receive an honorary degree for her care of children with AIDS. They first meet in a hotel lobby, where they make "small talk," an "exchange of tired words" (118). Small talk in this novel is always a form of evasion, a way of not saying something. Later, Blanche delivers a short speech to the university graduates. No more circumspect than her sister, she argues that humanistic learning represents a falling away from God's Word and, thus, from the concerns of "ultimate" importance (123). It should be no surprise that the luncheon following the ceremonies is contentious, particularly when Elizabeth and her sister begin to argue. Costello remarks that literature rather than religion provides her with solace and counsel, and, before retorting,

Blanche asks whether the rules of politeness have been suspended: "Is this just a conversation over luncheon . . . or are we being serious?" (128). The dean responds, "We are serious," leading Costello to revise her opinion of him and his colleagues, to see them as "hungering souls" rather than obsequious academics. A sophisticated conversation follows, moving from the history of religion and its place in a new multicultural world to the infallible Word and intellectual relativism. Notably, the two most successful conversations in the novel take place over meals; breaking bread seems conducive to interesting talk. The next day, Blanche brings Elizabeth to her mission hospital in the hinterlands, where their quarrel continues, a debate between a humanist and a missionary, a writer of novels and a nun who cares for dying children. In her "unrelenting" sister, who continues the argument even as they exchange what will likely be their final goodbye, Costello has met her match in gravity and candidness (144).

An episode later in the novel tests Costello's commitment to forthrightness. Her talk at Appleton College—specifically, her comparison between the killing of animals and the Holocaust—led to an uproar in the press, accusations of anti-Semitism, and hostile crank calls. Now she has been invited to a conference in Amsterdam to lecture on censorship. The controversy over her remarks at Appleton has diminished "what appetite she ever had for disputation," and she wonders if the problem of evil, the subject of the conference, "will be solved by more talk" (157). What compels her to lecture again, to reenter the volatile world of conversational freedom, is a novel she has just read, *The Very Rich Hours of Count von Stauffenberg*, a mercilessly vivid, even nauseating, recounting of the torture and execution of the failed plotters of an attempt to assassinate Hitler. The novel has provoked Costello to wonder about the limits of free expression, whether or not there are certain subjects that "ought not to be brought into the light" (159). There is significant irony in the fact that her lecture in Amsterdam—in the Netherlands, possibly the world's most open society—ponders whether or not speech ought to be limited. Though an executive of PEN, the international association of writers dedicated to preserving expressive freedom, and a longtime critic of censorship, Costello has begun to wonder if certain subjects should be hidden

behind a veil, *The Very Rich Hours* being her primary example.

Upon her arrival in Amsterdam, she discovers that Paul West, the author of the novel she is set to discuss, is among the conference's attendees.[2] The difficult irony of her situation is compounded. She must decide whether she should, in an act of utter candor, denounce a fellow author for his outspokenness, and do so with him in the audience. As she debates her course of action, she wonders what "in the greater scheme of things . . . a moment's embarrassment amount[s] to?" (163). Even as she begins to efface West's presence from her lecture, she asks why she feels a "reluctance to offend" (164). Yet she also remains troubled by her argument. It may be too easy to defend free speech as a categorical good, but she wonders if she really ought position herself as a censor. Finally, she decides to give her talk, in its original form, and risk offending Paul West, in order to argue that some things are obscene and thus ought to "remain off-stage" (169). Her talk, of course, is a failure. As we might expect, the liberal Dutch audience argues for West's right to represent evil in its most acute forms, and the chapter ends with Costello, in a corridor, at a loss, hoping to bump into West, to converse, to argue. Instead, Coetzee leaves her silent, alone, and uncertain. Forthrightness (both West's and Costello's), Coetzee reminds us, has its costs, and conversation and confrontation do not necessarily bring resolution.

Before her speech in Amsterdam, Costello locates West in the lecture hall, and, apologetically, apprises him of her intentions. He sits silent, icily, barely acknowledging her presence. When she speaks, Costello is often greeted with such silence, by neighbors at the dinner table, even by the guard at the gates of the afterlife (the book's final episode finds Costello, in a sort of purgatory, before a Kafkaesque tribunal, defending her writerly suspension of certainty). Costello notices these silences and wonders what they conceal. She is equally troubled by the limits of language, by all that is unsayable. As an author, an artificer of language, she is struck by the extent to which "words … lack … power" (111), by what we are unable to convey. In an early lecture on the

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[2] Paul West is a real person, indeed the author of a book titled *The Very Rich Hours of Count von Stauffenberg*, not a fictional character like Costello. In *The New York Review of Books*, the critic David Lodge (in an otherwise positive review) took issue with Coetzee's depiction of West, and his use of the fictional Costello to muster a critique of West's novel, as a "a startling transgression of literary protocol" (Lodge 2003).

death of literary realism, Costello proposes that the "word-mirror is broken," that modern readers and writers have lost faith in the promise that words will deliver meaning (19). And yet, Costello also asserts that it is the writer's job to imagine the multiplicity of existences, to use language to transport her readers into the lives of others. This ambivalence about language underlies her ambivalence about conversation. In the novel, conversation is beset by numerous difficulties: over-wrought sensitivity as much as insensitivity, mixed motivations, the incomprehensibility of the other, the incommensurability of worldviews. Yet conversation is also represented as an ethical imperative, the responsibility of anyone who decides to believe or to care, because conversation is what allows us to shape the world in common, to share responsibility. To hold a belief or feel a concern, the novel suggests, requires one to accept the duty of challenging others who think and feel differently.

We often pathologize the sort of moral seriousness embodied by Costello. In polite conversation, ethical disagreement—a challenge to another's beliefs and behavior, a questioning of the principles and motivations that underlie their existence—is profoundly unsettling. Moreover, in contemporary America, we tend to hold that one's significant beliefs—religious, ethical, aesthetic, and political—are one's own, a kind of property, and are, thus, not subject to challenge. People, like Costello, who initiate uncomfortable and probing conversations appear out of place and threatening. They seem to violate the principle of freedom of conscience, a central plank of classical liberal thought, which is shared by Democrats and Republicans alike. Perhaps this principle explains why we emphasize expressive rather than conversational freedom, why we are welcome to express our own beliefs, just not to challenge anyone else's. Liberal society, in this sense, tends toward what I have referred to as polyphony: multiple, fragmented voices, speaking not to but past one another. Liberal culture teaches us how to leave each other alone, to mind our own business, and, on a related note, to trust our own beliefs precisely (if only) because they are our own. A society that understands itself in terms of polyphony must stress tolerance and tact. There is surely much to be said for freedom of conscience, for the preservation of personal space, and for the pleasures of sociability. Yet, the normative pluralism facilitated by taciturnity

and politeness, such as that embodied by Costello's son John, may itself silence valuable forms of inquiry, expression, and disagreement. Difficult conversations, Coetzee seems to say, may have social costs, but so does vapid and anodyne small talk.

So far, this essay has focused primarily on conversation, but its subject is equally "freedom." The trouble with this term, and thus with any defense of freedom of expression, is its profound vagueness, the fact that it has come, in contemporary parlance, to mean everything—and so nothing. Just observe the way that our current president invokes freedom in every imaginable context; at his second inauguration, he used the term twenty-six times in his twenty-minute address (add "free" and "liberty," and the number is forty-nine).[3] In post-9/11 America, the term functions as what Slavoj Zizek refers to as a *point de capiton*, a quilting point of ideology, an undefined and yet absolute term that holds a worldview—in this case, American nationalism and the absolute faith in free markets—in place.[4] Given this complex ideological purpose—given the way that, in the contemporary lexicon, 'freedom' obscures as much as it reveals—it is reasonable to wonder why we privilege expressive freedom to the extent that we do, why the First Amendment is the most cherished, why freedom of expression should be the subject of this collection of essays. Is free expression necessarily more valuable than honest expression, felicitous expression, reassuring expression, beautiful expression, or logical expression? Is freedom of expression so unequivocally good that it is, in all cases, preferable to social harmony?

Focusing on conversation in the place of expression, I suggest, better equips us to answer these questions, however provisionally, because an emphasis on conversation reminds us that all speech acts have an audience. Speech acts are meaningful only in a particular communicative context, a context defined by the relations among speakers, by venue (a comment that means one thing at a public lecture may mean something else in a conversation over drinks),

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[3] For an analysis of Bush's rhetoric of freedom, see George Lakoff's *Whose Freedom? The Battle Over America's Most Important Idea* (2006).

[4] Zizek writes, "What creates and sustains the identity of a given ideological field beyond all possible variation of its positive content? . . . The multitude of 'floating signifiers,' of proto-ideological elements, is structured into a unified field through the intervention of a certain 'nodal point' . . . which 'quilts' them, stops their sliding and fixes their meaning" (Zizek 1989, 87).

by a multitude of idiomatic and cultural factors. Conversation is never free in an absolute sense, which is why free speech is not simply something that must be protected, an abstract space of pure potentiality. Rather, free speech is something that must be continually tended to, generated, and imagined, within the concrete domain of actual dialogue. Freedom, in this sense, is best described by the French philosopher Michel Foucault as a "conscious practice," one that is intimately linked with ethics, a reflexive relation to our self and to others (Foucault 2000, 284). Freedom, Foucault proposes, ought to be understood as a kind of active and ongoing practice, not simply as an empty and open space defined by the lack of restriction. In other terms, we might think of conversation as an instance of positive freedom, whereas freedom of expression is a kind of negative freedom.[5] Negative freedom is defined by an absence of extrinsic constraint (such as, in the case of expressive freedom, laws permitting censorship). Positive freedom, by contrast, is contextually determined and interdependent. It is facilitated not by a lack of restraint but by the presence of particular constitutive elements. In the case of free conversation, these elements include multiple participants (though Montaigne notes that the most scintillating conversations are often those that take place among the different voices in a single mind), each manifesting some degree of self-awareness, as well as a collective will to seek justice or truth or some other value that transcends the individual.

It is, I have been arguing, primarily a cultural logic that precludes us from free conversation: the imperative to remain in the safe domains of phatic engagement. We are, however, no less constrained by our own mental indolence, by the pleasures of passivity and a casual acceptance of habit, the well-carved ruts of our mental pathways. Two even more powerful impediments to free conversation are solipsism, the intellectual incapacity to transcend the self, and narcissism, the psychological incapacity to transcend the self. Conversation requires us to recognize the other, which in turn requires us to recognize ourselves more carefully and completely. In conversation, we are held responsible for what we say, required to defend our position, even to change our point of view. When we converse, we open ourselves to scrutiny, which is

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[5] Isaiah Berlin offers the most significant articulation of this distinction in 'Two Concepts of Liberty" (1969).

why the philosopher Emmanuel Levinas describes the act of "offering a word" as an instance of "the subject putting himself forward," opening himself to the other. "To speak," he writes, "is to interrupt [one's] existence as a subject and a master" (Levinas 1997, 149).[6] It is hard to notice the particular position one occupies when one's only aim is to express oneself; it is hard not to notice such positionality when one is conversing. Conversational freedom is more focused, more limited, more circumscribed than free expression, because in conversation another holds us responsible for what we say.

At the same time that we open ourselves to the other, conversation requires us to attend to the other. In a conversation, one may generate confusion, anger, or sorrow. To speak simply of expression is to ignore such consequences; when holding a conversation, it is difficult not to notice them. To converse requires us to listen, to sympathize, and to imagine another point of view. Conversation offers a bridge between selves, and it may generate, suddenly and unexpectedly, a disconcerting intimacy, so it should be no surprise that, etymologically, "conversation" refers to lovemaking no less than talking. Walter Ong describes conversation in terms of such intimacy, though in more existential than physical terms, as a kind *eros* produced by sound and meaning: "the I-thou world where . . . persons commune with persons, reaching one another's interiors" (Quoted in McWhorter 1 January 2004, 47). Like sex, conversation is as fraught as it is pleasurable. Another person may ask a question that one has carefully avoided asking oneself, or say the name that one has doggedly sought to repress. A comment may draw attention to an unconscious and embarrassing habit or a clearly stupid belief. To converse is to recognize the other as something other than an instrument to our own ends, to recognize the other as capable of calling into question our own beliefs, values, and motivations, which is why good conversation is a form of respect. Conversation produces a collective space between people, a fragile and ephemeral space. The fact that there remain an infinite number

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[6] Levinas links the difficulty intellectuals have in recognizing conversation as a significant cultural form to the prevalence of inane small talk: "Contemporary philosophy and sociology have accustomed us to underestimating the direct social link between persons who speak, and to prefer silence or the complex relations, such as customs or law or culture, laid down by civilization. This scorn for words certainly has to do with the way language can degenerate into a prattle that reveals nothing but social unease" (148).

of interesting and important conversations to be had does not mean that they will be painless or comforting.

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When Free Expression Gets Expensive:
Legalities, Liabilities, and Realities

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Not unto ourselves alone are we born.

— Willamette University Motto

Americans love certain things. We love our cars. We love our guns and violence. We love our sex. We love our money. We love our freedoms; and of all of the freedoms we love, freedom of expression is our baby. In the words of former United States Supreme Court Justice Benjamin Cardozo, freedom of expression "is the matrix, the indispensable condition, of nearly every other freedom."[1]

When one reflects on the fact that the power of self-expression has given civilization the Magna Carta, Beethoven's *Ninth Symphony*, the ceiling of the Sistine Chapel, the Reformation, and Van Gogh's *Starry Night*, it is hard to argue with the belief that self-expression should be freely allowed, even at the cost of other cherished democratic values like equality, community, and civility. Indeed, we Americans love our free expression so much that we would rather tolerate hate speech,[2] virtual child pornography,[3] pro-Nazi demonstrations,[4] obscenities,[5] and simulated "snuff" films,[6] than restrict our nation's favorite freedom.

Who am I to disagree? I love rolling f-bombs off my tongue as much as the next litigator. If things get a little heated in the halls of the local courthouse and a few colorful expressions are required to get my point across, I know that the United States Supreme Court is there to back me up in my moments of obscenity. This is, after all, America, the greatest democracy in the history of the world, right? If an African-American family in St. Paul,

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[1] *Palko v. Connecticut*, 302 U.S. 319, 327 (1937).

[2] R.A.V. v. *City of St. Paul*, 505 U.S. 377 (1992) (overturning the conviction of a youth for burning a cross in the yard of an African-American family's home in violation of a municipal hate speech ordinance).

[3] *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002) (striking down the Child Pornography Protection Act of 1996).

Minnesota, is terrorized by a burning cross on their front lawn, isn't that just the unfortunate price that has to be paid for our freedom?[7] After all, we are warned that restricting speech is a slippery slope and if we start to restrict the right of people like the members of the Ku Klux Klan and neo-Nazi organizations to commit iconic assaults on innocent families, some day we might lose our own right to launch f-bombs.[8] And what kind of world would that be? I can only imagine.

We Americans swagger through life with the cocky assumption that we are free to say whatever we want, whenever we want, however we want, to whomever we want, and that we must tolerate others doing the same.[9] We hurl our expressions into the "marketplace of ideas"[10] and if someone objects, we urge them to be more tolerant.[11] We quote Milton: "Let [Truth] and

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[4] See *Nat'l Socialist Party of Am. v. Village of Skokie*, 432 U.S. 43, 44 (1977) (reversing state court's refusal to "provide immediate review" or issue a stay of trial court injunction preventing Nat'l Socialist Party from conducting a pro-Nazi demonstration on the grounds that such a refusal did not meet the "strict procedural safeguards" of prior restraint), *Skokie v. Nat'l Socialist Party*, 69 Ill. 2d 605 (1978) (holding that the swastika symbol was protected speech under the fighting words exception), reversing *Skokie v. Nat'l Socialist Party*, 51 Ill. App. 3d 279, 295 (1977) (prohibiting defendants from "Intentionally displaying the swastika" on the grounds that the village "met its heavy burden" justifying prior restraint because "epithets of racial and religious hatred are not protected speech"). See also *Smith v. Collin*, 436 U.S. 953 (1978) denying cert. to *Collin v. Smith*, 578 F.2d 1197 (7th Cir. 1978), affirming *Collin v. Smith*, 447 F. Supp. 676 (N.D. Ill. 1978) (requiring village to issue valid permit for pro-Nazi demonstration).

[5] *Cohen v. State of California*, 403 U.S. 15, 25 (1971) ("one man's vulgarity is another man's lyric"). See, e.g., the lyrics to 50 Cent's song, "Fuck You."

[6] In "snuff" films, men are portrayed as becoming sexually aroused by the torture and eventual murder of women. See *Am. Booksellers Ass'n, Inc.v. Hudnut*, 771 F.2d 323 (7th Cir. 1985) (invalidating a city ordinance prohibiting pornography that portrayed women in a degrading manner).

[7] See *R.A.V.*, 505 U.S. 377.

[8] See, e.g., *Cohen* at 26 ("Indeed, governments might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views. We have been able... to discern little social benefit that might result from running the risk of opening the door to such grave results.").

[9] To the contrary, the United States Supreme Court informs us, "[T]he First and Fourteenth Amendments have never been thought to give absolute protection to every individual to speak whenever or wherever he pleases or to use any form of address in any circumstances that he chooses." *Cohen* at 19.

[10] The "marketplace of ideas" theory is one of three classic theories offered to support the principle of freedom of expression. The theory asserts that ideas should be allowed to compete in a free and open marketplace in order to advance human enlightenment. The second is the "human dignity and self-fulfillment" theory. This theory suggests that self-expression is critical to the human condition, (cont'd from previous page) and that without the freedom to express ourselves we cannot fulfill our human potential. The third is the democratic self-governance theory. Under this theory, freedom of expression is viewed largely from the role the freedom plays in protecting democratic ideals. Thus, expressions that are not related to politics or governments might not be protected if the theory is construed strictly as the only justification for freedom of expression. (1 Rodney a. Smolla, smolla and nimmer on freedom of speech: a treatise on the first amendment, § 2.3-6 (16Th ed., 2007)). [So annoying that I can't comment in footnotes – what is this? Is it a cite of some sort? Is it a book? It's not in the works cited... I don't get it]

[11] Even Albert Einstein warned, "[L]aws alone cannot secure freedom of expression; in order that every man present his views without penalty there must be a spirit of tolerance in the entire population." (Einstein 1950, 13).

falsehood grapple; who ever knew Truth put to the worse, in a free and open encounter" (Milton 1644)?

Unfortunately, free and open encounters are rare even when one does not insist, which one must, that there should be equality between the holders of truth and falsehood. As John Dewey observed:

> The notion that men are equally free to act if only the same legal arrangements apply equally to all—irrespective of differences in education, in command of capital, and that control of the social environment which is furnished by the institution of property—is a pure absurdity (1940, 271).

If falsehood is being conveyed by media, corporations, and those in political power, and the person who conveys truth is a prisoner in Guantanamo Bay or an immigrant fieldworker in the Willamette Valley, is there anyone among us who sincerely believes that the latter will have the opportunity and power necessary for truth to prevail?

We only need to look to Germany's tragic history to see the dangers of trusting the marketplace of ideas to identify and protect truth. An imbalance or concentration in power in the dissemination of ideas and values (especially when combined with a concentration in political control) can influence individuals to engage in or tolerate speech and conduct antithetical to truth. Thus we must, and do, regulate the public expression of ideas just as we regulate all markets where products of value are traded, from food to utilities to securities to words.

John Stuart Mill's belief in social, legal, and self-restraints on liberty is based on his recognition that "every one who receives the protection of society owes a return for the benefit, and the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct to the rest" (1986, 53). According to Mill, society is justified in enforcing "at all costs" the rights and interests of those who would be harmed or interfered with by another (53). Moreover, Mill asserts that society is entitled to punish "by opinion" one whose conduct hurts or is disrespectful of others, even if the conduct does not go so far as to violate "any of their constituted rights." (85) Mill recognized that "[n]o person is an entirely isolated being," and

that as social creatures the liberty we so treasure must end at the point of harm to others—whether social, economic, or physical—and that society can properly exercise its power to prevent such harm (85-105). John Dewey went even further asserting that "The democratic idea of freedom is not the right of each individual to *do* as he pleases, even if it be qualified by adding 'provided he does not interfere with the same freedom on the part of others'" (1940, 341).

Contrary to the old adage, "Sticks and stones may break my bones, but words can never hurt me," the truth is: we have the ability to harm others when we express ourselves. Words are used to harass, degrade, insult, abuse, deceive, rob, conspire, marginalize, and worse. If words were not such powerful tools of both good and evil, we would not go to such great lengths simultaneously to protect and restrict them.

Modern civilization has created entire systems of regulation that are born from and embodied in religious beliefs, social values, financial incentives and penalties, and legal restrictions and liabilities in an attempt to minimize the occurrence of expressions harmful to others.

All of the world's major religions include teachings that warn against unbridled self expression. Both Judaism and Christianity teach the Ten Commandments, at least four of which directly or indirectly regulate freedom of expression:

- "Thou shalt not make unto thee any graven image, or any likeness *of any thing* that is in heaven above, or that is in the earth beneath, or that is in the water under earth." (Ex 20:4 Authorized King James Version)
- "Thou shall not take the name of the Lord thy God in vain; for the Lord will not hold him guiltless that taketh his name in vain." (*Ex* 20:7)
- "Honour thy father and thy mother…." (*Ex* 20:12 AV)
- "Thou shalt not bear false witness against thy neighbour." (Ex 20:16AV)

Islam also regulates speech, treating lying and fraud as among the greatest sins (Sultan 2007, 126). The *Qur'an* warns that one must refrain from false

speech or be shunned by Allah: "Truly Allah guides not one who transgresses and lies" (Ali 2000, 40:28).[12] "Speaking the truth and standing up for the truth, however, are qualities possessed by the people of righteousness" (Sultan 2007, 126).

The *Tao Te Ching* teaches that words can be false and misleading and should not be overvalued: "True words aren't eloquent;/Eloquent words aren't true./Wise men don't need to prove their point;/Men who need to prove their point aren't wise" (Mitchell 1988, ch. 81).[13] Even when words are necessary, the *Tao Te Ching* basically advises us to state our peace and then sit down and be quiet (Mitchell 1988, ch. 23).

The Eightfold Path to self-enlightenment in Theravada Buddhism includes *Samma Vacha*, or Right Speech. The essence of "Right Speech" is described as:

> …control, until our every word is courteous, considerate and true. All idle gossip and unprofitable talk must be stamped out. Silence should be so respected that the words which break it must leave the world the better for their birth. (Humphreys 1990, 110).

The Dalai Lama also teaches us "the ethic of restraint," whereby we discipline our minds in order to exercise our freedom to "respond" in an ethical way, keeping others' interests before our own (1999, 81-4). The ethic of restraint compliments his teaching of "universal responsibility," where we recognize that each one of our acts has a universal dimension and that everyone has an equal right to happiness. If we develop a sense of our universal responsibility, we will "recognize the need to avoid causing divisiveness among our fellow human beings" (162-3).

Independent of religious teachings, modern social mores embodied in everything from etiquette books to the rules that govern kindergarten classrooms guide us through the minefield of self-expression. And we have plenty of laws that regulate self-expression. We ban speech that constitutes

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[12] See also Qur'an 2:42: "And cover not truth with falsehood, nor conceal the truth when you know [what it is]."

[13] "Those who know don't talk./Those who talk don't know." (ch. 56); "The tao that can be told/is not the eternal Tao./The name that can be named/is not the eternal Name./The unnamable is the eternally real./Naming is the origin/of all particular things." (ch. 1); and "Honors can be bought with fine words." (ch. 62)

treason, fraud, defamation, harassment, criminal speech (speech involved in preparation for rape, murder, robbery, etc.), "fighting words,"[14] conspiracy, solicitation, obscenity, and, of course, yelling "fire"[15] in a movie theater when there is no fire, among others. If one moves beyond speech to include expressive conduct, one can identify thousands of illegal acts—from trespass to burning draft cards to murder—regardless of whether the intent was to convey a constitutionally protected message through the act. With so many restrictions on freedom of expression, we cannot argue that freedom of expression should be protected absolutely, and once we depart from absolutes, the questions become when, why, and how to regulate self expression in our society.

If one focuses first on when we restrict expression, we see that Americans' love of money trumps our love of free expression. There seems to be little argument with our considerable restrictions on commercial speech. No one says that we should tolerate false advertising, price fixing, consumer fraud, or breached warranties and just allow truth and falsehood to grapple. Perhaps it is because the encounter in this case isn't "free?" When the American Civil Liberties Union comes knocking at our doors soliciting contributions, I don't recall them even once protesting compelled commercial speech such as truth-in-lending requirements or securities filings, warning of the "slippery slope" we are likely to slide down: "Today it is Microsoft's 10-K, Ma'am, tomorrow your right to protest for world peace."

Why is it that we believe we should restrict or compel one's words to prevent one from taking another person's money unfairly, but not his or her dignity? Is it that money affects all of us, whereas hate speech is targeted at marginalized groups? Is there a darker side to our staunch defense of this freedom? Is it that we, the persons advantaged by the current social order, are not likely to be affected by the abuse of this freedom and so we are not willing to give up one lick of it, unless and until we are at risk of being victimized? Are we trying to dress up our efforts to defend a value that protects and

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[14] "Fighting words" are personally abusive epithets that are likely to provoke a violent reaction in the ordinary person. See *Chaplinsky v. New Hampshire,* 315 U.S. 568 (1942). See also *In re John M.,* 201 Ariz. 424 (Ct. App. Div. 1 2001) (holding that the "fighting words" of an unprovoked youth leaning out a car window and yelling "Fuck you, you god damn nigger" at an African-American woman were held not to be protected by the First Amendment).

[15] See *Schenck v. United States,* 249 U.S. 47, 52 (1919).

perpetuates a social, economic, and political hierarchy built on biases such as racism, sexism, and class prejudice because we are the ones who benefit? If this is the greatest democracy in the world, committed to protecting the rights of all individuals, should we not prioritize the defense of those in our society who are most likely to have their individual rights trammeled upon?

Other democratic societies are openly striving to balance freedom of expression with additional democratic ideals such as dignity and equality. For example, Germany holds "human dignity" to be the "supreme Constitutional principle," so that free expression is often subjugated when the two values collide. The basis for this principle lies in a cultural tradition that values honor and respect in society. Thus, one can neither defame nor insult another person regardless of ethnic heritage in Germany. Germany also suppresses certain types of speech, such as anti-Semitic and neo-Nazi speech, in light of the tragedy of the Holocaust (Krotoszynski 2006). Thus Google risked a criminal investigation for facilitating neo-Nazi propaganda by allowing users to upload anti-Semitic videos, and removed the offending videos at Germany's request (Miller 2007).

Canada demonstrates a similar willingness to balance freedom of expression with other democratic values. While Canadians enjoy free speech protections that are similar to those espoused in the First Amendment of the United States Constitution, the Supreme Court of Canada has interpreted the Canadian Charter of Rights and Freedoms as giving priority to "equality and multiculturalism" over freedom of expression. Thus the Supreme Court of Canada upheld a hate speech statute that makes it a crime to promote hatred against any identifiable group.[16] It also upheld an obscenity statute on the grounds of equality stating, "if true equality between male and female persons is to be achieved, we cannot ignore the threat to equality resulting from exposure to audiences of certain types of violent and degrading material."[17]

It cannot be denied that there are dangers inherent in this approach, as exemplified by the fact that even "The Satanic Verses" by Salman Rushdie was interpreted by some as "hate speech" in Canada (Krotoszynski 2007).

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[16] Regina v. Keegstra [1991] 2 W.W.R. 1 (Can.).

[17] Butler v. Regina [1992] 2 W.W.R. *577* (Can.).

Nonetheless, when democratic ideals such as freedom of expression and equality and dignity appear poised to collide, we must have a hierarchy of values that takes into account both our society's past and its future.

Here in the United States we have inherited a history rife with racism, sexism, xenophobia, and homophobia (along with a whole host of other "isms" and "phobias" that are too many to name, unfortunately). Certainly we have made some progress to right our nation's path towards a more ideal democracy. Many federal, state, and local laws now prohibit discrimination based on race, color, religion, sex, national origin, age, sexual orientation, and disability.[18] Unfortunately, we still have long way to go on our journey.

The remnants of slavery and segregation are glaringly visible in our inner-city schools where children can be found walking to class in hallways that smell of urine, without books to take home to complete their homework, sitting at broken desks next to filthy windows riddled with bullet holes. We deny immigrants a number of legal protections. We have no constitutional amendment expressly extending equal rights to women. The Convention on the Elimination of All Forms of Discrimination against Women was sent to Congress for ratification in 1980 and has not been seen or heard from since. We are the only recognized country in the world that has not ratified the Convention on the Rights of the Child other than Somalia (and Somalia has no organized government and so could not ratify the Convention even if it wanted to). Gays and lesbians continue to be denied the right to form legal families in most states.

This unfortunate history of denying equal rights to many members of our society is compounded by a future comprised of rapidly changing demographics and economics both in the United States and internationally. These changes are leading to social, ethnic, religious, and linguistic diversity at unprecedented levels. As globalization accelerates and economies become more integrated, the risk of social, cultural, ethnic, and religious conflict is heightened. Traditional social orders are being upset. Historically closed societies are being opened. Gender roles are being reversed. Caste systems are

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[18] Title VII of the Civil Rights Act of 1964 provides the foundation for much of our modern civil rights law. See 78 Stat 253, as amended, 42 U.S.C. § 2000e et seq. (1988 ed., Supp III).

being questioned, and in some instances, disregarded. With so much social and cultural upheaval occurring throughout the world, it is more critical than ever for democratic societies to cherish and protect principles that will minimize violence, exploitation, humiliation, marginalization, and outright exclusion.

Responding to these changes, our society has taken some steps to protect at least the economic interests of women and minorities in recent years. For example, it is now clearly established that individuals are legally entitled to workplaces free of harassment and discrimination.[19] Thus, women are no longer required to have sex with their supervisors to maintain their employment or tolerate pornographic posters of other women in full labial display at work. Although employers in some cases try to argue that the display of pornography at work is constitutionally protected expression, courts have seen it for what it is: sexual harassment.[20]

Moreover, courts have extended liability for harassment and discrimination not just to the individuals who commit the acts, but to supervisors and employers as well. For example, an employer may be liable when a manager or supervisor harasses an employee or if the employer knew or should have known of the harassment or discrimination and failed to take corrective action.[21] Thus, employers have significant incentive to create policies and procedures that strictly prohibit harassing and discriminatory speech and conduct.

Employer liability for the speech of its employees is not limited to workplace harassment and discrimination. Employers also face liability for misrepresentations (and material omissions) by its employees if made in the scope of their employment duties under a theory of vicarious liability. Under this theory, the employee is viewed as an agent of the employer. The words and actions of the employee can be imbued to the employer, and thus wrongful conduct of the employee can be viewed as wrongful conduct of the

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[19] See, e.g., *Meritor*, 477 U.S. 57.

[20] *Robinson v. Jacksonville Shipyards, Inc.*, 760 F. Supp. 1486 (M.D. Fla.1991). But note that some courts have disallowed Title VII claims based on pornography as sexual harassment, but not on the basis that displaying pornography at work is protected speech. See, e.g., *Rabidue v. Osceola Refining Co.*, 805 F.2d 611 (6th Cir. 1986) (Keith, J. concurring in part, dissenting in part), cert. denied, 481 U.S. 1041 (1987).

[21] See, e.g., *Sparks v. Jay's A.C. & Refrigeration, Inc.*, 971 F.Supp. 1433 (M.D.Fla.1997).

employer. This system creates incentives for employers to regulate adequately the speech and conduct of their employees in the workplace or face the risk of significant financial loss.

Third party liability for an individual's speech is not restricted to the workplace. Parents, schools, publishers, and internet sites have all faced potential liability for the expressions or omissions of third parties. For example, the West Virginia Board of Education adopted a resolution requiring students to salute the United States Flag in the midst of World War II. If the students refused, they were deemed to be subordinate and faced expulsion. They would only be readmitted if they complied with the requirement that they salute the flag. Since absence from school was unlawful, charges would be brought against the both the child and his or her parents, who would be subject to a fine and a jail term.[22]

This compelled speech was especially troubling to families who were Jehovah's Witnesses because the salute and the pledge violated their religious belief that it is a sin to worship "graven images." Thus they sued, alleging that the law violated both their First and Fourteenth Amendment rights. A federal district court agreed, enjoining the enforcement of the regulation and the Supreme Court affirmed.[23] The court recognized that a "clear and present danger" test (based on the principle that serious substantive harm must be imminent before expressions or omissions can be punished) must be applied.[24] However, nowhere was the appropriateness of holding the parents liable for their child's choice of expressive conduct questioned by either court.

More recently, the tables were turned when the United States Supreme Court recognized that schools have an obligation to regulate not only the speech and expressive conduct of teachers and school employees to prevent harassment, but the speech of students as well. LaShonda Davis, a fifth grader in Georgia, was repeatedly sexually harassed by another elementary school student. The harassment included both sexually explicit remarks as well as groping of her breasts and genitals. Although the harassment was reported to a

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[22] Former W. VA. CODE §§ 1847, 1851 (Supp.1941) (repealed 1943).

[23] *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943).

[24] *Barnette* at 633.

number of teachers and administrators, they failed to take sufficient corrective action. LaShonda's grades suffered and she considered suicide at one point. Eventually, her mother brought a civil suit on LaShonda's behalf arguing that Title IX obligates school districts to remedy instances of severe sexual harassment by other students, and the Supreme Court agreed. Thus, schools receiving Title IX funds now must regulate students' speech during school activities to avoid instances of severe harassment or risk civil liability.[25]

Similarly, publishers have faced potential liability for the advertisements placed by third parties in their publications. In one of the landmark decisions in First Amendment history, the *New York Times* was sued for libel by a city commissioner from Montgomery, Alabama at the height of the civil rights movement. The claim was based on a paid advertisement placed in the newspaper by a civil rights group called "Committee to Defend Martin Luther King." After a brief trial, the jury returned a verdict of $500,000 against the *Times* and four individual black ministers connected with the advertisement. The Alabama Supreme Court affirmed the award.[26] However, the United States Supreme Court overturned the award, finding among other things that the newspaper's failure to retract the ad and failure to check its accuracy did not constitute the "actual malice"[27] standard that must be met in libel suits involving a public official.[28] The Court later acknowledged that the choice of the term "actual malice" was an unfortunate one because the standard has nothing to do with hostility or ill will,[29] and suggested that the best practice would be for jury instructions to refer to publication of a statement with knowledge of its falsity or reckless disregard as to truth or falsity.[30] Implied by this ruling is that a publisher could be held liable if it publishes an expression by a third party that constitutes libel against a public official if the publisher shows reckless disregard as to the truth of the expression.

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[25] *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999).

[26] *New York Times Co. v. Sullivan*, 273 Ala. 656 (1962).

[27] *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 511 (1991).

[28] See *New York Times Co. v. Sullivan*, 376 U.S. 254, 286-88 (1964). For a comprehensive treatment of the entire case, see (Lewis, 1991)

[29] *Masson* at 511.

[30] Id.

In the United States and abroad, internet service providers have all faced legal, political, social, or market liability for third party expressions facilitated by them. As noted above, Google faced the possibility of criminal investigation in Germany for hosting anti-Semitic videos. YouTube™ was pressured to take down recruiting videos for Al-Qaeda. Google™, Yahoo™, and Microsoft™, among others, have all had to adapt access to the content they provide in order to enter the China market because of regulations on freedom of expression in that country (Miller 2007). Recognizing the potential legal and economic consequences of facilitating "hate speech," a number of internet service providers and websites now include warnings against hate speech in their terms of use with subscribers.

In other words, employers, parents, publishers, and internet providers have found that they may face potential financial or even criminal exposure not only for their own words, but for the expressions of others. This web of liability encourages members of society to rise above the allegorical standards of Pontius Pilate. Under the threat of vicarious liability, we cannot simply "wash our hands" of the speech of others—we are obligated to correct and sometimes even silence potentially harmful, if not illegal, speech because we have been made potentially vicariously liable for it.

Under this legal scheme, for example, a university cannot view itself simply as an institute of higher education, existing in rarefied air above and beyond the grit of unseemly sexual comments, racial slurs, and other embodiments of offensive speech that permeate our society. The university exists as a matrix. Its obligations include balancing its duty as an educational institution to protect and nurture the idealism of freedom of expression (being used by informed adults to advance moral, spiritual, and intellectual enlightenment) with its duties in other roles, such as employer, to ensure that individuals that try to harass or discriminate against others through expressive conduct are corrected, and sometimes silenced.

The difficulty of navigating these at times conflicting roles can be appreciated by imagining that it is spring semester 2007 and you are Lee Pelton, President of Willamette University. You are out of town on business and during a break in one of your meetings you receive an email advising you

that your university campus is in crisis and an executive decision has to be made immediately.

Apparently a Willamette University student has displayed a number of mock lynchings of African-Americans, Asians, Jews, and Hispanics around campus. Members of the university community, including both employees and students, encountered these mock lynchings without warning as they arrived for work and school that day, including members of the ethnic groups represented. Understandably, many were shocked and upset by the vision they encountered. Indeed, that was the intended response.

If you were President Pelton, what would you do? Does it matter that Willamette University is also an employer, and that places of employment generally have a lower tolerance for freedom of expression? You recognize that as an employer, the university administration must ensure that a hostile work environment is not created. If the student were only a student, you could argue that the university is not liable for the student's expressive conduct (although even then the university could be obligated to take corrective action). However, the student who organized the mock lynchings was also an employee of the university. Indeed, it appears that the student-employee was working on a project funded by the university and, thus, this expressive conduct was directly within the scope of his employment. As a result, the university could be held vicariously liable for legal claims based on the expressive conduct of the student-employee. Looked at from this perspective, the executive decision appears simple: the mock lynching displays had to be removed immediately to limit the university's legal exposure. The university took corrective action as soon as it learned of expressive conduct that a reasonable person could perceive to create a hostile work environment.

But what about the university's unique setting as a place where "the free and unfettered interplay of competing views is essential to the institution's educational mission?"[31] While places of employment tend to have a lower tolerance for freedom of expression than society generally, universities are deemed to have a higher tolerance. Thus, President Pelton and other university administrators are at a point of tension that embodies the intensifying conflict

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[31] *Doe v. Univ. of Michigan*, 721 F. Supp. 852, (E.D. Mich. 1989).

that exists in the world at large between free expression, on the one hand, and equality and dignity on the other.

As campuses have become more diverse and reflective of the world around them, the frequency of hate incidents on campus in recent years has been disturbing. How does a university respond when "Death Nigger" is scratched on a black woman's dorm room door or a slave auction is held at a fraternity (MacKinnon 1993, 53)? The immediate response of many universities when such incidents became prevalent was to develop speech codes. However, when legally challenged, the speech codes were deemed to violate the First Amendment.[32]

A student is not permitted to go up to another student and say, "Give me all of your money," while waving a night stick, so why can a student go up to another and commit an iconic assault by brandishing a noose or a burning cross and demand that same person's dignity with denigrating or hateful speech? Some would suggest that one surrenders one's dignity only by choice; we—or more likely you— just need to be tolerant of these offensive expressions; you need to "toughen up." But we could say the same thing regarding a robbery. You only surrender your money by choice; just ignore the implied threat of the weapon and do not allow yourself to be intimidated by the brute. After all, what is more important to protect: a few dollars cash or freedom of expression? And yet we restrict speech to protect our money.

We also do not hesitate to issue standards prohibiting students from plagiarizing, even though this is a restriction on their freedom of expression. Again and again, we restrict students' (and other individuals') freedom of expression for many things that are important to us; apparently, the dignity of others is not one of them. In fact, we place so little value on the dignity of members of disadvantaged groups that we restrict the ability of universities— bastions of the highest levels of civilization—to protect their most vulnerable students' dignity by creating standards of expression on campus.

Private groups such as families, private schools and universities, associations, churches, businesses, etc. not only have the right, but an ethical

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[32] See, e.g., Doe, 721 F. Supp. 852; *UWM Post v. Board of Regents of Univ. of Wisconsin*, 774 F. Supp. 1163 (E.D. Wis. 1990); *Ioata XI Chapter of Sigma Chi Fraternity v. George Mason Univ.*, 773 F. Supp. 792 (E.D. Va. 1991), affirmed, 993 F.2d 386 (4th Cir. 1993).

duty, to regulate expression among their members. These entities play a significant role in socializing and civilizing individuals and they should be free to create spheres in society that are as free from hostility, harassment, and denigration as possible. Thus, a parent should be free not to allow racist speech in the home, an employer should be free to prohibit sexist speech at work, and a private university should be free to take down a display of simulated child pornography on the university quad, for example, all in an effort to foster a more civil, egalitarian, inclusive, and tolerant world.

Ours is not the first community to struggle with the balancing of freedom of expression with the other values we cherish, such as civility, community, dignity, equality, and enlightenment. Nations around the world have struggled, and continue to struggle, with the role of free expression in their increasingly diverse societies. Canada, Japan, the United Kingdom, and Germany, among others, have all tried to create legal protections for free expression with varying aims, unique contours, and differing degrees of success. Each has tried to protect this fundamental freedom of democracy while balancing it with the need to protect other democratic values such as equality and human dignity. None has created a right to free expression that is absolute (Krotoszynski 2006).

Here in the United States, we have yet to demonstrate a willingness to balance openly and consistently our nation's most cherished freedom with a commitment to protect and advance the interests of marginalized persons, including women, children, immigrants, minorities, and the impoverished. It is time for America to recognize that as the world becomes increasingly populated and integrated we must reasonably limit the freedoms we enjoy to allow literally billions of people of different races, religions, economic classes, languages, genders, sexual orientations, abilities, and ages to live peacefully together in a more respectful, equalized, and civilized manner. This will require us to tap into all of the sources of social regulation we can muster, from religious teachings to the socialization of our children in schools and homes to standards of conduct within private spheres such as the workplace and universities. It also requires us to consider whether we should follow the examples of other diverse and democratic countries like Canada and

Germany and reconsider our interpretations of the constitutional protections of freedom of expression to allow for the balancing of America's favorite freedom with other democratic values such as equality and dignity.

We have never enjoyed absolute freedom of expression and we never will. If we can curb freedom of expression to protect economic interests, perhaps it is time to question whether there might not be other things that are just as important to us, if not more important to us, than money.

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The Difference Between Can and Should: Protection and Exercise of Free Speech in a Democracy

Joseph Kaczmarek

Lewis Lapham, the editor of *Harper's Magazine*, begins his book, *Gag Rule*, on a day which has begun many stories in the last six years: September 11, 2001. It chronicles the singular unity of purpose that pervaded our nation in the weeks and months following the attacks, and the way in which we drew together behind our flag and our government in the pursuit of security and justice. Unlike many of the stories that have been told about those days, *Gag Rule* does not present that unity in a positive light. On the contrary, Lapham argues in page after page of cutting, bitter prose, that our unity was harmful and dangerous, because it temporarily destroyed a large section of the population's willingness to engage in, or even listen to, expressions of dissent. He argues, with the aid of quotations by historical figures ranging from Thomas Paine to Theodore Roosevelt, that purchasing consensus at the cost of healthy disagreement is a betrayal of democracy, even (or perhaps especially) in times of crisis (Lapham 2004, 1-40). While many may take exception to Lapham's politics, at the core of *Gag Rule* is a thesis with which virtually all citizens of a democracy must agree: that the freedom to speak is a key component of any healthy democratic society. Speech, as both a right and a process through which public policy is decided, plays a constitutive role in democracy. Its free and open exercise is essential to ensuring that democracies continue to exist, because liberty is not only preserved through martial might but also, and perhaps even more vitally, through the maintenance of the democratic rule of law that, in our society, is its guardian and administrator. This does not happen spontaneously, accidentally, or idly. Rather, it requires that conscientious citizens continually engage in those pursuits through which democracy was established in the first place: not just the prosecution of military operations, but also the deliberation and participation in public life of both elected representatives and private individuals seeking a freer, more

just, and more equal society for themselves and their children. Without such engagement we are surely doomed to lose sight of the high ideals on which liberal democracy was founded. It is my hope that the compilation about freedom of speech of which this essay is a part will contribute to that sort of participation within our university community.

Debates about free speech, which are almost always debates about how speech may or may not be acceptably limited, have been an important part of democratic societies for as long as they have existed. In the nascent days of western civilization the Greeks and Romans spoke of the central importance of freedom of speech, while at the same time often abrogating the speech of their citizens in ways that would almost certainly not be tolerated in a modern democracy (Darbishire 1994, 18). And so it has continued since then, with every society that professes the importance of protecting freedom of expression struggling to find the proper balance between preserving speech and fostering stability, civility, equality, and every other value with which unbridled speech may seem to conflict. Today the increasingly heterogeneous and multicultural nature of our society, the rise of new forms of communication, and a growing awareness of the pervasiveness and persistence of historical inequalities continue to add new layers of complexity and urgency to this debate.

It is the task of each individual in a democracy to help resolve this dilemma. To do so, citizens must examine the issue carefully, weigh it themselves, and come to a conclusion that they can contribute when it is time to decide the matter in the public sphere. That is what living in a democracy is all about. My contention is that a multicultural democracy will be best served by a two-part approach to freedom of speech. First, the government, in the interest of preserving those things which make speech so valuable, and with an awareness that any censorship will necessarily be crafted and enforced by human beings who are neither omniscient nor free of the temptations of self-interest, should set broad protections in place around expression and endeavor always to err on the side of free speech, even in those cases in which the speech in question is objectionable. Second, citizens should recognize that government protection is not the same as societal endorsement, and there should be a powerful and broadly held cultural awareness that speech

should be engaged in with consideration of other citizens, not used as a weapon of degradation and marginalization. Offensive speech should not be proscribed, but it certainly can, and usually should, be met with disapproval and opposition.

The remainder of this essay is devoted to supporting that contention. I will first discuss the different reasons for which the freedom of expression is traditionally valued, focusing primarily on those which have been most prominent in past discussions of this issue: the role of communication in determining truth, sustaining a democracy, and contributing to the individual exercise of free conscience and the pursuit of happiness. It is from these functions of speech and the value we place on them that all arguments for the protection of speech stem. I will then contrast these with the liabilities that unrestricted expression poses for a society, especially the promulgation of hateful and derogatory messages and the fact that speech can faithfully serve the purposes of individuals who seek to subvert the very goods that protecting expression aims to preserve. With this groundwork laid I will move on to examine the question of governmental regulation of speech, taking into consideration the positive and negative aspects of free expression and also the liabilities inherent in preemptive regulation in order to support the first part of my thesis. Finally, I will assert that in an ideal multicultural democracy broad governmental protection of speech will be complemented by a cultural awareness that the right to free speech ought not be twisted into a shield for those who would say terrible things and that there can still be public and private opposition to speech that is hateful and discriminatory.

Freedom of Speech and Why It Is Valuable

In order to avoid confusion, this discussion of freedom of speech will begin with a definition of the term. In this context "freedom" is not used to denote a total lack of constraints, as it does in its most absolute sense, but rather as a stand in for "liberty," the more qualified notion that individuals shouldn't be bound by "arbitrary or despotic government or control." Like "freedom," "speech," in this context, denotes something other than its common conventional meaning. It refers not merely to spoken interpersonal

communication, but to any conduct which an individual or group might use "to communicate or express a thought" (Merriam-Webster, Inc. 2007).

Communication saturates virtually every aspect of human existence. It is the mechanism by which disparate individuals are able find and affirm common ground, make each other aware of problems, find (or fail to find) solutions to those problems, form and participate in social institutions larger than themselves, and generally live and work with one another. Communication is an essential part of everything from business and government to art and education, religion, culture, love, and war. This is why speech and questions about it play such a central and complex role in society and government, especially in democracies, which by their very nature emphasize the importance of consensus-building that cannot take place without communication.

Communication fulfills a multitude of roles as it facilitates all of these different aspects of human life and culture, but a few of these roles are more pervasive or significant than the rest, and it is from the need to safeguard one or more of these that arguments for the protection of free speech have traditionally stemmed.

Of the two rationales for protecting free speech that have been most prominent in American jurisprudence, the first is a belief in the value of preserving a "marketplace of ideas." This argument, championed most iconically by Supreme Court Justice Oliver Wendel Holmes in the early years of the 20th century, insists for several reasons that there is value in the clash of differing opinions and so the government should refrain from preventing this clash by proscribing the expression of any given point of view (Sunstein 1993, 24-5). The first of these reasons is the belief that when ideas are allowed to clash with each other in the arena of public consideration, truth will become apparent and falsehood will fall by the wayside. The second is a skeptical conviction that it does not do to allow any idea or institution to become so entrenched that it is immune to criticism.

British political thinker John Stuart Mill was a particular proponent of the first theory, maintaining that not only will truth emerge triumphant from the general tumult but that this is the best way for us to come to the

truth, because our understanding will be all the stronger and clearer for having overcome falsehood (Moon 2000, 9-10). Some argue that it is naïve to think that the majority will be able to determine what is correct and what is not when presented with every available opinion. It is true that, in an age of reality television and intelligent design, vesting faith in the general public to give its allegiance to truth rather than falsehood may seem a daunting prospect, but human history is, in the long run, a record of the persistent if gradual emergence of newer and more complete truths. If, as one author put it, our optimism that this trend will continue, "is not blind naiveté but is rather a motive force that encourages us to keep the faith in the long view of history," then "it can be a self-fulfilling prophecy" (Smolla 1992, 7). The hope that a group of well-meaning individuals can form a consensus that will lead them to think and act rightly is one of the primary justifications for faith in the democratic system. If we abandon it entirely we may as well start casting about for a philosopher-king.

Skepticism does not require such a sunny outlook, and so belief in its value is easier to swallow and it, too, is justified by history. The differences between accepted convention and the reality of how the world works tend to become apparent over time, no matter how self-evident and objectively true the convention seemed when it was first adopted. Despite this the temptation to protect what currently passes for bedrock truth with the force of law is ever present. Some of free expression's staunchest proponents value it as a remedy for this folly. In 1919 a political activist was prosecuted and convicted under the Espionage Act of 1917 for distributing leaflets criticizing capitalism and the United States' Government. While the Supreme Court upheld the decision, Justice Holmes eloquently dissented, saying:

> If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition…but when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself

accepted in the competition of the market, and that truth is
the only ground upon which their wishes can be carried out
(Sunstein 1993, 24).

Our past is replete with instances in which the power of law was invoked
to suppress emergent truth in order to shield established orthodoxy. And this
tactic has resulted, frequently and famously, from the house arrest of Galileo to
the Scopes Trial, in the embarrassment of the powers that be and the eventual
vindication of truths that would not be silenced and which were revealed by
the light of public scrutiny to be the correct choice after all. Because of this,
and even more so because of the tragic, frightening possibility that official
sanction has at some point successfully extinguished progress and worsened
the lot of the human race by extending the reign of flawed understandings
of the world, thinkers such as Justice Holmes maintain that preserving a free
and open marketplace of ideas by protecting freedom of expression should be
a priority of government.

The traditional American counterpoint to marketplace based arguments
in favor of free speech protection has been the notion that speech needs to be
protected because of its importance to the continued function of a democratic
political system. This view has been championed most prominently by Supreme
Court Justice Louis Brandeis and philosopher Alexander Meiklejohn (Smolla
1992, 12; Moon 2000, 14). It is, in some ways, easier to understand and defend
than the open market argument for speech. Anyone who has participated in
a democracy understands that speech is a key part of the system, playing a
central role in the business of government on every level, from the canvassing
efforts of local politicians to the deliberations of the highest courts. But the
argument from democracy, as it has been developed by different thinkers
over the years, goes beyond the understanding that speaking is necessary for
democratic deliberation. It is a nuanced and complex assertion that works on
several distinctly different though complementary levels.

First, protecting expression protects the vitality and legitimacy of the
vote, which is the lifeblood of democratic government (Moon 2000, 14). In
order to vote meaningfully for one proposal over another, voters have to be
free to put forward any option they choose and to disseminate and receive

relevant information about the options before them. This notion can be further developed into a sort of politics-specific version of the marketplace metaphor. Free speech ensures that citizens have the ability to freely and fully discuss the issues of government before them, which will give them the best chance of completely weighing their options and choosing the course of action that will most perfectly reflect the will of the polity and be most advantageous for the society (Smolla 1992, 12). It protects discussion and criticism of the sitting government, ensuring that the elected leaders and the institutions they run are not insulated from the influence of the public they are intended to serve.

At the same time that it facilitates the smooth and vigorous exercise of majority rule, protecting freedom of speech benefits a democracy by ensuring that a power-hungry majority is not able to subvert democratic principles (Richards 1999, 18-19). By protecting free speech, a society ensures that a majority can never use its political clout to subvert the ability of a minority to protect its interests by speaking for itself in the public sphere. This is a function of protected speech that is of special import to a multicultural democracy in which many diverse voices seek to participate in the political process.

Justice Brandeis further argued that political participation was not merely a means to an end but also an end in and of itself. He believed that the act of participating in the work of democracy and taking an active hand in the shaping of their own fates contributed to the individual development and fulfillment of members of the polity (Sunstein 1993, 27-8). Thus, it is important to protect speech in a way that ensures that every individual citizen will have access to the dignity and self-fulfillment that comes from participation in democracy.

Finally, some authors hold that protecting the right to speech, especially when it is being exercised by unpopular or objectionable minorities, helps maintain the peace and stability of the state (Smolla 1992, 13). By ensuring that the majority is not able to deny a minority its right to expression, protecting free speech helps to prevent the feelings of disenfranchisement, helplessness, repression, and ultimately desperation that would accompany such a denial. Furthermore, it ensures that tensions within the society can be

resolved in the light of open discussion, rather than being pushed out of the public sphere, to fester in darkness until those afflicted by them are driven to acts of lawlessness.

The marketplace of ideas arguments and the arguments about democracy that have dominated the legal discourse justifying protection of free speech in this country are alike in that they both treat speech as a means to an end and argue that it should be protected because it allows us to gain valuable things. The last line of argument about the worth of free speech that I will cover in this section approaches the matter differently, arguing that expression possesses intrinsic value for those who engage in it, and that it should be protected on these grounds. It is similar to the general libertarian belief that citizens should be free to act as they wish absent some compelling societal interest in preventing them from doing so, which is the basis for all free societies. Proponents of this view proclaim that individuals who wish to speak their minds should have that option and that it is not the government's job to protect its citizens from hearing falsehoods or to tell them what views they should or should not espouse. Attempts to do so infantilize individuals and are an affront to their dignity as rational actors in charge of their own destinies (Smolla 1992, 9).

The most powerful advocates of this view go further, maintaining that expression should be given a higher threshold of protection than other human activities, because speech is more closely linked with the processes of thinking and feeling than any other human activity. James Madison equated the protection of freedom of speech with the protection of freedom of conscience because speech plays an important role in the processes though which we develop beliefs about the world (Richards 1999, 24-6; Smolla 1992, 10-11). Others have pointed out that it is through the communicative acts that make our thoughts, feelings, and convictions known to those around us that we construct the social identities which determine *who we are* in relation to our fellow men and women (Moon 2000, 20-1). With this understanding of the value of expression in mind, it is easy to see why restrictions on free expression should be scrutinized carefully and limited to the greatest extent possible. They have the potential to interfere both with an individual's ability

to freely and fully form convictions about the world around them, and also to honestly and authentically live those convictions.

This understanding of the value of free expression has several things to recommend it. It justifies the protection of a broader range of speech than either of the two ends-based theories. Ends-based views of the value of free speech mandate protection only of that speech which contributes towards the successful attainment of the end. The danger of this approach is especially easy to illustrate in the case of the argument from democracy. At one time Meikeljohn argued that, because the point of protecting free speech was to ensure the proper functioning of democratic government, only that speech which was directly concerned with the work of government was worthy of protection (he abandoned this view after he was heavily criticized for proposing an understanding of freedom of speech which required no protection of art, education, or philosophy) (Smolla 1992, 15). An argument based on the idea that the freedom to speak is intrinsically valuable, on the other hand, offers a presumption of protection to nearly every communicative act, and does so because it is grounded in a view of expression that more accurately reflects the constitutive role that communication plays in human life.

Many who have written about freedom of expression have argued that one reason or another is the best justification for protecting expression, and that we should look to it exclusively when crafting our laws. This essay will not, because doing so creates a false and unnecessary dichotomy and runs the risk of excluding valid points from consideration. Each of these arguments is based on an understanding of one of the many valuable roles that speech can play in our society, and any or all of them should be taken into account in situations in which they are relevant. It is important that speech worthy or deserving of protection be protected. It is not important that the justification for that protection stem in every instance from the same basic argument.

The Liabilities of Unrestricted Expression

If expression's only roles in society were the positive ones listed in above last section, its protection would arouse no controversy and a great many authors over the years would have had less to write about. Unfortunately, that

is not the case. Expression is reflective of the men and women practicing it, and this sometimes seems more of a curse than a blessing. Communication can be a means by which the truth is concealed and selfish or unscrupulous individuals can pursue their own ends at the expense of societal welfare. It can reveal the earnest convictions of those whose views we find hateful, abhorrent, objectionable, or even merely annoying. It is not possible to honestly argue that speech should be protected without taking into account the potential unpleasantness to which rigorously protecting free speech leaves a society liable.

The great risk in allowing people to do whatever they want is that they may want to do something we would rather they not. Indeed, it is almost inevitable that at some point they will. The broader the range of freedom granted, the greater the magnitude of the objectionable action we risk condoning. In the case of speech, one of the most thoroughly protected realms of activity in most liberal democracies, and especially in the United States, this can translate into state-mandated protection of some truly miserable expression. Perhaps the most emotionally powerful instance of this is the protection of racist, hateful, and degrading speech. In protecting the right of citizens to give voice to their earnest convictions, free speech advocates have occasionally found themselves in the unenviable position of protecting the right of those who wish to publicly declaim abhorrent things. To make matters worse, this often occurs in the faces of those being denigrated, as occurred when the American Civil Liberties Union famously defended a group of Nazis seeking permission to hold a demonstration in the predominantly Jewish town of Skokie, Illinois.

And the emotional turmoil caused by exposure to unpleasant or objectionable speech, powerful as it is, may not be the greatest danger unrestricted speech poses for a democratic society. Protected speech can arguably be a threat to the very structure of democracy itself. There are in every social establishment those individuals who seek to subvert or overthrow the things that establishment represents, and they will necessarily communicate with others as they pursue their goals. In erring on the side of protecting speech, democracies run the risk of facilitating the efforts of people whose goals

are contrary to the values that society stands for or even inimical to the society itself. The most obvious example of this sort of speech is the communication of a radical who advocates the abolition of democratic government. Some thinkers, usually those who justify the protection of speech primarily on the strength of its value to the processes of democracy, argue that this sort of speech shouldn't warrant any protection, and in some countries (Germany, for example) it does not (Krotoszynski 2006, 118-30).

Finally, speech can be used to subvert the very things that make it valuable and worthy of protection. In societies that have known significant, deep-rooted historical inequality, some argue that degrading language from the dominant class intimidates and silences members of the traditionally oppressed classes to such an extent that it effectively destroys their access to the rights of speech, participation in society and government, and the pursuit self-fulfillment that are ostensibly being served by the protection of free expression. This occurs even when equal access to those same rights is legally protected. In the last few decades a number of academics and legal thinkers such as Mari Matsuda and Catherine MacKinnon have maintained that, in light of this, such degrading speech should be regarded as causing concrete harms that remove it from the realm of communication which is entitled to protected status (Glasser 1994, 3).

How Broadly Should Free Speech Be Protected?

This brings us to the question that democratic societies have wrestled with for as long as they've existed. Taking into account liabilities of free expression, such as those listed in the previous section, and arguments for its protection, like those in the section before that, what is the extent to which expression should be protected? Answering this question requires the weighing of costs and benefits. In any situation in which a question of free expression arises, members of the society must decide how much significance they ascribe to the benefits and harms protecting expression incurs and determine whether or not the costs outweigh the benefits. I propose that to this analysis should be added a pragmatic question: even if a speech act carries with it significant harms, can we be reasonably sure that proscribing it is a

necessary and effective step to alleviating those harms, and that this act of proscription does not expose society to other, greater risks? Unless the answer to this question is yes, it should not be possible to make a successful case for the restriction of a speech act or form of speech.

It is easy and tempting for a life-long citizen of the United States of America to pre-empt most instances of cost-benefit analysis and argue for extremely broad protections of free speech on the strength of an *a priori* assumption that such protection is an essential component of liberal democracy. This is not the case. Western liberal democracies can and do maintain a broad degree of protection of basic freedoms and healthy democratic processes, while at the same time restricting speech in ways that would be unconstitutional in the United States. Indeed, the protection accorded to free speech in the U.S. is among the broadest in the world (Krotoszynski 2006, 214). This is because in some other countries the privileged designation of "preferred freedom" given to expression in the United States is conferred on other rights, such as equality in Canada, or dignity in Germany (26-7; 93-4). In others, such as the United Kingdom, it is because firm legal mandates requiring the government to protect expression over other concerns were simply never written into law (183-5). Even in the United States, the high level of protection accorded to speech is a relatively recent development. In the days before the Civil War the southern states frequently and legally prevented abolitionists from expressing their views (Glasser 1994, 1). Between the Civil War and the First World War, the Comstock Act, an 1873 anti-obscenity measure, justified the seizure of 130,000 books, 194,000 pictures and photographs, and 60,300 "articles made of rubber for immoral purposes," without successful challenge (Rosen 1994, 36). The passionate defenses of free speech penned by Justices Holmes and Brandeis were written in the early part of the twentieth century, shortly after the Supreme Court had *first begun* to regularly hear cases based on First Amendment challenges, and they were often as not recorded as dissenting opinions (Sunstein1993, 24-7). It was not until the mid-1960s that the current broad interpretation of First Amendment protections was firmly established (Krotoszynski 2006, 12). Despite this history, it would be foolish to maintain that the United States was not a healthy, free-

dom-loving democracy sixty years ago, just as it would be foolish to say that about Germany or Canada today. Broad protections of freedom of speech must be justified on their own merits.

Nevertheless, I will still argue that freedom of speech should be given broad legal protection, for two reasons. First, the various benefits that the right to free speech preserves for a democratic society are so valuable that only the most dire of harms will outweigh them. Second, restrictions on expression conceived of and administered by the government carry some very significant liabilities of their own.

I've already discussed the various arguments that are advanced in favor of freedom of speech, and will try not to waste time by repeating them here. I will, however, briefly re-emphasize the idea that protecting freedom of speech is analogous, in a very meaningful way, to protecting individual autonomy and liberty of conscience. In recent years support has grown among American academics and legal scholars for the proscription of hate speech, or vocalizations which denigrate others on the basis of some demographic difference. This stance represents a departure from the free speech advocacy that has traditionally been a hallmark of American liberalism, and some liberals have sought to explain this apparent reversal by maintaining that in the past protecting free speech was primarily a means to serve other interests, such as equality (Arthur and Shapiro 1995, 1; Brown 2004, 30). Stanley Fish writes that free speech is a "political prize," a means to an end that, having been appropriated by conservatives and lost its power as a tool to advance liberal values, should be swiftly and guiltlessly abandoned in favor of other policy advocacies (Fish 1993, 43-5). Belief in the value of autonomy serves as a counterpoint to this means-based justification for the protection of free speech. One of the oldest and proudest cultural concepts of the United States is a belief in the value of individual liberty. Some modern liberals may interpret freedom as nothing more than a space to be filled with other values, but principled advocacy of liberty rests on the belief that individuals ought to be given that space to fill with convictions of their own choosing, rather than be coerced into sharing values collectively decided upon by society and enforced by the state.

A more pragmatic reason to be skeptical of speech restrictions enacted with the goal of correcting societal problems or elevating certain values is that state coercion is often an inefficient, ineffective, and error-prone method of pursuing social change. There is a good chance that it will not work, or will end up working in ways that the people who initially enacted it never intended. The specific way in which these formidable liabilities will manifest depends on the specific sort of speech being restricted and the goal these restrictions are intended to achieve. It would be impossible to discuss every instance in which governments have attempted to restrict speech in order to expedite social improvement, but restrictions on hate speech are a useful representative example that is contemporary and of special significance to multicultural democracies such as our own.

Ira Glasser, the former director the ACLU, writes that the current advocacy for restriction of hate speech was driven by frustration over the persistence of entrenched inequality in American society decades after equal rights were granted legislative protection during the Civil Rights movement of the 1960s (Glasser 1994, 15). They are justified on the grounds that speech acts that subordinate and marginalize minorities are inimical to the establishment of equality and so should be restricted. They rest on the reasonable belief that the autonomy of racists is less important than the promotion of equality. The question of relative value will have to be answered elsewhere, but the pragmatic question remains: will banning hate speech eliminate racism? If the societies in which such speech is currently banned are any indication, it will not. In Germany, Nazism, anti-Semitic speech, and Holocaust denial have been illegal since the late 1940s, and yet these ills persist (Krotoszynski 2006, 131). Banning racial defamation in 1965 did not eliminate racial tension in the U.K. (Gates 1994, 43). And one Canadian author bemoans the persistence of racial supremacist groups in Canada, even as he notes that their activities are prohibited and maintains that "it is a contradiction of terms to speak of the coexistence of racial supremacism and social democracy in Canadian society" (Li 1995, 2). This should not be surprising. Speech may be one of the mechanisms through which racism manifests, and even through which it is perpetuated, but it is hardly the only one. The same Canadian author goes

on to admit that racism is the result of any number of social factors and that it is frequently deeply institutionalized (Li 1995, 6-7). Speech proscriptions do not change these underlying social factors, nor do they comprehensively attack institutional racism. We cannot even reasonably expect them to eliminate racist speech, at least not any more successfully than laws against speeding or illicit drug use successfully eliminate those activities.

Laws against racist speech may not eliminate racism and inequality, but this does not mean that they are without effects. For example, they can unintentionally curtail legitimate discussion of ideas that happen to be controversial in the wrong way. When the University of Michigan enacted a speech code restricting speech that "stigmatizes or victimizes" individuals on the basis of "race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap, or Vietnam-era veteran status…" they were sued on free speech grounds by an anonymous graduate student. The student, who specialized in biopsychology, was a teaching assistant in a psychology class on comparative animal behavior. He worried that he would be open to prosecution under the speech code for attempting to lead classroom discussion about theories that postulate a biological basis for the mental abilities of male and female human beings. On the grounds that the code was vague and overbroad, and because there had already been an instance in which a student was subject to disciplinary action for an "offensive" statement made in the context of a classroom discussion, the Court ruled that his complaint had merit (Arthur and Shapiro 1995, 114-121).

Author David Richards points out that laws against hate speech, in addition to potentially suppressing peripheral discourse of the sort the teaching assistant wished to engage in at Michigan, detract from the quality of the discourse about race and racial equality itself. As he put it:

> Majoritarian judgements of group harm…mandate a kind of orthodoxy of appropriate tribalization in the terms of public discourse…this empowers the state to determine not only what discourse is properly respectful and what not, but what groups are entitled to such protection and what are not. But such state-enforced judgments introduce stereotypical political orthodoxies as the measure of human identity,

thus removing from public discourse precisely the contest of such stereotypical boundaries that a free people often most reasonably requires, in particular, persons afflicted by a pervasive culture of structural injustice (Richards 1999, 135).

Category-based speech restrictions necessarily require the codification and legal institutionalization of those categories, an approach which is incapable of accurately reflecting the complex realities of human existence.

Outlawing racist speech will not eliminate it, but it will drive it underground, and away from the public discussion that would expose it to unsympathetic ears who might attempt to disabuse its proponents of their flawed beliefs, and ensure that the only people who hear racist speech are those who agree with it and whose beliefs will be reaffirmed by it. Such laws can even, by granting absurd and abhorrent notions the status of a threat worthy of official suppression, give legitimacy to racist views that they would otherwise lack. As Richards observes, "Holocaust denial and related laws, ostensibly directed at structural injustice, only further entrench it, not least by a shallow political symbolism that, in apparently condemning such evils, distracts from the deeper reasonable inquiry into the history and culture of European structural injustice" (Richards 1999, 164).

Finally, restrictions on racist or derogatory communication can be turned into weapons against the very people they were intended to benefit. This is because, as Ira Glasser points out, these restrictions will be enforced by the institutions of the establishment, which perpetuates injustice in the first place (Glasser 1994, 7). During the year in which the University of Michigan's speech code was in force, twenty charges of racist speech, including the only two resulting in disciplinary action, were levied by whites against blacks (Glasser 1994, 8; Gates 1994 45). It should come as no surprise that the power to silence is more potent in the hands of the dominant group than in those of its subordinates.

In a perfect world every measure intended to improve society would work exactly as it was intended, but that is not the world we live in. Attempting to solve a complex social problem, such as persistent inequality, by restricting speech is as ineffective as it is simplistic. In light of this, and because such

restrictions necessarily require the sacrifice of one or more of the powerful benefits that protecting speech gains for a democratic society, it seems clear that the primary duty of a democratic government with regards to free speech is to grant it broad legal protections and enforce them vigorously.

Obligations of Free Speech

While broad governmental protections for free speech are best for a multicultural democracy, that should not be the end of the story. The persistence of structural injustice is a real and significant problem in multicultural democracies such as our own, and the approach of citizens to communication does have a role in its perpetuation or resolution.

One risk of broadly protecting offensive speech is that individuals may interpret this as a societal mandate endorsing speech that degrades others. To put it lightly, this is not a desirable occurrence. While government restrictions are too cumbersome and prone to corruption to effectively prevent racist speech without unacceptably compromising individual liberty, this does not mean that nothing can be done. A strong cultural understanding that rights are accompanied by responsibilities and an aversion to speech that is recklessly or needlessly offensive to others could do a great deal to mitigate that risk. I do not believe that such an aversion exists in this country, but it should.

Such an approach to expression was nicely articulated last year by South African writer Kristina A. Bentley. While analyzing an article written by the black vice-chancellor of a university that compared some white male South Africans to baboons, she suggested that the broad boundaries of our rights are perhaps not the only boundaries we should heed where speech is concerned. Perhaps, instead, we should regard speech as something that entails responsibilities or moral duties as well as rights and conduct ourselves accordingly. As an exemplar of this approach to freedom of speech, she cited John Stuart Mill, a famous proponent of the right to free expression who nonetheless severely castigated a contemporary for publishing a racist article defending slavery. Mill's criticism stemmed from his worry that the article, published as it was when America was poised on the brink of Civil War, would encourage the southern states to press the issue. Bentley used this instance,

in which a powerful advocate for free speech maintained that citizens should restrain themselves from speaking in ways that are likely to be detrimental to society, to illustrate the idea that we can have a duty when it comes to expression that goes beyond the minimal restrictions levied on us by the contours of our right. She argued against attempting to back this obligation with the force of law because she worried that that doing so would destroy the public discussion of racism without solving the problem, but maintained that it should nonetheless be a culturally and socially valued motive force in our lives (Bentley 2006, 31-44).

This approach to reconciling the harms and benefits of speech seems very attractive. Cultural mores can certainly have a profound influence on individual behavior but, because they are ultimately voluntary and open to individual interpretation, they lack the bureaucratic and coercive elements that make legislative speech restrictions a poor choice. Virtues such as civility, courtesy, and, especially important in a multicultural democracy, understanding of and respect for the backgrounds of others could, given sufficient cultural impetus, dramatically improve the public discourse and private life in a democratic society (Jaggar 2000, 40-4).The strength of these concepts is not particularly great in the United States, and it would almost certainly improve the quality of our democracy if that were to change.

A Commitment to Freedom, A Dedication to Decency

Professor Frederick Schauer observes that "Rights are constitutional in the familiar sense, but also…are constitutional in the sense that they constitute who and what we are" (Krotoszynski 2006, 185). It is for this reason that I have argued for the broad protection of freedom of speech in this essay. Regulating speech is nearly tantamount to regulating thought, and much of this country's greatness comes from its willingness to allow anyone to think, and by extension speak, as they wish. This is, in its own way, a powerful commitment to equality. It takes courage to grant such freedom, and even more courage to maintain it during those times when it has unpleasant and frightening results. As Richards writes, "Our principles are, I believe, best and most reasonably affirmed when we resist the temptation to respond to bigots

in kind and insist on embracing them in an inclusive moral community that recognizes in all persons what some of them might willfully deny to others, the equality of all persons as free and reasonable members of a political community of principle" (Richards 1999, 150).

And yet if we are to realize the full potential of our multicultural democracy there is more to do. Broadly protected free expression gives us the power to shock, hurt, and appall each other without fear of reprisal. If we wish to live in the greatest society we possibly can, we should voluntarily refrain from harming others through speech or any reason other than absolute necessity. The raw power of our right should be tempered by a commitment to civility and mutual respect more powerful than the one that we currently possess. Democracy has been called "a fighting creed," but it does not need to be a bar room brawl, and it should not be (Jaggar 2000, 29).

Let our laws demonstrate that we are not afraid of hateful, offensive, or disturbing declarations. Leave the work of demonstrating that they do not have any place in our society to our words and action. This two-part approach to free speech would serve our democracy well. It could, I believe, produce a society that is truly great.

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Freedom of Expression

Douglas R. McGaughey, Ph.D.

The question of freedom of expression goes to the heart of a liberal arts education and illuminates a profound manner in which the natural sciences and humanities complement one another. One can investigate the theme of freedom of expression from two perspectives. Freedom of expression can be taken to mean one way among others in which freedom is exercised. In such a case, expression is one particular kind of freedom among others. Grammatically, here the expression is an *objective genitive*, and it is speaking about the exercise of liberty or free will. In a second fashion, however, one can view "freedom of expression" as a statement about expression itself and its occasion for illuminating something universal about freedom. Here one is concerned with a *subjective genitive*; that is, speaking about a universal human capacity of creativity itself.

For example, we express simultaneously two profoundly different meanings when we speak, for example, of the "love of God." Taken as an *objective* claim, this genitive expresses love felt by someone over against God (e.g., the individual's appreciation of God). Taken as a *subjective* claim, this genitive expresses God's own love (of course, the difference between an objective and a subjective genitive is more dramatic if one uses "fear of God"). Applying this distinction to "freedom of expression," we are simultaneously speaking of the communication of something (*objectively*), which the speaker can choose to communicate or not to communicate (liberty or free will), and speaking of creativity (*subjectively*), which is the ability to initiate a sequence of events that nature cannot produce on its own (freedom). In the *objective* sense of free will (liberty), expression is one *particular* kind among other kinds of freedom; in the *subjective* sense, expression and freedom are profoundly equivalent and illuminate something *universal* found in all human beings. This essay will not entirely ignore the objective sense of the expression, but it claims that the objective meaning is dependent upon and presupposes the subjective meaning of freedom of expression. Freedom of expression takes us

to the core of the task of *becoming* human (creativity).

Freedom as Creativity

It is important to distinguish freedom from liberty. The latter is taken here to mean the capacity to choose between or among already existing options. For example, in the marketplace my liberty as a consumer is defined in terms of my having options among competitive products. Furthermore, in terms of social contracts, either with respect to my submission to the law of the state or to an agreement with another to perform a certain task for me in exchange for remuneration, I *restrict* my liberty for the sake of what my society and I take to be a higher goal: the guarantee of rights and the accomplishment of tasks that I cannot perform myself.

Contracts are undertaken to accomplish certain things. Whereas the liberty to engage in a contract of consumption, a social civic contract, or an economic contract may be the framework in which I exercise my freedom, liberty presupposes freedom and must be distinguished from freedom. To be sure, freedom of expression can be treated merely as an example of liberty, but then our question is restricted to the objective genitive and we overlook the significance of the subjective genitive expressed by our theme.

Freedom is taken in this essay to be the capacity to initiate a sequence of events that nature otherwise could not accomplish on its own. Freedom is a form of *eminent*, in contrast to *formal*, causality. A formal cause has the *tt* degree of reality as its effect in contrast to an eminent cause that has *greater* reality than its effect.[1] Formal causality can account for a seed of corn replacing itself through a natural sequence whereas we can wait forever for nature alone to bring the parts of a computer spread out on the floor together to constitute an actual computer in the absence of a human mind to initiate and coordinate the process. However, the mind is not limited to bringing about a computer. In this respect, then, the mind is a *greater* reality than the effect of the computer.

Because of this extraordinary eminent causal capacity of freedom, we do not have to be satisfied with *what is* but can imagine *what can be*.

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[1]. See Meditation II of René Descartes (1983), 27, n. 2.

Furthermore, this eminent causal capacity confronts us with the question of what *should be*. If we were incapable of changing the way things are (i.e., if we were not free), then we could not speak of our responsibility for our actions. This theme of responsibility must be examined further, but, before that can be done, it is necessary to discuss the conditions that make freedom possible in the first place.

Freedom presupposes a physical world in which we can and do act. However, it requires more than a world of physical objects.[2] It requires more precisely, *a world of appearances that are not the objects themselves*. We can experience freedom because we cannot experience the world from the perspective of the objects themselves. In short, freedom demands that we are limited in our understanding of the world.[3] Anything approaching the capacity to grasp things *as they are* would impose a form of necessity upon us that would deny our freedom (KrV B 564). Without the distinction between appearances and things in themselves, we would not be able to distinguish among what *is, might be*, *could be*, and/or *should be*. We would only experience a world *as it is*.

What might be taken to be a devastating circumstance, then, is in fact a profound advantage. It is necessary in order for us to be who we are in the order of things that we cannot experience the world in any other fashion except through appearances. Furthermore, this limitation to appearances is not restricted to our experience of the physical world. It applies to the self as an identical being through time. This *self-identical* self is never experienced directly but only indirectly through the way we appear to ourselves,[4] The

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[2] One can distinguish among *technical, pragmatic,* and *moral imperatives* (i.e., three kinds of necessity). The first two are shaped by one's physical circumstances, the third is self-legislated and self-imposed as a consequence of the extraordinary original causality of freedom. See Immanuel Kant (1998b), 43–46. The first two are exclusively *hypothetical* (i.e., demanded by a particular situation—e.g., *if* I want to accomplish a task "x," *then* …). A technical imperative is demanded by the *physical* conditions in order to accomplish a specific task (e.g., *if* I want to undertake a construction project, *then* it is *necessary* to have the appropriate tools, materials, and plans). A pragmatic imperative demanded for the pursuit of happiness in one's *personal* life is called cleverness, and is always merely subjective in its goals (stochastic) although happiness is universally pursued (e.g., *if* a particular profession is desired to make one happy, *then* it is *necessary* to acquire the appropriate education and experience for that profession). In contrast, a moral imperative is *categorical* because independent of one's situation — it is *not determined by interest* in particular things or persons (e.g., to be consistent with myself as an autonomous self-legislating moral agent [i.e., my freedom], it is *necessary* that I not lie). On the distinction between *hypothetical* and *categorical*, see Immanuel Kant (1998f, 201; 1974a, 22) and Ernst Cassirer's discussion (1977, 249).

[3] See Kant, *Kritik der reinen Vernunft* [KrV] B 567-569; (1998b, 86–88; 1974b, 267–69) as well as Hans Feger (1995, 74).

distinction between appearance and self-itself is the necessary condition for all psychological theories about a sub- or pre-consciousness[5], but, rather than a condition that makes us powerless over blind mechanical or imperceptible forces not in our control, it is paradoxically crucial for our experience of freedom.[6]

We are not only situated in the middle between a world of physical and mental appearances, but also, equally important for our discussion of freedom, we cannot experience ultimate causes like energy or freedom directly; we experience such causes only indirectly and they are always to a degree equivocal since the same cause can have multiple effects and the same effects can be the result of different causes.[7] Not only does Kant acknowledge that *we can neither prove nor disprove* our possession of this causal capacity of freedom,[8] but he also insists that all that is necessary is its *assumption*. Not any and all assumptions, however, are necessary. Only those are necessary that are demanded of us by our experience (KrV B 693 f.). Paradoxically, appearances, which seem to imply uncertainty, are the key to certain knowledge—however, this is certain knowledge of the conditions necessary for us to experience appearances as we do and not certain knowledge of what the appearances mediate to us in themselves. Knowledge does not depend upon access to substances (things in themselves) or causes directly, but, rather, it depends upon our capacity to identify the conditions that are necessary for us to experience appearances. This is the Copernican Turn that constitutes Kant's critical project: Just as Copernicus required the denial of the senses on

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[4] Paul Ricoeur distinguishes between what he labels "*idem*-identity" and "*ipse*-identity" as the key to understanding the self. *Idem*-identity is that notion of the self that is self-identical, universal, and articulated by the "I" in the sense of "permanence in time." *Ipse*-identity is not concerned with an "unchanging core of the personality," but rather with "the dialectic of *self* and the *other than self*." See (1992, 2–3, 85, 116, 118-119, 121, 124, 137, 149-150).

[5] The distinction between the self as *appearance* and *in reality* by no means originates with Sigmund Freud. It is as old as Plato's distinction among the three parts of the soul in the *Republic* 439d, 57ld-572a, and 580d-58lc, and is a central insight in Kant. See for example, *Kritik der reinen Vernunft*, B 37, 69, 152-159, 277, 293-294, 334, 383, 404, and A 356, 402; and it is a consistent theme throughout Kant's corpus. See (1998f, 205; 1983, 772; 1998b, 87; 1998a, 430, 438; 1998i, 205).

[6] Kant attributes our freedom to this incapacity to experience the self directly. See (1998a, 425n).

[7] This is the lesson Kant learned from Hume that awoke Kant from his "dogmatic slumbers." (Kant 1998f, 118). See David Hume (1963).

[8] See KrV B 586, and (1974a, 109, 152–53, 155, 159, 163–65). Nonetheless, among the three "ideas of reason" (God, Cosmology/Freedom, and the Soul) inaccessible to the senses, Kant speaks of freedom as the one "fact of reason" confirmed by our action in the world. See (1974a, 36–37, 122; 1974b 349).

the basis of the certainty of the mathematical descriptions of the relationships in the appearances that explained the appearances to be just the opposite of the obvious "physical evidence," so, too, there are structural elements to consciousness that are necessary for us to experience appearances that are more certain than the appearances themselves.

The point of the Copernican Turn with respect to freedom: it is not necessary to prove freedom as a cause. However, if we deny that we have this capacity, we turn ourselves into, at worst, marionettes and at best mere mechanical automatons.[9]

Incompatibilism, Compatibilism, and Deontology

Although there is not space here to examine adequately all the arguments that question the existence of freedom, our discussion of freedom of expression is aided by distinguishing among three options for thinking about freedom.[10]

The first option maintains that freedom is incompatible with physical causality. *Incompatibilism* acknowledges only physical causality, and the very notion that there could be a causality in addition to physical causality is an illusion that suggests a metaphysical dualism that would undermine the coherence of physical causal explanation. Although this sounds very contemporary and is frequently articulated in neurobiology today[11], Kant already defused the argument in the "Third Antinomy" in his *KrV* (B 472 f) as an example of "pre-critical" confusing of appearances for substances. Incompatibilism makes three errors: 1) It assumes that there is a proof for causality grounded in our access to cause (i.e., it denies that experience is limited to appearances), 2) it substitutes an ontological for a merely epistemological dualism, and 3) it overlooks the social and political consequences of the denial of freedom.[12]

Compatibilism, however, relativizes freedom by proposing that we

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[9] See (Kant 1974a, 117, 169). The opposite of mechanical necessity or material determinism is not indeterminism. Freedom in the sense of the ability to initiate a sequence of events that nature cannot produce on its own does not presuppose chaotic indeterminism but absolute self-determination.

[10] For a discussion of these three options, see Jochen Bojanowski (2006, 4–17).

[11] See for example, John R. Searle (2007).

cannot understand ourselves without some acknowledgement of this causal capacity, but it is *not only compatible with but also subordinate to* physical causality.

Deontology agrees with Compatibilism that there is no freedom without material causality, but r*ejects the relativizing of freedom* by Compatibilism. Freedom is the condition of possibility for both the categorical and the hypothetical.[13] In other words, freedom is a form of causality that is entirely independent of, though necessarily compatible with, physical causality, and it can even be applied contrary to our physical interests. Whereas Incompatibilism denies freedom and Campatibilism relativizes freedom, Deontology insists upon the absolute nature of freedom capable of acting contrary to any and all personal interests. The crucial question for Deontology is what criteria does one use to govern this categorical capacity?

Expression and the Symbolic

Before examining the issue of moral principles and the criteria for their self-legislation by the individual in an act of establishing *shoulds*, it is necessary to turn our attention to the other side of our coin. We are reminded by Ernst Cassirer that humanity not only has the mental capacity to *reproduce* but also the capacity to *represent* reality:

> Acquaintance means only presentation; knowledge includes and presupposes representation. The representation of an object is quite a different act from the mere handling of the object. The latter demands nothing but a definite series of actions, of bodily movements coördinated with each other or following each other. It is a matter of habit acquired by a constantly repeated unvarying performance of certain acts. But the representation of space and spatial relations means much more. To represent a thing it is not enough to

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[12] Not all Neurobiologists overlook these consequences. See, for example, Christian E. Elger (2004, 30-37). See, as well, Chapter 19 "Einspruch 2: Hirnforschung" in Otfried Höffe (2007, 246–61).

[13] With respect to freedom as the condition of possibility for the hypothetical we are not , of course, talking about human but, rather, divine freedom, which is a necessary presupposition for any and all experience. This is the basis for Kant's insistence that symbolic, though *not* literal, anthropomorphic language for God is a necessary presupposition both for our understanding of the world and for morality. See (1998f, 233; 1974b, 265, 340; and "Allgemeine Anmerkung zur Teleologie," 349-361. Already in the *Kritik der praktischen Vernunft* (Kant 1974a), God is one of the three necessary (391, 699), yet unprovable (669), "ideas of reason."

be able to manipulate it in the right way and for practical uses. We must have a *general conception* of the object, and regard it from different angles in order *to find its relations to other objects*. We must *locate it and determine its position in a general system* (Cassirer 1977, 46, emphasis added).

While other life forms interact with their environments out of a dyadic interactive structure of a receptor (outward stimuli) and an effector system (response), we find to varying degrees in humanity a connecting symbolic system between these two systems (Cassirer 1977a, 46). This symbolic system is not to be reduced to a mere linguistic sign system that points *outside itself* to the physical world. Rather, this system can even substitute for the physical world: "Physical reality seems to recede in proportion as man's symbolic activity advances. Instead of dealing with the things themselves man is in a sense constantly conversing with himself" (1997a, 25).

Humanity constructs epistemological and social symbolic systems to understand its world, and this capacity is the source of our extraordinary constructive as well as destructive power.[14] On the basis of our communal symbol systems, we develop litmus tests to determine who is *in* and who is *out* of a specific social system (e.g., an academic discipline, a social institution), and such artificial identities have been the basis for exploitation and genocide throughout history. To be sure, our symbolic systems provide us with a sense of coherence that serves as the deep background for identifying the anomalous. However, once an indispensable survival strategy for identifying what is different and potentially threatening, our symbolic systems have become shockingly destructive as they have made it possible to combine technological power with mass media to shape individual and corporate identities to perform horrendous atrocities. Deontology provides an invaluable corrective to such distorting use of symbolic systems.

It is precisely here where expression and freedom find their common core. Symbolic expression is as much what it means to be human as is our creativity, since symbolic expression is a product of creativity. Both symbolic

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[14] Already in 1774 (i.e., in the so-called "pre-critical" period prior to the publication of the *Kritik der reinen Vernunft* in 1781), Kant warns that freedom gives us the capacity to destroy everything (2004, 177) and he states that in the absence of a principle, freedom is our greatest threat (179).

systems and freedom are dependent upon our not having access to the world *as it is in itself.* Just as our freedom demands that we ask what *should be*, so, too, do our socially constructed symbolic systems.

The Social Dimension of Freedom

The human condition is most dramatically illuminated where our capacities for freedom and for expression in and through symbolic systems meet. Neither is possible, however, without our anchor in a physical world, and this is why Kant's "Doctrine of Method"[15] insists that, before turning to any other form of causal explanation of experience, we should exhaust our options for a physical causal explanation. However, when we do turn to non-physical causal explanations, they are never justification for undermining our acknowledgment of our dependence upon the physical order.[16]

Nonetheless, both our freedom and our dependence upon symbolic systems of understanding and expression confront us with our capacity not only to ask what *should be* but also to assume *our personal responsibility for* what should be. Given the social nature of symbolic systems, though, this level of personal responsibility is not immediately obvious.

As social animals, we are easily drawn to seeking *recognition* and *honor* from our social groups even when such recognition and honor is dependent upon our violating our own sense of what *should be*[17]. Here, the social aspect of our epistemological and social systems is as threatening to our

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[15] See "Des Kanons der reinen Vernunft" (KrV B 825-859) and "Der transzendentalen Methodenlehre" (KrV B 860-884). See as well, (Kant 1974b 251) and §78 "Von der Vereinigung des Prinzips des allgemeinen Mechanismus der Materie mit dem teleologischen in der Technik der Natur" (276-282) and "Anhang. Methodenlehre der teleologischen Urteilskraft" (283 f).

[16] This is precisely why Kant questions miracles. It is not that we can disprove or prove that a miracle can happen since we are concerned with causal explanation and we only have access to appearances. Rather, miracles undermine our search for a physical explanation for phenomena by encouraging the folding of our hands in the face of the miraculous (1983, 871), and, more importantly, miracles undermine our own assumption of responsibility for our freedom since a miracle presupposes an ultimate intentionality *behind and above* events that turns moral effort into a matter of mere self-interest, since finding favor with (or fearing punishment from) this ultimate intentionality becomes the motivator for moral action (see 1998g, 871n).However, Kant does not recoil from employing non-physical causal explanation in order to understand physical phenomena. He insists that we must use "top-down" causal explanation (teleology) and not merely "bottom-up" causal explanation (efficient causality) to understand organic phenomena (e.g., the liver fluke). (See 1974b 235,272–273). However, such "top-down" causality never justifies drawing conclusions about (divine) intentionality behind such phenomena. See "Allgemeine Anmerkung zur Teleologie" in (1974b, 349–61).

[17] Kant distinguishes among three predispositions in human character. *Animality* is the predisposition to live merely for the satisfaction of one's appetites; *humanity* is the predisposition to seek honor among one's peers;

personal responsibility as material reductionism and divine predestination. Nonetheless, the moral conflict that emerges in our quest for *recognition* and *honor* in our social groups illuminates the crucial moral component to the human condition. It becomes most clear that the individual alone is culpable and responsible precisely when the individual's choice of her/his moral principle places her/him in conflict with her/his socially constructed reality.

Our moral culpability and responsibility is the consequence of our capacity of freedom, which the individual alone can exercise, and only the individual knows whether or not s/he has acted on the basis of a moral principle. Neither can I establish for you nor you for me what you or I must do in a situation. The challenge of freedom is the risk connected with the individual's autonomous *self-legislation* of moral principles, which s/he alone knows have or have not been embraced. Were any agency other than the individual to have control over the exercise of freedom, we would have a condition of heteronomy (external determination), not autonomy (internal determination).[18]

For this reason, Kant identifies the capacity of freedom as the key to individual dignity, which is irreplaceable by, and un-substitutable for, anything else. Kant speaks of the *dignity* rather than the *worth* of the individual since the latter is dependent upon a system of exchange among things (1998b, 68). Unlike a system of honor that determines the individual in light of the notion of worth established by means of corporate interest, and unlike racism that determines individual worth by a physical criterion[19], Deontology defines the individual in terms of the radically personal and exclusive sovereignty of the extraordinary imperceptible and intangible cause that is freedom. Furthermore, human dignity involves a personal responsibility that accompanies freedom

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[cont'd from previous page] and *personality* is the predisposition to act on the basis of self-legislated moral principles. Animality and humanity are predispositions driven by hypothetical imperatives; personality is a predisposition driven by categorical imperatives (1998g, 672–75). To be sure, given the limits to reason, there is no perfect character of *personality*, but Kant maintains that even a character ostensibly defined purely in terms of *animality* (sensuousness) possesses the capacity of freedom to become a moral agent (690). Sensuousness alone is too little to account for evil in humanity because it would make evil a matter of animality alone, and reason alone is too much to account for evil in humanity because it would elevate evil to a diabolical principle equal to the other ideas of reason: God, freedom, and the soul (683–84). The capacity of freedom that enables the determination of one's moral disposition is good (693). Hence, evil presupposes the good (freedom). This is precisely why we experience the paradox that good can come from evil. However, rather than the degree of evil illuminating a larger amount of good, the good presupposed by evil is a challenge to individuals to exercise more rigorously and responsibly one's freedom.

and expression.

To be sure, there is a crucial social component to Deontology. However, the role of culture in morality is not to establish a heteronomous system of moral principles to which the individual must conform, as in the case of a system of honor, which can be horribly distorted. Rather, culture, Kant proposes, is the extent to which a social group encourages the individual to *make* decisions and *to take responsibility* for those decisions on the basis of *self-legislated* moral principles regardless of the individual's personal interest. In other words, culture does not consist of some objectively measurable standard of living or capacity of consumption. Rather, the level of culture is established by something far more intangible: the extent to which a community encourages the individual to be moral.[20]

The presupposition for the exercise of personal virtues is the presence of a system of civic law that is not to be confused with moral principles.[21] There can be no adequate social system without the restriction of liberty since no individual is capable of satisfying her/his needs in complete independence of others.[22] However, a system of juridical duties cannot guarantee justice any more than a list of moral principles can guarantee virtue. As laudable as the legal principle that one is innocent until proven guilty is, it can encourage deception. Both juridical duties and lists of moral principles require, in addition, ethical duties (Deontology) in order for there to be any hope of justice. No civic law or list of moral principles can make the individual act in terms of a higher end above the law and/or above even personal interest.

In short, one cannot legislate morality, and one cannot circumscribe

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[18] Though note: autonomy does not mean some kind of absolute knowledge by means of instrumental reason. Deontology is a moral understanding that acknowledges, unlike any other ethical system, that reason is profoundly limited. Kant uses the metaphor of an island in the middle of a stormy ocean to speak of reason. See KrV B 294-296.

[19] It is not from where one comes or with whom one is allied that establishes one's dignity, but whether one becomes who one is as a unique agent of freedom, and only the individual knows whether or not s/he has. See "From Hero Worship to Race Worship," Chapter XVI in Ernst Cassirer (1946, 280–310).

[20] See (Kant 2004, 204, n. 134; 1974a, 175; 1974b, 300, 330; 1998d, 516–17, 522–23; 1998a, 681–182, 684; 1998j, 706, 740); *Preisfrage*, 167

[21] For example, Kant's *Die Metaphysik der Sitten* is divided into two parts: "Part I: Metaphysical First Principles of the Doctrine of Right" (i.e., juridical duties) and "Part II: Metaphysical First Principles of the Doctrine of Virtue" (i.e., ethical duties). Ethical duties presuppose a system of juridical duties

[22] This is already recognized by Plato long before either Hobbes or Rousseau. See the *Republic* 359.

the subjective freedom of expression. Only the individual can do both—even when there is the encouragement of culture. Education and repeated personal effort are the only strategies available to the individual and to society.[23] The motivation to do so is no less than the desire to *become* human.

Liberty is restricted to establish a social order in which individuals can express their freedom. However, the relationship between liberty and freedom must be clear: liberty does not and can not guarantee freedom; rather, freedom is what makes the restriction of liberty necessary. This is the context in which Supreme Court Justice Oliver Wendell Holmes' famous dissenting opinion in favor of the free expression of ideas is perhaps best understood.[24] On the one hand, the constructive response to what is shocking and disturbing in free expression is not silencing the speech but a heightened call to culture (i.e., the moral improvement of individuals and, hence, humanity). On the other hand, when society is understood by the individual to be systematically distorted, society needs *personalities* (not just individuals driven by appetites and/or rage) to remind us not only of the nakedness of the emperor but of the injustices perpetrated in the name of *order* and *self-interest*. Conformity to a socially constructed system of norms can neither be imposed on individuals nor can consciences be shackled, but we cannot expect dominant socially constructed systems (particularly when systematically distorted) to welcome criticism enthusiastically. Freedom not only demands responsibility but, at times, martyrdom.

While it is possible to identify four cornerstones of Kant's moral system[25] as consisting of *two prohibitions*: 1) Do not lie and 2) Do not commit suicide[26] and of *two commands:* 1) Develop one's talents and 2) Aid the needy. Even when such a kernel of principles is laudable, their moral status is not because they come from Kant or from having some privileged status of objective

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[23] That we are born with a moral capacity that must be developed is at the heart of Aristotle's ethics. See especially Book II of *Nicomachean Ethics* (Oxford: Oxford University Press, 1998), 27–28, 35. See, as well (Kant 1974b, 132).

[24] See *Abrams v. U.S., 250 U.S. 616* (1919).

[25] See (Kant 1998b, 52–54, 61–63). See as well, (Höffe 2000, 206) and "Kant über Recht und Moral," in *Kants Ethik*, in ed. Karl Ameriks and Dieter Sturma, (2004), 258. Three of the four (absent self-development) are found in (Kant 1974a, 81). Development of one's talents is stressed in (1998d, 552, 580).

[26] Kant is not talking about end of life decisions as engaged by the "Right to Die" movement.

moral principles because of their divine revelation or cherished embrace by the community. Rather, their moral status comes from their conformity with Deontology's criteria for the self-legislation of moral principles.

Criteria for Moral Principles

It is an unfortunate commonplace today to speak of morality as culturally relative.[27] In addition to Otfried Höffe's correct observation that there *are* universal core moral principles, and insistence that morality is not a matter of mere social convention or natural impulse (2007, 30, 70), it must be underscored that neither the *origin* of one's principles nor the *consequences* of one's actions provide the criteria for the authority of morality. Both knowledge of origins (e.g., divine revelation) and of consequences (e.g., Utilitarianism/Consequentialism) require an omniscience[28] that we cannot possess as well; they are profoundly *hypothetical* since they are dependent upon dimensions independent of us and not *categorical*, which alone is anchored in the individual and within our capacity.

If we can count neither on the authority of the origin of our moral principles nor on our calculation of the consequences of our selection of a moral principle to govern our action, we must seek to establish criteria for the personal selection and self-legislation of our moral principles that acknowledge that moral principles can come to us from multiple sources (Kant 1974b, 132-33).

Just as only the individual can know whether or not s/he has acted on the basis of a moral principle, the authority of a moral principle cannot come from any source other than the individual. It is *not* because the moral principle belongs to some privileged list that we acquire either by divine revelation, social convention, or family expectation that gives the moral principle its authority any more than a system of civic law in and of itself gives justice. Justice is something *higher* than the civic law that holds the law accountable. Similarly, no empirical list of moral principles can guarantee virtue (Kant

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[27] See, for example, (1996a, 224–25; 1996b, 309–98; 2005, 88, 93–94).

[28] Kant identifies the role of omniscience with respect to the grounding of the authority of morality in revelation (1974b, 311, 355–56) and rejects the omniscience implied in Utilitarianism/Consequentialism (1998b, 47–48).

1998b, 35-41). We can misuse virtues just as we can misuse the civic law for unjust ends.

Kant proposes criteria for the autonomous self-legislation of a moral principle in the three modes of the Categorical Imperative (CI) (1998b, 51, 61, 63) and in the three Maxims of General Understanding (1974b, 145-147). The criteria for the selection of a moral principle must be in conformity with the conditions that make it possible for us to be moral agents. Hence, not only must the criteria be compatible with individual autonomy, but also any form of heteronomy (over the other or the self) must be rejected as a possible criterion for the selection of a moral principle.

Kant's three modes of the Categorical Imperative and three Maxims of General Understanding are compatible with autonomy and incompatible with heteronomy. The first mode of the CI eliminates moral anarchy: we should choose to act on the basis of a moral principle that we would want to be a universal law analogous to a law of nature. By insisting that the moral principle is, in fact, a law and not a subjective whim, one is reminded that laws are universal, not capriciously individual.

Further, the second mode of the CI eliminates imposition of or subservience to heteronomy: we should treat the other (and ourselves) as an end and not as a mere means. A human being acts according to unconditional ends (self-selected goals); other species act according to the means that fulfill an instinct (i.e., there are hypothetical, natural conditions that determine goals, rather than the autonomous, categorical, selection of goals). In order to fulfill a goal, one must know the appropriate steps to accomplish one's end. These steps are the "means" one requires in order to accomplish one's intended end. Hence, to treat the other and oneself as an *end* and not a mere *means* is to treat the other and oneself as an autonomous agent capable of acting according to ends and not as a mere instrumental means for accomplishing one's selfish ends. To be able to establish an end is to be able to initiate a novel sequence of events that nature can not accomplish on its own. To be treated as an end is to be treated as one capable of establishing such autonomous ends (i.e., as a creative, autonomous individual able to initiate a novel sequence of events). Hence, to treat the other (and oneself) as an end means to take into

consideration his or her (or my own) goals in a given situation and *not* to focus exclusively one's own (or the other's) goals for the other (or myself) in a fashion that turns the other (or myself) merely into a blind instrument.

Finally, the third mode of the CI is the presupposition of the first two: we should always treat the other as an autonomous self-legislator of moral principles. In other words, universal moral laws (the first mode of the CI) governed by ends (the second mode of the CI) both assume that we are autonomous (free) individuals capable of initiating a novel sequence of events according to moral laws that nature cannot accomplish on the basis of mere physical laws.

In addition to these three modes of the CI, Kant describes three maxims that govern general understanding: think for oneself, think from the position of all others, and be consistent. Although similar to the CI, the three Maxims of General Understanding are not categorical but hypothetical. First, in order to think for oneself, one must be in a given social condition that seeks sovereignty over one's autonomy. In other words, it presupposes a social condition. Second, to think from the position of all others does not mean one must be able to assume the social condition of the other. More importantly, this maxim of general understanding insists that we act as if there were a commonness to understanding (an objectivity, hence, necessity) to which we all are accountable and by which we are liberated from our subjective narrowness. Hence, this second maxim is also hypothetical and not categorical since it presupposes a certain condition (the social situation and perspective of all others). Third, to think consistently is also hypothetical because it assumes the concrete condition of the individual and demands that, whatever one understands and does in that concrete situation, one should be consistent with one's highest capacity, freedom.[29] In other words, to be consistent does not mean to be merely coherent. A coherent system can be systematically distorted (i.e., it can involve a horrible inconsistency that everyone in the society holds to be consistent) (Habermas 1970). The maxim of the understanding that calls for our being consistent demands that we not be blindly systematic but that we be consistent with our freedom in our understanding and actions.

If we apply the three modes of the Categorical Imperative and the three hypothetical maxims of the understanding in the process of self-legislating our moral principles, we will and must avoid moral anarchy. Above all, we will have important strategies to discern absolute (categorical) moral principles upon which to base our actions and not merely hypothetical norms derived from the pursuit of self-interest as shaped, for example, by cultural norms. Categorical imperatives are not, but can be, compatible with hypothetical imperatives. However, hypothetical imperatives are *best* when grounded in the unconditional and not merely hypothetical. Our capacity of autonomous freedom establishes the unconditional moment as the highest expression of the human. To be human is to autonomously self-legislate moral principles to guide our capacity to discern and to accomplish what *should* be and not merely reflect what is. An individual becomes human not at birth (birth gives us dignity, not our full humanity) but only with the exercise of her/his moral capacity (Kant 1998e, 87).

Freedom of Expression: The Core of a Liberal Arts Education

Contrary to Karl Popper's reading of Plato's *Republic* as a project in totalitarianism[30] that includes a theory of justice merely as a propaganda theme for the support of totalitarianism,[31] the thematic structure of the *Republic* is exactly the opposite. We encounter a project concerned with discerning the meaning of *justice* that is neither merely aiding one's friends and harming one's enemies nor merely a plaidoyer for the strong (those who are unjust) to dominate over and exploit with impunity the weak (those who are just). Not only are virtue and justice defended in the face of the *generally recognized ways of the world*, but also Plato ends his project with an extraordinary story with the central line spoken by Lachesis, the second of the three fates who is responsible for establishing the length of one's life: "'[...] now is the beginning of another cycle of mortal generation where birth is the beacon of death. No

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[29] (Kant, 2004, 180). Suicide, for example, is inconsistent with one's freedom since it is using this extraordinary causal capacity to destroy itself (174).

[30] See *The Spell of Plato*, vol. I of *The Open Society and Its Enemies* (Princeton: Princeton University Press, 1966), 87, 101, 104, 107, 169.

[31] See *The Open Society*, 92.

divinity shall cast lots for you, but you shall choose your own deity. Let him to whom falls the first lot first select a life to which he shall cleave of necessity. But *virtue has no master over her*, and each shall have more or less of her as he honors her or does her despite. The blame is his who chooses. God is blameless.'"[32] (*Republic* 617d-e) (emphasis added)

There could be no more emphatic embrace of freedom. Although the material and intellectual conditions are given, the individual chooses her/his own destiny since each individual is the self-legislator of virtue. We cannot blame God, the gods, or the fates, but only ourselves for our moral lives, for there is no master over virtue but the efforts of the individual. The *Republic* contextualizes this extraordinary challenge by offering a description of justice not in terms of distributive or retributive justice with which we are all too familiar but, rather, with a description of justice as the process of establishing internal rational sovereignty over one's appetites and rage.[33] The just individual is like a charioteer driving with two horses. The charioteer neither denies the appetites in ascetic rigor nor flees from rage as merely destructive but, rather, knows that there is no life without the appetites and that rage can be a motivator for positive achievement. Yet only the individual knows whether or not s/he has been successful in the pursuit of inner justice, only the individual knows whether or not s/he is sovereign over the team of horses, since the effort of sovereignty over the inner self is not accessible to the senses. Nonetheless, the *Republic* is Plato's proposal that were all to "look after her/his own affairs and not meddle in the affairs of others," in other words, were all to seek just sovereignty over her/himself, society itself would be just.[34]

Despite his rejection of "happiness" as the goal of the moral life (1974a, 24, 29, 32, 40, 77, 107-08, 131, 132-33, 149), Kant, too, insists that the pursuit of virtue has its own reward. However, in the case of our experience

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[32] See Ernst Cassirer's discussion of the ethical significance of this passage in *Zweiter Teil. Das mythische Denken*, vol. 12 of *Philosophie der symbolischen Formen* (Darmstadt: Wissenschaftliche Buchgesellschaft, 2002), 157, 202.

[33] "*Thumos*" is translated by Grube and Reeves as "spirited." I prefer Richard Broxton Onians' translation of "rage" (1994, 44, 49).

[34] Plato includes a discussion of the state in his investigation of the meaning of justice not because individual justice is dependent upon the justice of the state but precisely the other way around. We can learn something about individual justice (what is closest to us and hence hidden) by examining something larger (i.e., the state). See Book II of the *Republic* 376e.

of beauty in nature, a vista out over the Cascades is not beautiful because we are interested in it; rather, we are interested in it because it is beautiful. The same is true of virtue: it is not because we are interested in it that the moral principle is good; we are interested in the moral principle because it is good. On the one hand, the pursuit of virtue with its corollary of justice is not done out of interest in one's personal happiness. On the other hand, one can experience an extraordinary happiness unmatched by any experience in the appetites when one knows that one has acted on the basis of a self-legislated categorical principle independent of personal interest. Kant spoke of this happiness not as a goal of morality but as the by-product that comes from being *worthy* (1983, 776; 1998b, 84-85) of it by knowing that one has acted on a moral principle regardless of the consequences for one's personal interest (happiness). As Kant proposes in the *Kritik der praktischen Vernunft*: the goal of creation is neither happiness nor praise of God but the highest good that can make us worthy of happiness (1974a, 150-51).

Moses Mendelssohn took first place in an essay contest sponsored by the Berlin Academy of Sciences in 1763, in which Kant was ranked second. There are several themes in Mendelssohn's first place essay that take on central significance in Kant's subsequent work.[35] Among them is the proposal that humanity is not expected to be perfect but to do its best,[36] for Kant speaks of the open-ended process of moral improvement not merely in terms of the goal for the individual, but also in terms of the goal for the species (1998c, 35; 1998e, 92, 102; 1998a, 683-84; 1998h, 356v-57; 1998j, 702). Rather than our humanity being something established by birth,[37] Deontology challenges us to *become* human reflected in the constant effort to be moral beings. In other words, *becoming human* is what it means to exercise fully the freedom of expression.

Freedom of expression is not some tangential aspect to humanity.

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[35] Not the least is the distinction, but not the labels, between analytic and synthetic judgment and what came to be the core three "Ideas of Reason" (God, Cosmology/Freedom, and the Soul) in the *Kritik der reinen Vernunft* (Mendelssohn and Kant 1764, 41, 58–59).

[36] See *Preisschrift* 1763, 61.

[37] Again, dignity is a product of birth; yet, we must become human by practice and habit (i.e., by application of the capacities given at birth) (Kant 1974b, 132). The moral law is discovered through our actions and encouraged by the cultivation of the habit of pursuit of the good. (Bojanowski 2006, 64).

Rather, freedom of expression is precisely what humanity is all about. We are a species capable of and dependent upon symbolic systems for understanding and creating our worlds. However, this is not a capacity that is a vague indeterminism over against material determinism. Our own creativity confronts us with the question of what *should* be done since we do not and cannot be satisfied with *what is*? This creativity is adequately exercised only when the individual in the silence of her/his inward life learns to self-legislate moral principles independent of (but never separate from[38]) personal interest. In other words, this creativity is a challenge to pursue the good.

Pursuit of the good can only occur in the physical world, and humanity's extraordinary capacities of freedom and symbolic mediation are dependent upon the appearances of the physical world even as they are not reducible to that physical world. The theme of freedom of expression, then, is the crucial bridge uniting the natural sciences and the humanities in a liberal arts education and not only because the physical world of appearances is the condition of possibility for any and all creativity. It is not enough to ask *what is?*; humanity is fully human when it asks *what could* and *what should be?* We can *become* human only by pursuing justice, which is at the core of our freedom of expression.

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[38] In "Metaphysik Mrongovius" (1983, 1015–16), Kant insists that interest (stimuli) always have a role to play even in morality for in the absence of interest we would always act according to the law (1016). On the ubiquitous role of interest in Kant's understanding of morality, see Höffe (2006).

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Listening As Letting Go of Comfort and Embracing Difference: Responsibilities of the Listener in Freedom of Expression

Cassandra Farrin

Introduction and Process

When I came to Willamette University as a student in 2001, I had no interest in Asian culture. Then in the spring of 2002 I met Nao Kawakami,[1] a tough and funny girl with big dreams for her future, who happened to be a student at Tokyo International University of America (TIUA) and also happened to be deaf. Our friendship blossomed by chance one night when Nao wandered by my open door. My friendship with her later inspired me to get involved with the TIUA community. I have never looked back with regret on the path our friendship led me to take, because becoming familiar with a context outside the one in which I grew up has humbled and challenged me to think about how I approach difference. If Nao's unique situation had not required me to get to know her as an individual in order to get to know her at all, I would have missed out on her friendship. I would also have missed getting to know the many students who followed her, because I learned from her that every person, even if described by the same title as others—whether it be "TIUA student," "Willamette student" or anything else—has his or her own story to tell. Several years and hundreds of TIUA students later, I have found that there can be no rushing through each person's story to get it 'out of the way,' no assumption that we have already 'heard it all before,' and no dismissal of its unique value, even if it is downplayed by the person himself or herself. The immense impact this knowledge has had on my understanding of the world is what leads me to write this reflection on freedom of expression: We must all consider how we can best relate to, support, challenge, and engage

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[1] Any students who are named or whose personal information is shared in this essay have given permission to the author to do so. Interviews with TIUA students for this publication occurred from May 2007-July 2007. Most interviews were conducted in writing and students sent me their responses via email, except for Yuki Sugisawa and Shosuke Inoue, with whom I talked in person during the same time period.

every member of our community as listeners and respondents to difference—a role that we occupy more often than we realize.

I will begin this reflection on how diversity and freedom of expression are connected, and from there, move on to why we should pay attention to the ways we listen in light of the above discussion. After that, I will put forward suggestions about a set of expectations that we as a community could set for ourselves about how we listen, by considering what we do when we face situations in which we are uncomfortable with the idea of or actual conversations with people who are different from us. This set of expectations are just as they sound: expectations, not rules or regulations, that we as a community might hold up as a standard for treating others with dignity and respect. As our Associate Chaplain Karen Wood has been known to say, "We don't learn by doing; we learn by *thinking* about what we have done." I finish by reflecting on my experiences with TIUA students on campus and sharing some of their comments and stories relevant to this subject, sincerely hoping that readers will do the same in their own areas of interaction in whatever place they designate as their community.

Within this discussion, I wish to share the bravery and creativity demonstrated by TIUA students, as individuals and as a group, in integrating into our community, in part thanks to a great deal of support from their peers, staff, and faculty, as an example of the incredible contribution that providing structure and support for exploring difference can bring to our community. The nature of an exchange program is such that the exchange student must, in order to be successful, invest all his or her courage in the act of leaping into a new and relatively unknown culture. As Jeani Bragg, Associate Director of Co-Curricular and Intercultural Education at TIUA[2], said to me recently, "We are not meeting the TIUA students halfway." Metaphorically speaking as well as physically, TIUA students travel much further than we must in order to befriend us, gain our respect, and communicate who they are and

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[2] I am indebted to Jeani Bragg and Naomi Collette for our numerous conversations about communication, problem solving, and relationship building across cultural differences, the fruits of which appear throughout this essay in ways big and small. Had it not been for their patience with me first as a student, then as a staff-member, I might still be talking *past* TIUA students instead of engaging in conversations with them.

what they contribute to our community. It is possible that some readers know very little about the TIUA program while others may be long-time friends and acquaintances. In either case, maintaining awareness can help all of us to be more empathetic to each student's efforts without undermining his or her intellect and preparedness as a student, and that openness in turn can help us create an atmosphere in which TIUA students—along with so many other courageous students with equal need for recognition and support on our campus—are able to express themselves more freely.

Beginning to Consider Our Responsibilities in Our Diverse Community

The difficulties of integration faced by TIUA students and other minority groups on campus are experiences that we may all come across at different times in our lives, but that some of us will come across more often than others based on our background and situation. How can we respond to minority members of our community and offer them the support they need as opposed to our own idea of what support they need? We cannot say fairly about the minority student, "She decided to put herself into this situation by enrolling in this institution, so her struggles with adjusting to those differences are her own issue." As an educator, I cannot accept such a response, which is based on an assumption that members of the community who express dissatisfaction with "the way things are" brought the problem upon themselves and will work on solving it themselves, so that eventually members of the privileged group—who are already comfortable and don't believe they are also hurt by a system that silences and discomfits other community members—can accept the change passively as it comes, as long as it doesn't interfere with their daily lives. Even if members of the privileged group take notice of the problem and want to demonstrate solidarity or a desire to help, they might only go as far as to say, "Tell us what you need us to do and we'll get to work on it," implying that those who complain have first, the *responsibility* and *ability* to tell everyone how to make things better, and second, the *sense of security* to do so without fearing repercussions or simply being ignored. Paolo Freire explains:

> The oppressors do not perceive their monopoly on *having more* as a privilege which dehumanizes others and themselves. They cannot see that, in the egoistic pursuit of *having* as a possessing class, they suffocate their own possessions and no longer *are*; they merely have. For them, *having more* is an unalienable right, a right they acquired through their own 'effort,' with their 'courage to take risks.' If others do not have more, it is because they are incompetent and lazy, and worst of all is their unjustifiable ingratitude towards the 'generous gestures' of the dominant class. Precisely because they are 'ungrateful' and 'envious,' the oppressed are regarded as potential enemies who must be watched (Freire 1970, 59).

The language of Freire may come across as threatening to those of us who 'have more' on this campus; the language of the 'oppressor' and 'oppressed' may seem like something from a third-world country or a country at war, not a standard that a modern university setting might harbor. Does this exist on the Willamette University campus? The strongest evidence of this inequality on our campus is that, even though a group of nearly one hundred Asian students—the students of TIUA—on our campus has an entire staff of no fewer than 30 people working 40 hours per week to create a smooth integration process for them to the best of our ability, with sometimes successful and sometimes not so successful results, Willamette University has only a single staff person helping all the multicultural students on our campus. Students have expressed the need for more support from staff and have not gotten it except from staff members who choose to support them from their own personal experience or a desire to help, not through the University itself. Oppression exists anywhere where some people have more resources and opportunities as well as a higher level of comfort with their surroundings, than others.

As educators we have a responsibility not only to be aware of the dynamics of our campus and the message those dynamics send to our students, but also to teach our students how to work through their encounters with difference. To do so, though, we have to be able to do the same thing successfully: "Aware that there are dimensions of difference with which we are not yet knowledgeable or comfortable, we [must commit] ourselves—as individuals

and colleagues—to continue to confront our uncertainties" (Kingston-Mann and Sieber 2001, 4). If we don't know where we are on the spectrum of responses to difference, we will not be able to help our students. In an article rethinking the role of White Americans in multicultural education, Gary Howard explains, "Racism is not a Black problem or an Indian problem or an Asian problem or a Hispanic problem—or even a White problem. The issue of racism and cultural diversity in the United States is a human problem, a struggle we are all in together. It cannot be solved by any one group. We have become embedded in the problem together, and we will have to deal with it together" (Howard 1996, 330). Knowing this, we need to continually practice our own responses to difference and think about how we as teachers shape the cultural understanding of our students.

Dr. Milton Bennett created the Developmental Model of Intercultural Sensitivity "as a framework to explain the reactions of people to cultural difference" (Bennett and Hammer 1998). Bennett's goal was to create a model that could be used by trainers and educators to "diagnose stages of development for individuals or groups, to develop curriculum relevant to particular stages, and to sequence activities in ways that facilitate development toward more sensitive stages" (Bennett 1993, 24). There are six stages broken into two areas: Ethnocentric and Ethnorelative Stages. The first set of stages is called Ethnocentric because a person in these stages in some way experiences his or her culture as "central to reality:" Denial, Defense, and Minimization. The second set of stages is called Ethnorelative because the person in these stages experiences his or her culture "in the context of other cultures:" Acceptance, Adaptation, and Integration. We can move through all these stages, get stuck in one stage, or even revert back to a stage through which we earlier passed, because people's responses to difference are constantly changing based on their life experiences. Ultimately, the goal of an intercultural educator is to help students work through these varying stages both conceptually and practically, maintaining awareness of their own biases and cultural beliefs and values, so that they can become more sensitive toward the impact of differences on communication and learn how to successfully set and reach their goals in a conversation across those differences.

Experience of Difference

Denial	Defense	Minimization	Acceptance	Adaptation	Integration

ETHNOCENTRIC STAGES	ETHNORELATIVE STAGES
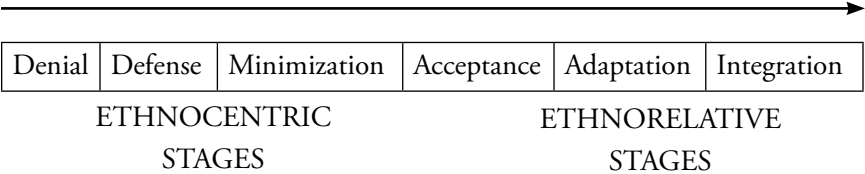
Milton Bennett

I bring up the Experience of Difference in a conversation that is ultimately about freedom of expression in a multicultural and democratic society because we simply cannot define the appropriateness of different words and actions in our community based only on how comfortable or uncomfortable they make us feel. Discomfort is inherent in the experience of difference, no matter how much we dislike the feeling. Educators cannot afford to fall back on emotional responses to an issue at moments when our students—and sometimes fellow faculty and staff—are asking us to see how our actions and words undermine their right to be different from us and each other. If we are not well-versed in the dynamics of multicultural settings, we can neither model for, nor teach, our students to navigate the complexities found there.

Locating members of an audience who make an effort both to 'get it' and take action in response to what a person proposes in light of our diverse society can prove difficult without doing something to startle or otherwise catch the attention of community members. In these cases, the work of locating an audience essentially falls on the person who wishes to speak. This is the responsibility of the speaker but, at the same time, his dilemma. He has to grapple with his concern that the only way to make positive change is to focus on how he can effectively *reach* dominant groups in his community and make them understand his ideas. Too often, this reinforces the demand that he conform to the expectations of dominant groups by using *their* vocabulary and means of communication instead of his own.
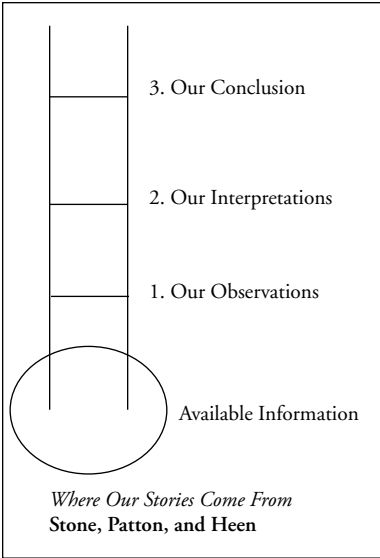
Why Talk about Listening in a Conversation about Freedom of Expression?

In response to recent events on the Willamette University campus, much discussion has gone into how we should define "freedom of expression." The questions that arise often focus on such issues themselves: How far should this freedom extend? What forms of expression are appropriate in our community? In light of the diversity of our community (both within the university and our greater cultural context), where can we draw a boundary of what is acceptable, if any such boundary is to be drawn at all? These are legitimate questions that need to be explored, but I hope that we can exercise caution toward the implication carried in the term "freedom of expression" as some form of *outward* production, such as speech or action. It is tempting to think that any responsibilities associated with exercising that freedom lie solely with the person speaking or acting and, therefore, that discussion of expectations regarding freedom of expression should focus on those who exercise their right to it.

Directing our expectations onto the speaker alone risks isolating our questions about freedom of expression into a separate sphere from where they actually occur: in the dynamic of dialogue and interaction between human beings in real, lived contexts with real, lived complexities, in which people respond to the words and actions of others and, in doing so, contribute to the exchange in both negative and positive ways. Even forms of media such as cartoons, articles, or television programs influence and incite discussion of difference in communities, so our expectations must be directed away from those of us who do the talking and shift to those of us who do (or do not) listen and respond in return. At some point we have to turn to our audience, in its scattered and disorganized form, and teach the audience to take some responsibility, not in any one particular instance, but in general, by expecting more of our audience, that is, thinking more about how *we* listen and respond to others in our community.

The difficult thing about listening is that we cannot control whether someone listens to us. The listener, therefore, has influence over the ways in which people choose to express themselves: their language, their communication style, and the contexts in which they speak. There is

a physical side to listening, but also a cognitive side. Our own ideas and expectations can deafen us to hearing anything besides what we want to hear, and we can reject something that doesn't make sense to us or makes us upset, confused, or otherwise uncomfortable. Just as in the Experience of Difference we can move through ethnocentric and ethnorelative stages, we only see what we are open to seeing, based on the story we tell ourselves about ourselves and our world. "Our stories are built in often unconscious but systematic ways. First, we take in information. We experience the world—sights, sounds, and feelings. Second, we interpret what we see, hear, and feel; we give it all meaning. Then we draw conclusions about what is happening. At each step, there is an opportunity for different people's stories to diverge" (Stone, Patton, and Heen 2000, 30). This has a direct impact on the ways we choose to listen to others, often in ways of which we are not even aware, and, in turn, on the ways we choose to respond to people when they try to express something about their experiences in our community that differ from our own. If we believe ourselves to be basically nice people who do not discriminate and who live in a basically fair society, we are not likely to notice the moments when we are responsible for discriminatory acts, expressions of bias, or exertions of privileges that come from certain demographic characteristics that we happen to possess. We may never have learned about the differences in the experience of other people, so we may be unable to comprehend those differences when someone attempts to show them to us. As a result, while there may be times when labeling a form of expression "inappropriate" is a necessary act for the safety and integrity of our community, there may also be times when we do so as an expression of power and privilege over others, consciously or unconsciously. Sometimes we may even *believe* we are upholding the safety

3. Our Conclusion

2. Our Interpretations

1. Our Observations

Available Information

Where Our Stories Come From
Stone, Patton, and Heen

and integrity of our community when really all we're doing is upholding the integrity of an oppressive element of our community that ought to be changed or removed.

This is a humbling truth: diversity is complex, constantly changing, and difficult to navigate, so asking members of a community to become more aware of that fact is equal to asking them to notice their own oppressive behaviors, even though doing so challenges the *status quo* and threatens community members with "losing" privileges that they believe rightfully belong to them. Inevitably, this will force members of dominant groups in our community to be extremely uncomfortable from time to time, more often than we'd like, and to work through that discomfort to find a better situation for the whole community. "It is necessary and even urgent that the school become a space to gather and engender certain democratic dispositions, such as the disposition to listen to others—not as a favor but as a duty—and to respect them" (Freire 2005, 116-7). Educators face a huge challenge in creating and supporting such an environment, where one's own emotions and desire for control in a situation can take over one's awareness of the Other.

In an article describing her experiences teaching privileged students to understand society from the 'minority position,' Christine E. Sleeter states, "Multicultural teaching is not simply a list of teaching strategies. Rather, it is an orientation to listening to oppressed people, including scholars, with the aim of learning to hear and understand what is being said, building dialog, and learning to share decision-making power with oppressed communities" (Sleeter 1995, 432-3). Communities, particularly those that value the education of the whole person, have an opportunity to become both more conscious and conscientious of diversity by considering what we can *expect* from our community when we try to make a statement about something. That is what I seek to do here, with the understanding that brainstorming a set of expectations is neither the same as bringing them into the lived experience of our community, nor is it the only inspiration needed to encourage everyone to take a look at the social atmosphere of the university and recognize what oppressive aspects are to be found in it.

These four phrases are generated out of my own experiences, mostly with TIUA students, and from personal reflection and research on how listening is connected to education, diversity, and oppression. I did not set out to learn, and in some cases resisted, when I stumbled across these ideas in my practical work, but have found over time that following them has helped me to get to know and respect each student individually where I would have been otherwise tempted to act based on stereotypes. This list is not exhaustive, nor does it fully satisfy problematic aspects of the relationship between speaker and listener in a diverse community. What it does seek to do, though, is to begin a conversation about what we can expect from each other and thereby help us all to become more aware of how we tend to interpret our interactions with one another. Not designed to be enforced, the above expectations are ideas that can be called upon and used as a means to encourage approaches that seek understanding and ways to improve a situation, or to object to approaches that send a dehumanizing or oppressive message. They are meant to provide a first step in a conversation about the ways we listen to one another so that we can improve our discourse in the future. At the same time, any statement, verbal or nonverbal, can be used as a form of oppression based on the context in which it is used, so to some extent this list of expectations will never be absolute, and it was never my intention to make them so.

In *How to Speak, How to Listen*, Mortimer J. Adler entitles his chapter on listening, "The Mind's Ear," arguing that "listening, like reading, is an activity primarily of the mind, not of the ear or eye" (Adler 1983, 85). In light of Bennett's description of the Experience of Difference, we can see that our *perspective toward* and *understanding of* the Other will have a direct impact on our ability to listen to him or her. It is damaging and disrespectful to the speaker if we, the listeners, come into the conversation with the assumption that what she has to say is only about herself and her own actions or about some other world that is totally alien and disconnected from ours and is in someway irrelevant to us. Instead, we must "have at least the intellectual courtesy of initially assuming that what is being said is of sufficient interest and importance to be worthy of attention," and, beyond that, "the listener must come to terms with the speaker…[by] discovering what the idea is

regardless of how it is expressed in words" (91). We must seek the meaning and significance in the speaker's words and consider how she meant her words to be taken even if our natural inclination may be to take her words differently. A person's value system, background, culture, personal history, sexual orientation, and manner of speaking may be completely different from our own, but if we find ourselves in a conversation, we will still need to negotiate our way through our differences in order to understand each other, beginning with the assumption that the other person has something to say that is worthy of our attention.

We need to seek what we don't know or understand yet, to the very best of our ability. In daily life, we tend to assume that everyone shares the same basic experience of the community—even though it would be *nice* to change some things, change is not viewed as necessary, or even encouraged, if one's perspective is that things are "basically comfortable" as they are now. In reality, some people may *not* be comfortable and may even feel that they are not welcome based on certain aspects of their identity, and we need to recognize that. This reality is what we, as members of a diverse community, need to keep in mind as the *context* for freedom of expression. What people say and do does not happen independently of that context, so we need to consider how it arose from that context and is connected to it.

Listening can be used as a means of figuring out context. By listening, we learn how to relate to others. Listening brings us one step closer to being able to acknowledge that a person's identity is just as wrapped up in the complex influences of family, ethnicity, work, and interests as our own are. To some extent, it is not possible to move beyond superficial relationships without encountering and educating oneself about a person's cultural and social background. We can work toward equality by being an active participant in the other person's reality, even when we are not comfortable with areas of difference between us. Even in that uncomfortable space, between us there can be a shared understanding that I will get to know and respect that person and she will get to know and respect me. I will try to learn her cultural references, and she will try to learn mine, so that we can connect those references and understand one another's perspectives. This approach enables us to see the

larger picture of our community, that is, its context, and to begin shaping that context together.

A Case Study: How Listening Has an Impact on Intercultural Exchange

Through many interactions, I have found that learning more about the context of my TIUA students and friends leads me to relate to them better because I'm able to translate it into my own context and relate to their cultural references. Our ability to mutually understand our differing cultural references enables our understanding of one another to be deepened and takes our conversations to a more complex level, even when we are working through a language barrier.

Below, I seek to elaborate and demonstrate the impact of cultural differences on the ways in which we listen and understand one another through stories of TIUA students' experiences on the Willamette campus, hoping that spending some time with TIUA students through this essay will lead more people to take a few more steps toward engaging *not only* TIUA students *but also* other members of campus about whom they may have hesitated in the past because of fear of or discomfort with difference.

Despite the complications that arise from our partnership, the partnership between TIUA and Willamette brings with it many unique learning experiences for our combined community.[3] Our universities don't even work on the same yearly schedule, yet we share many of the same goals, resources, and expectations of our students. Our courses, housing, activities, and student services overlap, and the areas where we can learn and grow from our exchange overlap in all these areas and more. These are areas in which we as partner universities have opportunities to work together in learning about how diversity impacts the ways we can make our programs more meaningful and our students more successful at reaching their goals.

Diversity Among TIUA Students

One of the most helpful things we can do for a minority group in our community is to learn more about who they are and never assume that similarity in one category means similarity in every other. Atsuko Kezuka,

a 2007 TIUA student, says it best: "I don't have same character with other [TIUA students]. Even [if] they are my best friends. Because if we have same character, it's very boring!" As we get to know the culture(s) of the TIUA students, we will also find ourselves acknowledging the individuality of each TIUA student within the context of that culture and changing the way we listen in order to give TIUA students and other minority group members the respect they need to express themselves with confidence.

TIUA students are as diverse as Willamette students. Most students are Japanese, but there are also sometimes students of second or third generation Chinese or Korean ancestry, who were born and raised in Japan but still have a strong connection with their ethnic background. There are also sometimes students of mixed backgrounds, such as of Portuguese-Japanese ancestry. Sometimes, students from other Asian countries go to Tokyo International University in Japan (TIU) as exchange students, then become exchange students in America through TIU, in effect studying American culture while simultaneously learning about Japanese culture through their classmates. Regional differences within Japan are also evident in each TIUA class: despite Japan's relatively small size, students come with diverse dialects and traditions depending on the part of Japan from which they come. A student from Hokkaido will have a different background from students in the Tokyo area, as would a student from Okinawa. Economically speaking, some students work to save money for their study abroad experience, others go into debt or rely heavily on scholarships to come to America, and others rely entirely on their parents for support. Differences in age are more distinct for TIUA students than they would be for American students because of the Japanese cultural expectation that an older individual has different formal responsibilities from a younger one (the *sempai/kohai* relationship). Sexual orientation is not a comfortable topic to discuss in public in Japan—students are often amazed by the relative openness of conversation on this topic in America—so it is rare

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[3] "In 1965, Japanese educator Taizo Kaneko wrote to 50 colleges and universities throughout the United States, offering to send the eager young minds of his culture to live and learn with American students. Of the 35 responses he received, only one reply - from Willamette University's President G. Herbert Smith - constituted an unconditional and immediate acceptance of his offer. Out of the shared vision of these two men, a mutually enriching relationship was born...TIUA stands as a solid example of Dr. Kaneko's commitment to students who are unafraid to think, to question, or to see the world around them." (http://www.tiua.edu/about/history.shtml)

and still socially threatening for TIUA students to "come out" or otherwise discuss their sexuality publicly. As a result, this area of diversity is not easy to identify or discuss, though it is statistically likely that some TIUA students privately identify with an orientation other than heterosexual. In any case, while the most immediate impression of TIUA students' sleepy but excited faces upon arrival may give an impression of sameness, diversity is as much a part of the TIUA context as of any other.

The social groups navigated by TIUA students at any given moment are twofold: those of American culture as well as those differing by age, class, race, and ethnicity *within* the TIUA group itself. Any member of this dual community may find that he is in the dominant group in some contexts and the minority group in other contexts. Thus, a TIUA student of Japanese ancestry and from a middle-class family in Japan will find himself in the majority while among TIUA students, though he becomes a minority when with American students. A Chinese student who is doing a double exchange as a student of a Japanese university in an American exchange program, in contrast, is a minority in both contexts. Neither context may be entirely comfortable, particularly because Japanese society has a different approach to diversity than American society, meaning that a minority student in both groups has to follow different expectations in each case. It is not an option for a minority student among TIUA students to simply step away from Japanese culture while in the program. Most of this student's classes will be with Japanese students, especially for his first five months in the program, and most of his gains in American cultural awareness will pass through the lens of Japanese culture, too, depending on how often TIUA courses reference Japanese culture as a basis for comparison and how far the student has assimilated into Japanese culture, particularly if he or she grew up in Japan.

Japanese culture manages diversity very differently from American culture. Japanese culture requires that difference be minimized or ignored as a way to highlight group solidarity and harmony. As the saying goes, "The nail that sticks up will be hammered down." No one member of the group should be singled out, by Japanese standards, because singling someone out creates separation between that person and the group. Americans may have a negative

reaction toward this concept and worry about loss of individual identity, but in Japanese culture this is viewed in a positive way, as a form of strengthening group bonds. These different expectations can lead to complex situations for a student who is a minority in both groups. For example, a Korean-Japanese student who is eating dinner with a mixed group of Japanese and American friends will find that her ethnicity is referenced frequently by the Americans, who may expect her to use her ethnicity as a frame of reference for other things, while it is downplayed by the Japanese students in order to make the student feel like an equal member of the group. How should this student proceed? She needs to tread a fine line between responding to the American students—whose opinion of her will be influenced by how eloquently and honestly she can speak from her experience—and responding to the Japanese students—whose opinion of her will be influenced by how well she reinforces her membership with the group. Even as the student is seeking to integrate into American culture, her reputation and relative comfort among her Japanese classmates would be affected by ignoring their cultural expectations. In some cases, the cultural expectations she faces are mutually exclusive and she will have to determine which aspects of her relationship with her community are important for her to maintain, and which she feels safe leaving behind.

This complexity of the relationships among TIUA students and differences in their experiences of their time at Willamette University are important to notice, because TIUA students, like many Willamette students of minority status, are frequently seen as a single group with homogeneous characteristics, when in fact they are, as individuals, completely different from each other, just as any student described by a blanket term such as "Hispanic," "lesbian," or "non-traditional" is completely different from other people who are identified in the same way, even as they may share similar issues. Keeping this in mind as we consider how we listen to members of our community will help us respond to each person more sensitively.

A Japanese Cultural Understanding of Listening

I have observed that in the first few moments of most interactions with TIUA students we inevitably come to a standstill in which we face a choice

between ending the conversation or encouraging it to continue in some way, though we're not sure how. The student has a look on her face that says she wants the conversation to go on but doesn't know how to proceed herself, and I can either smilingly go on to something else or settle down for a longer talk. When I first worked with TIUA students, I responded to these moments by hopping from topic to topic restlessly, wondering if the student would ever engage me as I moved from asking about the student's major, to hometown, to hobbies, to dreams, and getting responses of only a few words to most of these. "So...what *do* you care about?" I found myself wanting to ask, in moments of frustration. I didn't realize that we were operating under different expectations of how the conversation could and should occur.

The differences between Japanese and American conversations are based in differences in our understanding of relationships. American culture is individualized and task-oriented, so relationship building often comes as a *result* of working with others to accomplish a task. Thus, an American may begin a conversation with sharing information about herself, giving it to the other person like a gift and then expecting to get information from the other person in return to show that a certain level of trust has been established. This trust will stretch as deeply as required for whatever the task at hand is— whether a simple dinner conversation or a group project—and could evolve into a deep friendship over time.

Japanese culture is group-oriented, so a task doesn't get accomplished until relationships within a group are already somewhat established. Because of this approach, a Japanese person may begin a conversation with a formal introduction and spend time finding out as indirectly as possible what the exact relationship is between himself and his companion(s), to be sure that whatever he says or does does not create conflict or discomfort. The relationship is initially more important than the task at hand, so the Japanese person would rather leave a task undone if it involves conflict or disagreement that could injure the relationship, especially if the relationship is new.

I have noted again and again how delicate the communication process can be. When an American expects to work from within her own feelings toward those of the other person, she frequently mistrusts the Japanese

tendency to start by figuring out the other person's thoughts while downplaying one's own. When a Japanese person interacts with an American, he often becomes frustrated with the seeming selfishness of the American's insistence on distinguishing herself from other people and failure to remember people who don't do the same in return. "She [a TIUA alumna] told me before I came here that I would have to be independent from other TIUA students if I want anyone to recognize me," Shosuke Inoue, a 2007 TIUA student, said. These differences can lead to misunderstandings, so it is beneficial for our community to be aware of them.

In Japanese culture, the listener works like a detective, interpreting the speaker's meaning based on highly contextual language; that is, most of a person's meaning is not in *what* he says but in *how* he says it. The ideal communicator in Japan would be a person who, after hearing only a few words from another person, is able to accomplish a great deal. If, for example, she notices her friend rubbing his arms a little while sitting in her living room, she may *herself* comment, "Oh, it's getting a little cold in here," and close the window. Her friend should not need to ask for this favor directly. As much as possible in a conversation, requests, conflicts, and questions remain under the surface, while clues to their existence float through the conversation through non-verbal cues, indirect references, and comments made through mutual friends. The listener sorts through these various clues without asking direct questions, because asking direct questions such as, "Do you want me to close the window?" as in the above example, could embarrass the speaker by implying that the speaker didn't say or do enough to make himself understood.

Silence is valued in Japanese culture in a way that is different from American culture. As the Japanese sayings go, "Silence is golden," and "Silence surpasses speech." Silence in a conversation becomes a *productive* moment to consider what might be going on under the surface of the conversation, giving each person a chance to renegotiate the situation if he or she senses consensus has not yet been reached about an issue. In contrast, American culture prioritizes the speaker's responsibility to convey meaning as clearly and concisely as possible, and welcomes active questioning by the listener as a way to challenge the speaker to clarify still further. While in the West we do

care about silence and value it, it is often spoken of in the context of speech, such as using a pause to accentuate what was said. In any other moment, the silence would be awkward, sending a message that the conversation is boring or uncomfortable, or that the conversation is coming to an end. Americans often value lively conversations in which there is a quick back-and-forth of speaking, and thinking *as* we speak instead of *before* we speak and interrupting someone to disagree or make a point are all acceptable actions.

The indirectness described in the example above is not the same as being shy, though TIUA students will often say, "I am shy," in order to express that they are not as direct or "blunt" as American students. One common example of indirectness is the following: A students comes to me and says, "Cassandra, you look so busy. You must have so much to do." Taken in an American sense, her comments would simply sound like an acknowledgement of my current condition, and I might follow the comment by inquiring about how she has been doing lately, too, saying, "Yes, I've been really busy. How have you been?" However, taken in a Japanese sense, her comments about my busy schedule are her way of saying that she doesn't want to interrupt my work but needs to ask a favor or question of me. If I hear this comment and take it in a Japanese sense, I might respond, "I'm okay, I'm a little busy but it's not too difficult," telling her indirectly that she is welcome to ask me a question or request my help with homework, a cultural question, or something else. Even the most outgoing and talkative TIUA students sometimes use this technique to ask for help, so how would one know the difference between a student using American-style communication and Japanese-style communication? Sometimes cultural differences cannot be discovered based only on the surface level of an interaction. However, we can situate ourselves in a conversation by continually asking, "What *don't* I know about this person and his interests, responsibilities, and needs? Is there anything about this conversation that I'm confused about or that is making me unsure of how to proceed? Is there a piece to this conversation that I'm missing?" Such ongoing attention to the conversation can help us figure out how our communication styles are different and lead to a deeper understanding of one another.

What TIUA Students Would Like to See in Our Community

What many TIUA students long for during their 10-month sojourn in America is a deeper connection with their Willamette friends, classmates, and teachers. This goes beyond welcoming them. While most TIUA students express awe at the number of smiles and greetings they receive from Willamette students and staff—it is one of their first and long-lasting impressions of Americans—such greetings are not the same as an authentic connection between two human beings that develops into an equal relationship. TIUA students want to get beyond superficiality and be known as individuals, not as "my TIUA student friend," a comment often accompanied by forgetting the TIUA student's name or other simple identifying markers such as what his or her major is. In a conversation with me about this issue, Yuki Sugisawa, a 2005 TIUA student and now a WU student graduating in 2009, said,

> During my year at Willamette I often felt more like a customer than a friend [because of the general friendliness of everyone toward me, even strangers]. One case, though, was different. My roommate didn't have any background with Japanese people and didn't really come with a lot of stereotypes, and he told me that because of me his thinking changed about Japanese people. In that case, I felt that he was truly my friend.

In contrast, when one person or a group of people invests time in getting to know a TIUA student, that investment reassures the student that his or her difference does not undermine his or her importance:

> My roommate always invited [me] to dinner with her friends. They love to tell some jokes any time...but sometimes I couldn't get it because the conversation was really speedy to me. However, my roommate noticed about me every time, and ask to me like "Did you get it?" with big and good laugh. She told it to me again with another words. She seemed not [to] mind about that. When I talked to them, they also listen to me carefully even if my speaking speed was too slowly. That deed absolutely helped me to make some friends and talk to them with English (Haruka Ushida, 2004 TIUA student).

Haruka's roommate and friends respected Haruka's presence and expected that she had something important to add to their interactions. They began with the assumption that what she had to say was important.

Because speaking English as a second language may sometimes give the illusion of simplicity, it is easy for us to assume that TIUA students don't struggle with complex relationships, moral issues, or sense of identity. However, the truth is that TIUA students do deal with these issues, often to a more intense degree than usual through the lens of their lives abroad. Mile Hong, a 2005 TIUA student of North and South Korean background who was one of a group of 12 students with whom I worked closely as an International Peer Coach, had always thought a lot about her identity because she grew up in Japan and was culturally, if not ethnically, Japanese. Her arrival in America coincided with an increase in tension in the political relationship between America and North Korea, so coming to America and sometimes dealing with the implications of her background only intensified these reflections for her:

> Mentally, my nationality was the biggest challenge [during my time in America]. When [the] FBI came to see me, I thought, 'If I'm arrested because of this, what should I do? My time at TIUA would be over after just a little while! I came here just like other TIUA students to study, so why is this happening to me? Oh my gosh…this is the end [of my time here].

Even though Mile grew up in Japan and is completely bicultural, her nationality led her to face unique challenges during her time here, sometimes even requiring TIUA staff to stand up for her right to be here. She felt that she was here on the same terms as other TIUA students—to study English and American culture—but she was treated, in some cases, as though she might have ulterior motives in being here because of her background.

Fortunately, most students at TIUA never face such extreme situations, but it is likely that many of the situations in which they do find themselves will fall outside the normal level of challenges that they would expect to encounter in their home environment. Because of this, they and any staff or friends who work through it with them will have to negotiate unfamiliar territory. That

unfamiliar territory is where the need for humility and openness to what we *don't* know, interest in learning more about the values and beliefs of the other person, and concern for what is *under* the surface in a conversation is most important. Mile is an example of a student who needed friends, staff, and faculty to be advocates for her in numerous ways. Even while we helped her, she was an inspiring force for us, because she faced every situation with creativity and developed a strong sense of self as a result:

> I grew up in Japan and speak in Japanese the same as TIUA students. But I am Korean. WU students asked me what is difference between Japanese and Korean? It was hard to explain because I looked Japanese or they don't care how I look. But I felt ashamed that I couldn't answer the question clearly. Then I started to think, 'Who I am? I can do what everyone (other TIUA students) can do. There is no difference.' But I found the answer! I have my background a little bit more than other TIUA friends and...I think [this difference] was important for me. I could encourage myself if something happened (Mile Hong, TIUA 2005 student).

What Mile needed more than anything from me was for me, as her first American friend and guide, to be an open listener. Even though I could not understand her unique situation through my own experiences, we were able to build a close friendship through working out how her background influenced her values and views of life at Willamette, and how her experience at Willamette was connected to my own. Investing my time and energy into my friendship with Mile gave me the opportunity to learn from her, too. From Mile I learned about the complexities as well as the differences in perspective that come from belonging to more than one nationality, something I never could have imagined on my own, and made me more aware of many other members of our community who are in the same situation.

When we have a conversation with someone, whether it be Mile in her unique situation or a student who *seems* to fit every stereotype we have about a particular minority group, we need to respond to what they are saying, and we need to do so as appropriately as we are able. This can be difficult to do when what we hear threatens our sense of identity. In *Difficult Conversations*,

authors Stone, Patton, and Heen explain:

> Our anxiety [about difficult conversations] results not just from having to face the other person, but from having to face *ourselves*. The conversation has the potential to disrupt our sense of who we are in the world, or to highlight what we hope we are but fear we are not. The conversation poses a threat to our identity—the story we tell ourselves about ourselves—and having our identity threatened can be profoundly disturbing (Stone, Patton, and Heen 2000, 111-12).

It is intimidating to think that we might be mistaken about some aspect of our identities. If, for example, I believe, "Even though I'm white, I don't discriminate," but then someone gives me an example of discrimination that I have actually done before, my first response is to defend myself. I shut down so I can't hear anymore and say, "No, no, that can't be true. I didn't *mean* to discriminate, so I wasn't doing anything wrong." I might try to leave the conversation as quickly as possible. A Japanese friend once told me, "You (White) Americans think that wherever you go is America." Upon hearing this, I had to resist the urge to defend myself from what I felt was an unfair accusation, and I had to ask myself to reflect on the times I have assumed privilege as a right of my ethnicity and have benefited from that privilege—in this case, the right to assume that people will adjust to *me* instead of the reverse—and I can have a learning conversation about it. On every occasion, we have a choice to learn more about ourselves through engaging in a conversation about difference, or we can avoid it and try to escape.

Many TIUA students have great ideas about ways to enrich our campus, which they work toward accomplishing by connecting with Willamette students or putting together events themselves. This year, 79 out of 89 TIUA students took advantage of more than 245 leadership opportunities and volunteered for over 6,000 hours as a group. Many of those opportunities came out of the students' desire to connect with Americans and to understand the culture here, by working with Willamette students, local school children, the families of migrant farm workers, and many other members of our community. Most TIUA students try their best to reach out to the Willamette

community and seek friendships, understanding, and connections across the cultural differences. I, and all the staff at TIUA, greatly appreciate the people—students, staff, and faculty—who reach out to our students and help them create their own experience during their year in America. Our goal is to help our students reach whatever they hope for while they are here; as Nao Kawakami put it, "TIUA doesn't make you strong, but just *help* you to be strong. You can build your own style by yourself." I have known some students who by even coming to America have already accomplished their goals, some students whose only goal was to make at least one close American friend or to be able to hold a simple conversation in English without being afraid, and others who feel that ten months is just the beginning of a goal to work in the United Nations, cure the world of cancer, or find world peace, among other things. Every year is different, because every TIUA student comes to the program with different expectations, hopes, and desires for his or her experience. If that sounds familiar, it should. Willamette students come to their university experience with similar needs and hopes, and, like TIUA students, are unique and contribute to our community in their own ways.

"Freedom of Expression" Should Not Exclude the Responsibility and Role of the Listener

I do not have the space or scope to talk about the various important skills of cross-cultural communication that can contribute to a better understanding of difference, nor do I wish to say we should change our listening style to become more Japanese somehow so that we can understand this single minority group on our campus better.[4] I want to emphasize that, whether we find ourselves situated in the majority, minority, or both in our community, we can all benefit from a commitment to authentically *listening* to others and *responding* to them, whether we like their methods and ideas or not,[5] and whether we know their background already or not. In the words of Paolo Freire, "it is in listening to the student that I learn how to speak with him or her." Looking at the world from different perspectives is how all of us—students, staff, faculty, and all the other members of our community—begin to build trust and respect across our differences and work toward

creating a stronger, healthier community.

My hope is that, in sharing more about the culture and stories of TIUA students in our community, I have demonstrated how learning to listen differently can open up our relationships with people who we might otherwise think live in a separate 'world' and discover that we all navigate the same world with equal complexity and passion for our dreams. TIUA students are some of the bravest, most creative, most compassionate, and most motivated students I know. They feel deeply, speak honestly about their experiences, and struggle to understand difference to the best of their abilities, and do all of this while trying work out the values and expectations of a culture that is very different from their own. I am humbled and awed by the paths that led them to Willamette University and where those paths lead them next. For every student, this path is unique and inspiring, and I hope that everyone in this community has the opportunity to hear some of their stories during our and their time here.

This wish is, as I said above, not unlike what we say about Willamette students, and, if we stretch ourselves far enough to truly believe it, what we can say about the members of any community. As long as we find ourselves situated in diverse communities in which difference is easy to find even when we would rather avoid it because of the way it tends to slow down and complicate "simple" tasks, we will be tempted to let the speaker handle the tough topics and hold back what we owe to a conversation as listeners. Listening does not take responsibility away from the speaker, who has the obligation to express herself or himself as well as possible. However, more than any other place, an institution of education ought to be the location for its community to question its own structure and look for the areas where it needs to become more equalizing and empowering for all its members. Let us

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[4] Many people express concern about having to "act Japanese" in order to talk with TIUA students and have successful relationships with them. However, TIUA students commit a lot of energy and effort in learning about American-style communication, and practice using it during their time here, so adjusting our community structure or individual personalities to be more Japanese isn't necessary. Rather, greater awareness of Japanese culture helps us in the sense of making us more aware of potential areas of misunderstanding so we can work through them more effectively.

[5] During author Sir Salman Rushdie's recent visit to the Willamette University campus, he spoke to this need, saying, "Be brutal with ideas but courteous to those who spoke them."

take time in our community to decide what we can *expect* from one another, especially about how we plan to listen, because listening is the main avenue to grasping the perspective and humanity of another person, even a person we don't necessarily like or admire, and community members who have faced discrimination, oppression, or ignorance from us in the past need to know that we are at least practicing how to hear them better now. As a community, we owe each other this minimum expectation of respect: that if I ask someone to listen to me, they will.

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censor this essay

Rich Schmidt

> *"Take away the right to say 'fuck' and you take away the right to say*
> *'fuck the government.'"*
>
> — Lenny Bruce (Anderson 2005)

I cringe when people say, "It's a free country," as if this were an excuse. Freedom of expression does not allow you to say anything you want, free from punishment.

The First Amendment is bandied about as some sort of panacea, especially by people who have recently said or done something they regret. "Free speech" has become a useless catch phrase—a buzzword devoid of meaning. As our society fills with entitlement, sensitivity and self-righteousness, the runaway freight train of free speech has slammed through the wall of decency, dragging civility behind it like a useless appendage.

At the same time, free speech and freedom of expression are at the heart of everything the country stands for, and everything Willamette stands for. The very notion of a liberal arts college would be impossible without the ability to freely exchange ideas. The government still allows its citizens a great deal of personal latitude.

This is the great struggle. On the one hand, we are raised with an ideal of absolute freedom, devoid of governmental interference. On the other hand, giving people absolute freedom allows a dangerous amount of potential trouble. At what price freedom? This is the crux of the issue which I would examine in greater depth. Surely, the ability to freely express ourselves is the theoretical foundation of our society. But how truly free are we? And how free should we be?

Certain freedoms are subjective. If I lived on an island hundreds of miles from any other human being, I could walk around naked, or play my music as loud and as long as I pleased, or shoot any kind of weapon at anything I wanted. None of those freedoms can apply in the middle of New York

City. With the proximity of people, freedoms are curtailed. The many must benefit, not the one. So it is with freedom of expression.

I have three main thoughts, which I will explore in more detail below. The first is in regards to political correctness (which is, basically, a violent overthrow of free expression) and its natural repercussions. Political correctness has forced people to mask their thoughts with euphemisms while skirting the true issues. This repression, I feel, has directly led to increased frustration and the escalation of fear and backlash against the dangerous "other." A lessening of political correctness and an increase in honest dialogue and open expression would be a good starting place for decreasing tensions.

Secondly, the issue of censorship is more important than some make it out to be. Censorship is seeded in ignorance, but more than that, it has a base in fear and laziness. We censor what we don't understand, or what we find dangerous, because we don't trust others to make smart decisions with controversial information. I will look at the issues surrounding censorship and why the topic is so important to modern society.

Lastly, the biggest problem with freedom of expression is that people take it as a natural right, not as a privilege for which people have given their lives. The act of self-expression should not be taken lightly. It is not a "free country." I will examine ways in which free expression can be harmful and attempt to find the proper balance between the rights of the individual versus the rights of the many.

After all, a society with truly free expression would be anarchy, and this circumstance is something even anarchists do not really want. Anarchy could result in a power struggle that could end civilization as we know it.

But that's a topic for a different essay.

> *"There's so much comedy on television. Does that cause comedy in the streets?"* – Dick Cavett (*Quotations About Censorship*)

Perhaps the most important aspect of freedom of expression is that it gives people a built-in distraction from the world's oft-stark reality. Instead of concerning ourselves with the plight of the hungry, or the homeless, or the environment, we are instead able to worry about what a "shock jock" thinks of African-American women, or what is and is not pornography, or if cell

phones and the Internet really are at the crux of society's downfall.

In other words, instead of attacking real problems, we can uselessly argue at a surface level. Racism? Too big of a topic to grasp and deal with. Don Imus saying "nappy-headed hos" on the radio? Now *that* we can sink our teeth into. And if it leads to a heated discussion in which the middle-aged, white majority can subtly blame "gangsta" music and saggy jeans, and Al Sharpton and Jesse Jackson can rail against them in rebuttal while lining their own pockets, well, so much the better. None of this will fix anything, or change anyone's mind, but at least we'll all be distracted for a while.

An interesting example of this attitude at work is the explosion of internet message boards. It's the perfect sociological experiment: what will people say when they have (or believe they have) guaranteed anonymity? Not long ago, message boards were seen as the realm of the truly fanatical, and perhaps this is still the case. But instead of being limited to sites for sports fans or movie buffs, message boards are popping up everywhere. Whereas you might have once visited the site of your favorite college football team to rail about coaching decisions with other hardcore fans, now you can visit espn.com and discuss stories written by the Associated Press with people to whom you have no other link. Or visit your local newspaper and respond to stories written by local reporters.

And people do. Visit the website of Salem's *Statesman Journal* (statesmanjournal.com), for example, and witness people's initial reactions to all types of news stories. Cloaked in anonymity, people feel free to drop off little nuggets of feedback wherever they go. Their responses often evoke more responses, until a long thread of comments arises, often drowning out the original, banal story.

Are message boards a good thing? Initially, the answer seems to be yes. Everybody has an opinion and a right to share it; message boards provide an outlet. Message boards could even be seen as a venue for open dialogue, the kind that is so sorely lacking. Except, in reality, it doesn't work that way—that would be much too easy. Open dialogues only work when the people debating have an agreement—even an unspoken one—to approach the issue with open minds. Comments on message boards are left by people whose

minds are already made up; in other words, there aren't a lot of "conversions" ("Oh, I never saw it like that before, you're totally correct!") going on.

Instead, people anonymously express their opinions with no concern as to the societal implications of their words. If you discard the twenty or so percent of people who just aim to inflame, there are still an amazing number of differing opinions expressed by people who, in the past, might not have had a constructive way to do so. In the end, this is a relatively harmless way for people to discuss often-complex issues. So, while message boards might not be a bastion of intelligence or Socratic debate, perhaps they are a healthy outlet.

When examining the notion of freedom of expression, the thing I kept coming back to was racism. For whatever reason, racism has always fascinated me, and the notion of race itself is an interesting one.

Let me start by saying: we are all prejudiced. Everyone fears the unknown, the unfamiliar. This fear sometimes causes ridicule, or violence, or hatred, because that's just how we react. It can be as simple as a Chevrolet driver disliking someone for driving a Toyota, or as complex as a world leader hating Jews even though he himself is of Jewish descent. Often, the combination of prejudice and fear reaches such a magnitude that it manifests itself as racism. Racism, then, is the physical act based on the belief or prejudice.

Of all the divisions that exist in American culture, race seems to be the most prominent. Why is this? For one thing, aside from perhaps gender, race is often the most obvious difference between people; it can be seen on a surface level. Every racial group has its own history in America, and this history is the elephant in the room. Blacks were brought here as slaves and have been treated as second-class citizens (or worse) ever since. Asians were rounded up and put in camps during World War II. Native Americans were killed off or sent to live on reservations because they stood in the way of Manifest Destiny. And the list goes on. This embarrassing and tragic history is a constant presence, and no amount of guilt or reparations will ever make it disappear.

Part of what makes race and racism so complex is that we often do not know how to handle our own feelings. Almost everyone has likely watched or

read "Roots" at some point in his or her academic life. Watching it probably made you feel sad. Is that a good reaction to have? Empathy is a good thing, but it can lead to pity, which can lead you to consciously act differently toward someone because of his or her race. *That's how I just defined racism.* So how do we handle this reality?

We all have instantaneous reactions to things, all the time. Malcolm Gladwell examines this reality in his book *Blink: the Power of Thinking without Thinking* (2005), in which he has readers conduct experiments upon themselves. The end result of the experiments is that we equate words like "white" and "light" with Good and "black" and "dark" with Evil. This seems like common sense; when was the last horror movie filmed in the daylight? But the amazing thing about Gladwell's display was that he showed how hard it is to equate "black" with "good," even when you're trying to. Despite making a conscious effort, it's difficult. So, if I'm walking down the street and see a person of color, *even if I am consciously trying*, I likely will have a subconscious, negative response, a voice somewhere in the back of my head filled with fear, or loathing, or pity, or some response I'd be ashamed of were it conscious.

This could even trace itself back to our ancestors, who would no doubt have equated light with good and dark with evil because their physical tools were no match for the beasts prowling in the darkness. Light/dark is a true human archetype, and it seems only natural that this would translate, at least some of the time, into skin color.

What does this dichotomy mean? It means that prejudice and the fear of the other may be so culturally embedded, so deeply set, that they go beyond conscious effort and become part of the cultural subconscious, undermining any puny efforts to rid ourselves of it. Racism is the physical expression of this fear, and, as such, could be considered indestructible. It may be lessened, but it will always exist in some form within our culture. The concepts of race and racism do not exist in a vacuum; each generation learns how to handle them from previous generations. This is true on both a macro and a micro level: children learn from their families and from their surroundings, while the generation as a whole learns from their parents' generation. It can take

generations to break commonly-held beliefs: it wasn't that long ago that black men were legally considered three-fifths of a man. As long as all people do not look the same, it would likely require a massive cultural revolution, one which may not even be possible, to become a passably non-racist society.

Near-impossibility has never stopped mankind, for better or worse. In the last generation, this country has tried to alleviate racism by blaring political correctness at every turn. We have replaced epithets with hyphenated euphemisms, but is the effect really any different? We are still categorizing people by something which is, in the grand scheme, almost completely irrelevant. Of all the differences between humans, somehow skin pigment became the central concern, and highlighting this by saying "African-American" or "Indian-American" doesn't do any more to aid us in addressing the underlying problem: the fear of the other.

But racial euphemisms are only the surface level of political correctness. To me, political correctness also encompasses the regulations set forward by government agencies like the FCC. The world is multimedia. High-definition televisions, cell phones, iPods, Blackberrys—all of these are ubiquitous in American culture. Movies, television shows, video games, and music are defining cultural forces, from both artistic and marketing perspectives. These media are still regulated from the original, skewed, Puritanical mindset brought over on the Mayflower.

For example, television crime shows like *CSI: Crime Scene Investigation* or *NYPD* Blue often depict brutal murders or crime scenes, complete with blood, guts, rigor mortis and decay shown in gory detail. Yet, sex and nudity are not allowed. People often rail about the negative effects violent music and images have on our society, but the amount of blood and gore on television is relatively unchallenged. Violence has always been a part of human nature and, as such, of human culture. Realistic television should reflect this, and does. Sex is also a part of human nature; in fact, it is one of the most basic instincts. What television and mainstream movies do with sex is the same thing political correctness does with racism; that is, they take a serious topic and euphemize it. In both cases, the topic being covered up is a fact of life, but it's a fact of life with which the culture doesn't want to deal.

We handle each topic differently. Racism is seen as almost a physical object, one which used to be around and isn't so much anymore. Sure, we used to be a racist culture, but that's a thing of the past because we don't use uncomfortable words like nigger, chink, kike, honky, or any other. And when we do… it's nearly a criminal offense. But people still think these words, all the time. Sometimes they sing them, sometimes they whisper them to friends at a bar, sometimes they type them on a message board. The words are still a part of our lexicon. We know what they mean, and we use them with discretion but intent, like putting a silencer on a pistol.

And, of course, the words are not the important part. As the saying goes, it's the thought that counts. It really doesn't much matter whether or not I say the word "nigger" out loud if I am thinking it, right? Merely by thinking it, I am acknowledging that I think less of someone because they are black, and not for any other reason. This belief will influence my words, my actions, and my reactions, and will have more effect than if I say one stupid word out loud. Instead of attacking the root cause, the reason I would want to say "nigger," we are content to publicly castigate me for saying it. This is something of a running theme. Instead of attacking the root cause of poverty, we throw money at the problem, leading to corruption and kickbacks but very little assistance to the impoverished. The intent is there, but the execution is poorly thought out and lacking. Instead of attacking the root causes of crime (of which, interestingly, racism and poverty are two), we build more prisons and hire more cops.

I have a terrific example of political correctness run amok. Earlier this year, an Ultimate Fighting event came to Oregon in early May billing itself as *Cinco de Mayhem*. This seems like a fairly harmless pun on the holiday celebrating Mexican independence, right? Apparently not; it caused a minor uproar in Salem as people deemed the title insulting. Of course, I recall not too long ago, a certain car company held a *Ford of July* sales event every year and no one ever made a fuss about it. It's the same basic pun about the same basic holiday, so why the uproar? These are the types of battles we shouldn't be fighting because there is no disrespect intended. It's just a stupid pun. But because of the often-strained relations between different races and cultures,

we end up expending mental and physical energy on these types of ridiculous arguments.

The real issue is a lack of respect, real or perceived. If a culture feels as though it is being subjugated, every slight is magnified that much more. Even if the organizers of the Ultimate Fighting event meant no disrespect, it did not seem that way to the local Latino culture. (And, I must admit, the difference between the words "Ford" and "mayhem" is noticeable—perhaps the reaction would be similar if someone called an event "Fracas of July.")

This basic misunderstanding is why race relations should be at the forefront of the nation's agenda. So many problems would be easier to attack if the different races and cultures in the country had at least a decent relationship with each other. It's not that everybody has to agree, or even get along. It's more about intercultural understanding and respect—the anthropologist's dream. How is this accomplished? Instead of sheltering children, we should be pushing them into situations that make them uncomfortable. That goes for adults, too. Unfortunately, the most "cultural" many people get is eating Thai food. Learning things about other cultures is a good start. The initial discomfort will pass, and we will likely have an entirely new respect for a culture outside our own. Why not play on a sports team with people outside your comfort zone? Visit "the other side of the tracks." Visit a temple. Visit a synagogue. Visit a cathedral. Visit a mosque. Perhaps following Stephen Colbert's example and making "a new black friend" is not the ideal solution, but then again, perhaps it is. If we never force ourselves into these situations, the chances are good that they may never present themselves.

The most important thing we can do, though, is to understand our basic fear of the other, which may go deeper than we can control. Only when we do so can things start to change. Before that admission, most people just feel guilty for their fear and prejudiced thoughts, and castigate themselves or others. Guilt and reparations are not the answers to solving racial tensions. Instead, we should focus on fostering cultural respect, not attacking words which, in the grand scheme of things, are not as much evil as they are uneducated.

Sex, on the other hand, is treated like an evil, which has never made any

sense to me. An enlightened culture would take the topic of sex and make it as open as possible. No hiding. No "evil-izing." No use of words like "illicit" or "innuendo" or any other Puritanical bullshit. Sex is practically an illegal drug. Pornography is sold in dingy stores with no windows, or wrapped up in cellophane high up in the bookstore's magazine rack. Sex and pornography are not the same thing, but if we had a more enlightened view of sex, maybe there would be no such thing as pornography. Instead, sex is something to be hidden, to be done in secret; yet everyone knows it happens and, what's more, it's necessary for the survival of the species. The only effect this Puritanical attitude has is to make it even more desirable.

It's like no one has ever figured out that making something illegal, illicit, or somehow dangerous makes it that much more attractive. Remember the "Just Say No" campaign? Drugs are terrible and evil and addictive and they'll ruin your life, just trust us. That wiped out the drug problem in America, right?

Sex is an act of free and natural expression. Political correctness, along with an uptight Moral Majority has seen to it that we not see it that way. So, instead of treating the issue of sex as an enlightened culture would, we hide it away and demonize it. Ask yourself what's worse: showing a graphic sex scene or showing someone's head getting blown off, a la *Saving Private Ryan*?

> *"If we don't believe in freedom of expression for people we despise, we don't believe in it at all."* – Noam Chomsky (*Quotations About Censorship*)

Since the terrorist attacks of September 11, 2001, the United States has been in the precarious position of attempting to balance the right to privacy with the basic protection of the nation and its inhabitants. The heavily-debated Patriot Act, which weakened individual rights in order to allow the government more access to personal information, has shown that the notion of freedom of expression is in peril. It's a foregone conclusion (yet, strangely, not very well known or decried) that our email is being read, our cell phone conversations are being listened to, and our daily lives are being increasingly videotaped. Everything from attendance at political rallies to books checked out at the public library is being increasingly scrutinized as the government

attempts to sniff out threats to the nation's security. "Random" people are patted down in airports to give the illusion of safety, but no matter how many personal freedoms are taken away, the country can never be truly safe. Freedom of expression, then, seems to be suffering.

At the same time, certain types of freedom of expression are booming. In the not-too-distant past, the only way a "normal" person got on television was either on the news or on "America's Most Wanted" (the original reality show?). Now, reality television –which, contrary to what people thought when it burst onto the scene, is showing no signs of dying—tempts people with that most American of promises: you, Joe Schmo, can be a star! No training required!

Reality TV's easy-to-follow, contrived plots, natural and manufactured drama, and low number of larger-than-life, impossible-to-relate-to stars have made it popular with viewers; its low production costs and the ease with which a bomb can be cancelled (no mega-contracts) have made it popular with networks. Genuine hits like "American Idol," "The Real World," and "Survivor" become cultural touchstones, while useless duds like "Who Wants to Marry a Multi-Millionaire?," "Celebrity Mole," and "All American Girl" fizzle out without concern.

Perhaps "American Idol" is the most telling of the touchstone reality shows. Singing is an art form, a pure expression of emotion. Everybody does it, to some extent, whether it's singing in the shower, singing along with the car radio, or humming a commercial jingle. Of course, almost no one is any good at it; this is freedom of expression at work. In a different culture, perhaps only the good would be allowed to sing, lest noble ears be stained with off-key caterwauling. It's debatable if this would be positive or negative. In America, with freedom of expression, everyone is allowed to sing. "American Idol" is proof of this. As most people know, even non-viewers, the early weeks are filled with the best and the worst of the auditions, including contestants who are clearly advanced through the early portions of competition just so they may be humiliated on national television.

"That's outrageous!" some say. On the surface, it does seem like unnecessary cruelty to allow someone who clearly can't sing through the early

levels just so that Simon Cowell can say something particularly nasty about them on television. But reality television doesn't work that way. Reality TV places the infamous on the same level as the famous; just think of William Hung from "American Idol" or Puck from "The Real World." In today's society, it doesn't seem to much matter what you're famous for, just that you are famous at all. And, as William Hung can attest, the pay is the same. If you are willing to be humiliated, you, too, can be a star.

And what could be more American than dreaming of being a rock star? Rock stars live fast, make money, and party hard; that lifestyle could be considered the new American dream. Singers on "American Idol" express themselves (though they use other peoples' songs) in the hopes of landing a record deal that hinges on their popularity with a nation of television watchers. Now *that's* freedom of expression.

Reality television is not the only medium in which freedom of expression is booming. The Internet's explosion of popularity has given rise to a whole array of possibilities which are just beginning to be realized. YouTube™, a popular online video site, has thousands of hours of homemade video, from squirrels on water skis to people hurting themselves playing with their Nintendo™. Sites like MySpace™ and Facebook™ give everyone the ability to have their own website, from a fledgling band to a sports team to a grandmother.

And then we have the world of blogs. Anyone can have a blog, and anyone can say just about anything they want in a blog. They're used to vent, to brag, to gossip, to spread rumors, to report on events, to lie, to make announcements, and, most importantly, to influence public opinion. The notion of blogs seems to be a direct response to the old concept of "news;" that is, newspapers and television stations decide what is news and what is not, then they report that news and that's what the people know. If society's feelings about politicians have regressed since Watergate, their opinions about the media have followed. Many people feel that the news is biased, that it's too liberal or too conservative, too negative or too focused on showing rather than telling (that is, is something newsworthy if there's no film or video?). Then there's the timeliness issue: people want news now, not tonight at eleven or tomorrow morning.

So, in step blogs to fill that void. Blogs—even those written by newspapers, which have grudgingly realized that blogs are more than a fad—do not have to follow the traditional rules of reporting. Confirmation and quotes are less important than breaking the big news, even if it has to be reported as a rumor only. If I visit a rally for a politician and he uses a racially insensitive phrase, I can write about it on my blog that very second if I have the proper technology. Five minutes later, the word is out, and no one had to wait for the official story. This speed also alleviates the spin that will no doubt come from the offending politician. The vision of bloggers as lazy twenty-somethings who live in their parents' basements and sit around working in their underwear is going by the wayside as people begin to realize the importance of some of these sites.

Blogs and message boards prove that everyone has an opinion, and that it's often easier to type it than to say it. It's also much easier to post something online than to get on television, or to get people to show up to hear you speak.

Of course, this is a slippery slope. Giving people this type of freedom can have some dangerous side effects. What's to stop me from going on my blog and spreading deceitful rumors, or using insulting language? Nothing, really, at least to a degree. The Internet is not truly anonymous; anyone can be traced if someone wants to try hard enough. If I post on my blog that I'm planning to kill the President, I'm just as likely to get in trouble as if I proclaimed this at a bar or airport. And if I claim something hurtful and untrue about someone, I can still be sued for slander or libel.

In my mind, all of this is a *de facto* response to political correctness. Reality television, blogs, message boards, all of it. It's as though having thoughts repressed and rewired has caused us to need to vent. It also opens people's eyes to the fact that they are not alone; they're not necessarily crazy because they think something. In the end, these outlets create a series of communities of like-minded people, people who root for the same team or vote for the same party, people who hated the movie *Titanic* or people who are obsessed with the band Linkin Park or want to be the next American Idol. And, whether on national television, in semi-moderated forums, or on their

own blog, they express these beliefs and desires. It may not be in a medium imagined by the Founding Fathers, or even this generation's fathers, but it's a fairly pure form of self-expression.

As I sit back and think about it, I wonder if this isn't some sort of trap. I wonder if the government isn't performing a magic trick, pushing this relatively harmless "freedom" with one hand while hiding something more meaningful with the other. I no longer can assume any sort of privacy when I make a phone call, but it's okay, because I can go on my blog and vent about it and nobody will come to my house and make me disappear. It's not South America during the 1970s, but it's not exactly America either. It's the same paradox it's always been: technology has made the world greater; technology has ruined the world. Email and cell phones are wonderful inventions which make communication easy and inexpensive, but they also make institutional eavesdropping incredibly easy. The Internet offers a wealth of information at your fingertips, full of facts, figures, opinions, Star Trek analysis, and the starting lineup of the 1972 Dallas Cowboys. It's also full of videos of sex with animals, hateful messages, and your bank account numbers. You might use it to track down a long-lost relative or friend from high school; someone else might use it to solicit your 12-year-old daughter. Technology reflects, and perhaps magnifies, human nature, so new technology always reflects the best and worst we have to offer.

(An aside: Could the government be that smart? Could they be fooling us so? The answer, of course, is no, they are not that smart. But this doesn't mean pop culture isn't used as a distraction, that these types of events aren't hyped up to take our minds off the terrible things happening in the world. We can't control Iraq, or Darfur, or Guantanamo, so we might as well watch "Survivor." If we all paid more attention, things would be very different; but, of course, we would all go insane and kill ourselves. It's human nature to be distracted.)

This is why freedom of expression is such a dangerous thing. Allowing people to freely converse lets things out into the world that many people would prefer not be there. It also allows genius a chance to grow and bloom. No one said this was easy.

Of course, there are alternatives to free expression.

"Censorship offends me." – Unknown

Censorship always lurks around the corner and, much like the Ku Klux Klan, is always strongest when the society is weakest. Also like the KKK, it's an easy answer to what is perceived as a grave danger, but an answer which actually weakens the country and society further.

I work in a library. Censorship is a big deal here. I sometimes think librarians view themselves as the last line of defense against the tools of censorship. What other profession would celebrate *Banned Books Week*? (Well, maybe teachers, too.) I remember when I was hired, all the way back as a freshman work-study student. My supervisor at the time launched into a spiel about the library as a haven from censorship and governmental interference, complete with instructions on how to handle FBI agents should they come to the library demanding to see patrons' records.

It was 1999, pre-September 11th. I was 18 years old. All I thought was, "are you kidding me?"

Not too many years later, after the Twin Towers came down and American society was irreparably changed and freedom of expression was again on the endangered list, I found myself in the position of supervisor at the library. And I found myself giving almost the exact same speech, in the exact same fervent fashion, to a group of incoming freshmen workers. At this time, governmental interference was something I could actually see happening. And I didn't notice many skeptical looks as I was delivering the message.

This is how fast things change. At one point, who could imagine a war on something as abstract as terror? Another memory I have, from my sophomore year of high school, is of a visiting teacher in my history class. He was from the Czech Republic, and a pretty sharp guy. One day, offhandedly, he mentioned his belief that the United States military could defeat a combination of the rest of the world's military in a war. *The rest of the world!* And, what's more, the class believed him. Why would we not? His words reflected the view of the United States as the world's only superpower, a view which, it should be noted, became very popular. Now we are proving that we cannot defeat a

single country even after we deposed its leader.

As always, at times in which the strength of the country is called into question, the issue of censorship comes to the forefront. Some people claim that any criticism of the government, the president or the country is insulting to our troops overseas, fighting and dying for our freedom. They strive to rally everyone behind the leaders, to show support across party lines and across belief systems. Instead of challenging our politicians to make tough decisions and find alternate solutions, we are expected to blindly follow the abstract notion of "patriotism" wherever it leads us. Of course, this is a dangerous path to follow, since it encourages the suspension of critical thought and substitutes in the easy answer. And that, in a nutshell, is censorship.

> *"Books won't stay banned. They won't burn. Ideas won't go to jail. In the long run of history, the censor and the inquisitor have always lost. The only weapon against bad ideas is better ideas."* – Alfred Whitney Griswold (*New York Times* 1959)

As I mentioned before, library-types don't take kindly to censorship. Ask most anyone who works in a library and they can trot out examples of books being banned from libraries for ridiculous reasons, from the *Harry Potter* series (wizardry apparently equals Satan-worshipping) to *Lolita* (again with the Puritan stuff). Censors don't want people thinking too much. They have a certain view of the world and some things just do not fit in it. Banning books from a library may not seem, on the surface, to be all that egregious. There are worse crimes, right? Certainly, this is true, but that doesn't make the concept of censorship any less important. Book-banning is the easy answer. If no one reads a book, no one is forced to deal with the issues raised within. Another question I was asked, as a freshman hire, and which I now ask to freshman hires is: "How do you feel about handling books you don't necessarily agree with?" Most students laugh when they are presented with this question because, well, it seems laughable. Sure, no problem.

But what happens when you check a book out to a patron about a religion you disagree with? Or a religion which pretends that your religion doesn't exist? What about a book that blatantly, perhaps unfairly, attacks your religion? Or one that supports abortion? Or one that supports illegal

immigration? Or one that gives instructions for building a weapon? Or one that…you get the point. Suddenly, the question isn't that laughable. Will you look down upon the person checking out the book? Make a snide comment? Get in an argument? Tell the government?

The point is, someone, and most likely many someones, agree with the viewpoints espoused in those books. So, really, who are you to censor it, no matter how fervent your beliefs? Inside all of us, though, is a fear that everything we believe in might be wrong. This fear is more advanced in some people than in others, but we all have it to some degree. And this fear causes people to do rash things, like insist people not read books because of the wizardry portrayed within. Yet this is always disguised in some way.

> *"Did you ever hear anyone say, 'That work had better be banned because I might read it and it might be very damaging to me?'"*
> – Joseph Henry Jackson (Andrews 1989, 41)

In the television show "The Simpsons," Helen Lovejoy's character has a catchphrase: "Won't somebody *please* think of the children?!" Yes, it's always the children. Children are untouched lumps of clay constantly being corrupted by the surrounding world. Offensive books are just the start. Instead of having faith that children can read varying points of view and make their own decisions, it's much easier to put blinders on and shelter them. It's the same kind of thinking that's causing school districts to do away with games like dodgeball and tag. Learning the lessons these games teach may not always be fun, but they are necessary; otherwise, how do children learn to deal with people who are stronger than them or try to bully them around?

> *"I disapprove of what you say, but I will defend to the death your right to say it."* – Voltaire (*Tallentyre* 1906)

Freedom of expression always seems to be at a crossroads. Landmark Supreme Court decisions, F.C.C. rulings, your teacher disapproving of you wearing a *Mötley Crüe* t-shirt to class—all of these mark the ebb and flow of the First Amendment.

Of course, most people don't think about the big picture of freedom of expression, they just complain that Mrs. Crabface made them change their

shirt. Any restriction on one's own personal freedom elicits an oft-haughty backlash. There was, of course, a grace period after September 11. People sucked it up and realized that airport lines were going to be long and police officers were going to be less lenient.

That grace period lasted about a month.

Now, it's right back where it started. It's a staunchly American perspective, too: we want to be safe when we fly, but we don't want to have to wait in a long security line. For the most part, we have passively accepted many of these restrictions, but we complain about them constantly. The interesting thing about the complaints is that, in general, people seem more put off by the inconvenience than the overall lack of privacy. We also want competent security people, but no one is willing to fork over the money to pay for more TSA employees or to raise the wages to make it a more desirable job. I guess it works that way in all walks of life; we want the best but don't want to pay for it.

And that raises the worst aspect of the freedom of expression. It's not a "free country." As stupid as the bumper stickers were, the message was correct: "Freedom isn't free." The notion of free expression has raised the whiniest, most hypocritical society, one in which people show up to environmental fundraisers in stretch Hummers and so-called "pro-life" advocates (who I refer to as "anti-abortionists" because, well, pretty much everyone is pro-life, at least to a degree) get their message of how terrible it is to kill innocent fetuses across by blowing up abortion clinics and the people inside.

But this is the price you pay when citizens feel that the freedom of expression is a natural, God-given right as opposed to something that was fought for and consciously placed, by humans, in the Constitution and The Bill of Rights. This feeling of entitlement is so pervasive that we all find ourselves slipping into it, even though we may consciously fight it: "It's my right to drive a Ford Excursion with no passengers in it, whenever I feel like it. Hell, I'm paying for it, and the gas ain't cheap! Even better, I'll complain that I dropped $90 last time I went to the gas station so everyone will pity me and my gas budget." This is not a basic right, no matter what we think.

A couple hundred years ago, a bunch of guys got together and wrote

some documents, told Great Britain to bugger off, and decided they didn't want autocratic rulers in their fledgling nation. So they gave the people rights: things like voting and freedom from torture and the freedom to worship whatever god they chose, or to not worship any god if they so chose. And people liked these ideas, and the nation grew, and these freedoms became a cultural and political backbone.

But it's not a natural right. This is the point which is so often lost. "It's a free country." The patriots who wrote these timeless documents put themselves at grave risk doing so. The hundreds of thousands of soldiers who have defended the nation since then have done so knowing they were risking their lives for people they would never meet, and for freedoms they might not live to enjoy. These people earned their freedom of expression.

Me? What have I done? Well, I wrote this essay, but that's not much. I take so many things for granted. I can purchase books or music with anti-American, anti-Christian or anti-war themes and not be dragged in for questioning. I can go to school, any school I want, study anything I want, play any instrument I want, play any sport I want. My vote counts, even if its value is sometimes debatable. I am not forced to worship in any certain way, or obey the rules of a king. I wasn't selected at an early age for having a certain talent, then forced to spend the next 10 years of my life honing that talent to serve my country's wishes.

And yet I have these freedoms. I have done nothing to earn them, but I get them anyway. I'm as much of a hypocrite as anyone, because I take them for granted, and I complain at the smallest slight. And that's the beauty of free expression—I have the right to complain. My complaints are listened to or they are ignored, but they are not punished. More often than I would like, my needs or desires are forced to take a backseat to the needs of the culture, like when the Resident Assistants used to come and make me turn down my music in the middle of the night. Now, as then, I'm not happy about it, but I go along to get along. I enjoy more freedoms than the majority of the world, and this allows me to rant and rave about politics, sports, race, popular culture and all of the other distractions in the world.

In the end, freedom of expression and the First Amendment occupy a

place in our culture that is constantly in flux, but are always of the utmost importance. Our culture's ability to fight against the forces who desire and conspire to limit our freedom will determine our ability to survive and continue to thrive.

Now, if only we could learn to use our freedom of expression for things that are truly important.

> *"I have sworn on the altar of God eternal hostility against every form of tyranny over the mind of man."* – Thomas Jefferson (Text on the Jefferson Memorial)

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Between Freedom of Speech
and Cultural Diversity of Expression:
Bureaucratizing the Multicultural Imagination

Nathaniel I. Córdova, Ph.D.

> What, then, after all, is that "great primal act of imagination through which liberalism establishes its essence and its existence"… For me it is the insistence, in the face of all that divides and distinguishes us, that in some fundamental sense we are all equally worthy of moral respect, and that in treating each other as beings entitled to equal respect and concern, we accept the regulative principle that the conditions of our collective existence are always subject to our critical contestation and rejection, reinterpretation and elaboration (Benhabib 1999, 411).

Demographic changes experienced as a result of globalization processes have underscored the undisputable fact that citizens in democratic societies live in increasingly heterogeneous communities that intersect along dimensions of race, ethnicity, class, religion, gender, and culture. Such cultural pluralism, and the intersections central to the modern democratic polity, have resulted in political claims for recognition and accommodation by cultural minorities, and thus in the advancing of claims to justice not only by groups historically marginalized by dominant social and cultural structures, but by more recent identity groups. The resulting multiculturalism finds grounding in the recognition, and protection of, minority rights in a multicultural society that otherwise takes dominant group values as desideratum. Hence, as a distinct model for managing the proliferation of cultural identities and diversity in democratic multiethnic societies, multiculturalist policies attempt to manage diversity as a way to include marginalized and minority voices in public life.

Alongside these changes, the last few decades have also seen the emergence of great concern over multiculturalism as a response to such claims for equality and recognition of cultural identity, as a reply to the pressures to understand diverse others in our society, and thus as accommodation of claims of cultural difference. From the purview of political theory the dilemma raised by such

claims to recognition can be described in terms of traditional debate over how liberalism should recognize the role of cultural differences in democratic society. Traditional liberal democratic theories are quite suspicious of claims to identity and difference as based on particularist interests over the needs and duties owed to the larger community. More recently, these issues have taken the form of debate over the relative merits of distributive models of justice versus the claims of a cultural identity politics or "politics of difference."

Unfortunately, the language in which multiculturalism as an umbrella term for cultural diversity is expressed has become so slack in the past few decades that crucial distinctions and understandings among concepts such as diversity, inclusivity, and cultural pluralism are difficult to ascertain. We are deluged with talk about cultural diversity, pluralism and inclusivity, and with the attendant issues of identity, prejudice, freedom of expression, and discrimination to such an extent that many have become exhausted and inured to successive appeals in this vein, and threatened by the seemingly unstoppable claims to recognition of cultural difference that globalization has engendered. For many others, multiculturalism has resulted in our being "confronted by a bewildering, fleeting multiplicity of possible identities" and an accelerated proliferation of systems of meaning and cultural representation (Hall 1992, 277). The proliferation of these multiple discourses and demands for recognition, far from resulting in cultural homogenization, has frequently elevated tension and resentment directed at both external audiences, and internally at those who deviate from the cultural norm. In turn, substantive public discussion about issues of cultural difference has suffered. Hence, as Thomas R. West has noted, in discussing the rhetorical power of the contemporary discourse of multiculturalism and difference we end up avoiding substantial discussion about the formation of difference, for a philosophy of tolerance best characterized as a "harmonious, empty pluralism" (2004, 2).

It should come as no surprise that we are befuddled by discourses of multiculturalism to the extent of reiterating over and over again, the same conversations that we've had for at least the last thirty years about the meaning of diversity. As a constellation of terms, "multiculturalism," "diversity," "inclusivity," and "cultural pluralism" much too often provide rhetorical cover

for divergent political and social agendas without a concomitant engagement with the substantial issues of difference that are otherwise presumed addressed. In short, in *public forums* this set of terms has become a discursive apparatus increasingly deployed in either a self-congratulatory pat-on-the-back fashion for being responsive to an increasingly multicultural society and demands for cultural recognition, or in self-satisfied dismissal of such concerns as nothing but irrational, and illiberal, identity politics. Much of the time comprehensive engagement with issues of oppression, domination, and structural inequality is not taken up, or if at all, only in a cursory manner. In some activist circles this constellation of terms evokes feelings similar to those described by Zygmunt Bauman regarding the term "community:" "To start with, community is a 'warm' place, a cosy and comfortable place. It is like a roof under which we shelter in heavy rain, like a fireplace at which we warm our hands on a frosty day…" (Bauman 2001, 1). Indeed, one of the features of contemporary discourse of multiculturalism most taken for granted is the almost ritualistic way in which adherents come together as collectivity, under the banner of solidarity. Much too frequently, little conscious attention is paid to the resulting community as formed through "compositions of difference," or to the way in which this culturalist vocabulary often fails to effectively expose the workings of power to maintain privilege (West 2004, 3).

For us in academia, these challenges underline the importance of preparing students to live in increasingly diverse communities, and the need of institutions of higher education, as centers of cultural vitality, to nurture an understanding of how our lives require the ordering of plural and conflicting values (Kekes 1993, 11). Considered by many to be a microcosm of society, the college campus has become one of the central fronts in the cultural struggle regarding intergroup relations, education of diverse others, development of a diverse workforce, rectifying the legacy and history of past injustice, reducing intercultural conflict, the generation of knowledge about issues of identity, and the necessity of social justice to democratic life.

In this essay I explore difficulties that arise as a result of the terministic tension with the discourse of multiculturalism and a politics of difference, especially when connected to issues of freedom of expression. I am most

interested in how such tension is visible and consequential in some efforts regarding diversity in my campus, although I suspect the concerns apply broadly to other university campuses. It is my contention that the slackness in the language of multiculturalism is a result of a "bureaucratization of the imagination," a phrase Kenneth Burke used to describe what happens when we "try to translate some pure aim or vision into terms of its corresponding material embodiment" (Burke 1937, iii). My concern is that we in the university have reduced the vision of multiculturalism and freedom of expression as ends of social justice into "utilitarian routines" which become part of a technicist narrative that we, in turn, take as the amoral epitome of rational efficiency. In the end, that technicist logic only separates us further from the lives of those whose rights we ostensibly seek to protect. In short, we in the university(ies) have bureaucratized the multicultural imagination with a lack of self-reflection, engaging in essentialist practices, collapsing a politics of difference within a politics of cultural recognition, and conflating cultural diversity with freedom of expression in the process reducing freedom of expression to a dualistic mode of what can or cannot be said. The resulting atherosclerotic notions of multiculturalism, diversity, and freedom of expression limit the development of a refurbished vocabulary and rapprochement that could help us dispense with the reified notions that beset us and move forward with an inclusive and just conception of a plural community. Perhaps Anne Phillips, in her recent *Multiculturalism Without Culture* (2007), puts it best when she argues for:

> a multiculturalism that dispenses with the reified notions of culture…yet retains enough robustness to address inequalities between cultural groups; a multiculturalism in which the language of cultural difference no longer gives hostages to fortune or sustenance to racists, but also no longer paralyses normative judgment (Phillips 2007, 8).

In what follows I frame my remarks in four main sections. First, relying primarily on the work of Iris Marion Young, I provide a succinct description of the distinction between a politics of difference and a politics of cultural recognition, and how to our loss we've tended to muddy the distinction.

Second, I explore the bureaucratizing consequences of our current discourse of multiculturalism in the university. Third, I look at the complications brought about by claims to freedom of expression, and how freedom of expression straddles a fine line between a politics of difference and claims to cultural recognition. Finally, I rehearse a brief response to a series of campus events that took place on our campus between 2006-2007 and that served as a catalyst to this collection. I conclude with some suggestions for enhancing the conversation on campus.

On the Limits of a Politics of Cultural Recognition

In addressing the conundrum over claims to justice in liberal democracy and the role of cultural difference, Iris Marion Young drew a distinction between a politics of cultural recognition and a politics of difference (Young 1990). In a politics of cultural recognition particular groups base claims to social justice on narrow conceptions of identity. A politics of difference is primarily concerned with how dominant norms and expectations in society create conditions of inequality as a result of the structures of privilege and disadvantage that they instantiate. While dominant institutions support ruling norms that privilege some groups over others, not all such norms and expectations are cultural. In fact, Young notes that "most group-based political claims to justice" will be responses to other norms of "capability, social role, sexual desire, or location in the division of labor" (Young 1999, 415). A politics of difference thus claims:

> That hegemonic discourses, relations of power, role assignments, and the distribution of benefits assume a particular and restricted set of *ruling norms*, even though they usually present themselves as neutral and universal. The given economic, social, and political arrangements assume that social members and rights bearers either have or ought to have certain capabilities, desires, forms of reasoning, language, values and priorities, or plans of life. They have certain expectations of what is a "normal," or usual, life, and have certain standards, or norms, against which they evaluate individuals (416).

Thus, claims to justice based on cultural recognition (identity) are only one species of a politics of difference.

However, lest we believe that it is only structural inequality that creates injustice, Young reminds us that it is a challenge to oppression and domination, and not just to distributive inequality, that we must attend to in securing social justice. In other words, equalizing opportunity is only a first step toward eliminating oppression. The elimination of oppression and domination requires not just that we allocate resources more evenly but that we dismantle and reform the social structures, assumptions, and processes that sustain categories of oppression. Perhaps the primary category of oppression, according to Young, is the belief in a neutral or universalizable political morality advocated by liberalism (Young 1990, 206-10).

Therefore, as a response to a politics of cultural recognition, a politics of difference calls us to focus less on individual claims to corporate identity, and more on an expansive notion of privilege and injustice enabled by values and policies that, by claiming to treat all equally, dismiss precisely the careful addressing of many forms of oppression and domination experienced by individuals within socially disadvantaged groups. Young describes five "faces of oppression" that are not reducible or alleviated solely by developing an optimum calculus for distributing resources equally. These faces of oppression are exploitation, cultural imperialism, violence, marginalization, and powerlessness (Young 1990, 39-65). To be sure, the relationship between a politics of difference and distributive justice is not that simple. Issues of difference, distribution of resources, equity, and oppression are complex. The point is however, that oppression and domination are not merely matters of the distribution of resources, or of equity. Neither redistribution, nor policies that aim to render a "level playing field" can eliminate the historical imbalances created by sustained domination and oppression. In sum, Young calls us to recognize the differences that exist in the effects ruling norms and expectations, as well as structural inequalities, have for members of socially disadvantaged groups. Her point is that a politics of difference is "broader than a politics of cultural recognition," and furthermore that it is primarily "critical… as opposed to self-assertive" (1999, 416).

Much of the slackness in the language of multiculturalism is a result of a double move that levels the distinction that Iris Marion Young sought to draw between a politics of cultural recognition and a politics of difference. First, opponents of multiculturalism (or a culturalist perspective), tend to reduce a politics of difference to an identity politics. These challenges to a politics of difference revolve around how the focus on difference inherently undermines the basis for social solidarity needed for a redistribution of resources, how a politics of difference might not be different than a politics of redistributive justice, and how featuring difference over equality only serves to fragment and undermine social solidarity. Secondly, proponents of multiculturalism have indeed much too often resorted to an identity politics that reduces difference merely to its cultural dimensions, separating it from sociopolitical contexts, reifying difference as particularistic claims to knowledge/power relations, and foregrounding problematic notions of representation rather than the constitution and composition of difference.

The polarization and entrenchment of both camps does serious disservice to a productive engagement with the question of what difference "difference" really makes. By their reductions, opponents of multiculturalism in this debate avoid deliberation over a set of broader social problems that, albeit related to distribution, encompass a far larger set of social relations, and undercut a careful look at how oppression is sustained by cultural forms of interaction and communication that do not disappear solely by our subsuming them and ourselves into a mildly differentiated social whole ("celebrating diversity"). To the extent that they turn into an identity politics proponents of multiculturalism become obnoxious to the very claims of difference they seek to institute, and enact a lack of self-reflexivity characteristic of the hegemony they seek to dethrone. Both responses unfortunately miss Young's point about the necessity to communicate as equals within positions of difference: "we require real participatory structures in which actual people, with their geographical, ethnic, gender, and occupational differences, assert their distinct voices" (Young 1990, 116).

A real engagement with multiculturalism requires that we not put aside difference for a politics of impartiality, that we build democratic spaces and

opportunities for the substantive exploration of difference, in particular the exploration of how recent globalization pressures open the possibility for a reconsideration of what cultural difference entails within structures of global domination. Moreover, it requires that we expand our conceptualization of ourselves as global citizens, rather than citizens curtailed by the particularities of a narrowly-defined cultural location. It also requires a self-reflexivity to the implications and complications of our own claims to power. Finally, it necessitates that we keep alive what Young called a "differentiated solidarity" an attitude of respect and mutual obligation that "does not presume mutual identification and affinity as an explicit or implicit condition for attitudes of respect and inclusion" (2000, 221). I impose my own slant on this concept: solidarity is not to be expected solely on the basis of cultural identity. Participation in corporate identity varies to the extent that the group holds a politics to which I can subscribe. The following section expands on the repercussions of losing sight of a politics of difference.

Losing Difference:
The Transformation of Multiculturalism into an Identity Politics

Subsuming difference within a politics of cultural recognition further bureaucratizes the multicultural imagination by rendering multiculturalism into an identity politics said to impose a victimizing essentialism that reinforces inequities of power both internally and externally by homogenizing cultural tradition, promoting relativism, and forcing members into a regime of cultural authenticity. Criticized for what some say is a fragmentation of the body politic by hampering assimilation, proponents of multiculturalism are taken to task for a supposed lack of egalitarianism and the imbalance that can ensue when a group is supposedly granted special privileges. Aided and abetted by the events of September 11, 2001, and the xenophobia of an emergent security state, multiculturalism has seen a renewed challenge that centers on how it weakens social cohesion by "corroding the common core of citizenship, undermining the bases of social unity, and making it impossible for citizens to sustain a strong sense of national identity" (Phillips 2007, 2). A positive assessment contends that, under the banner of multiculturalism and

diversity, the identity politics that emerge are a type of defense mechanism, and seek to "replace the institutionalized forms of knowledge that oppress certain communities or social groups" (Escoffier 1998, 43). Although a full rehearsing of the perils or benefits of identity politics is beyond the scope of this essay, it is important to address briefly some of the basic difficulties that sit at the crux of a blindness we now face.

While a case can be made for why these critiques fall short of the mark, and indeed take only narrow instances for the whole, I contend that subsuming difference only into a politics of cultural recognition results in a slackness in the discourse of multiculturalism that tends toward either an aestheticized version of cultural diversity or a hyper-radicalized version of an activism blind to its own hegemonic claims to power. In short, academic multiculturalism divorced from self-reflexivity, and caught up in a politics of authenticity, has tended toward cultural identity solely as transgressive aesthetic. A new language of liberation, one that does not eschew broader engagement, and one that, as Linda Alcoff and Satya P. Monhanty remind us, "does not enshrine any previous period as holding the key to our pressing political needs today" is needed (2006, 3).

The Wounded Attachments of Multiculturalism as Identity Politics

A multiculturalism that emerges into an unreflective and fetishistic identity politics ultimately reinscribes, through demands for protection, the very oppressive system that it seeks to overcome. Wendy Brown puts this quite cogently when she notes in *States of Injury* (1995) that the inscription and emergence of identity politics not only reaffirms the historical injuries constitutive of those identities, but repositions either the state or the dominant institution as legitimizer of the injury, the identity, and the resolution of the problem. This is what Brown dubs a "wounded attachment" of an identity politics, one that is not only based on the injury, but which maintains the injured status as basis for civic participation (55). The unfortunate byproduct of those practices is an identity politics that talks about resistance, but which devolves into reactionary actions, sentimentalism, and lack of progress and vision. The positions to which an identity politics give rise are "prefigured

and contained by the very power they purport to oppose," hence the constant dissatisfaction and struggle within such camps about the possibilities of constructing new transformative social imaginaries free from the antinomies of identity politics that feature victimization.

I am persuaded by Brown's contention that ultimately such identity politics, through their own investment in their history of injury, have the paradoxical effect of shoring up structures of domination rather than undermining them. Understandably, an oppositional movement that emerges out of a history of how dominant structures have caused injury cannot easily let go of the injury that is ultimately constitutive of its own identity. However, the over-reliance on such wounded attachments create tragic frames through which we pose our politics of difference, and reaffirm the very unifying and assimilationist powers we seek to oppose. In that loop we remain victims of a state or dominant group whom we continue to validate through our tragic frame to grant us freedom and legitimize our identity. The issue of course is more complex. In current political contexts, claims to personhood might have to be attenuated by claims to a collective sense in order to make coherent claims to law. And yet, a pluralistic orientation that is not based on such tragic frames might go farther toward helping us step outside of the dilemma of generating a productive politics of difference that eschews the tragic and negative attitudes about the possibilities of social change which, along with anger and despair, seems to infect so many students.

Unfortunately, much too often we believe that in asserting an identity politics we nurture a strategic anti-essentialism, or even a strategic essentialism. That position, we believe, allows us to balance a recognition of the essentialism of identity politics as a pernicious part of our identity politics, with its necessity in specific situations to make "both politics and identity possible" (Hall 1987, 45; Spivak 1987, 205). Part of the problem is that, in a campus setting, students often miss the purported anti- and strategic essentialism because they are easily disposed to the comforts of trying on identities they have perhaps not had the chance to explore before arriving on campus. The resulting positions are hard-lined concretizations of identity taken up without much critical self-awareness. A multiculturalism that does

not deploy an epistemic agnosticism about its own claims is akin to what Plato criticized as the unreflective reiteration of formulaic thought.

The Tragic Frame of Melancholy

Moreover, the tragic frames that a politics of cultural recognition turned identity politics frequently constructs are reminiscent of what Walter Benjamin called "left melancholy," the attachment or devotion to a political perspective, and perhaps even to its failure, rather than to an ability to seize and generate opportunities for change (Benjamin 1994, 305). Wendy Brown again is helpful here in her encapsulation of this problem:

> left melancholy represents not only a refusal to come to terms with the particular character of the present… It signifies, as well, a certain narcissism with regard to one's past political attachments and identity that exceeds any contemporary investment in political mobilization, alliance, or transformation (Brown 1999, 20).

This mournful kind of attachment, when connected to a fetishized multiculturalism as identity politics, severely limits our ability to imagine the liberal arts university as an incubator for progressive social change, as well as our capacity to be effective advocates in responding innovatively to emergent social demands.

The transformation of multiculturalism into an identity politics and tragic frame of melancholy is reinforced by a kind of rhetorical intoxication with the terms multiculturalism, diversity, and inclusivity. These words form a cluster that orbits around that morphed notion of multiculturalism, and which ends up increasingly used to account for the failure of the tragic frame to generate innovative possibilities for change. The artificiality of the language is ameliorated by the real concerns expressed by all involved, but nevertheless, in dutifully following the conventions of a multiculturalism turned into an identity politics, the language used only affirms the tragic frame of melancholy.

To be fair, I am convinced that the deployment of this melancholic discourse, and the solidification of an identity politics, is partly the result of

the inability to suppress our disappointment with the persistent inequities that continue despite tremendous efforts at combating social injustice. Hence, it behooves us all to acknowledge the tension between the conditions on the ground experienced by many, the pervasive feeling of dislocation, frustration, and fear for our lives, with the move to rally behind a discourse that reaffirms essentialized identities and cultural authenticity as a defense mechanism. Despite such rationales, however, those who would turn multiculturalism into an identity politics must address the increasing privatization and disconnect that such melancholia provokes, even as it might initially motivate a resurgence of "activism." A politics of liberation that relies on such a melancholia is ill-equipped to sustain serious challenges, can eventually lead to the learned helplessness of despair, and cannot provide sustenance for the innovative, alternative, and positive visions needed for social change. Very simply put, an identity politics premised or supported by such melancholia remains politically unreliable for the challenges that face us.

Diversity as Technicist Rationality

Another example of the bureaucratization of the multicultural imagination is the narrow circumscribing of multiculturalism into the technicist rationality of "diversity" supporting the institutional concern for "counting" and measuring how "we are doing" from limited perspectives such as visibility and numbers. A technicist rationality renders ambiguous just what "diversity" might mean and has the effect of postponing full engagement with difference, if it only directs itself to that which it finds "measurable." In a university setting such "measurables" are articulated as a concern over number of minority students, faculty, and staff members recruited and retained, and also over number of workshops designed to enhance multicultural literacy and competence. What might be missed as a result is how such "diversity" encompasses sensitivity to the multiplicity of cultural groups in our society, recognition of their different ways of being, and a commitment to the fact that we are all equally worthy of moral respect. The work of "diversity" also entails an understanding that in order to protect minority rights, and to compensate for the disadvantages that a dominant ideological regime belief

in the "neutrality" of its values engenders, measures to supplement dominant group decisions might be necessary. Diversity understood as a strong case for the rectifying of unfairness is not invidious nor inimical to, and in fact might be required by, a commitment to social justice.

Often deployed within an economic narrative of scarcity that emphasizes how it is a valuable but scarce resource that we must compete for, "diversity" becomes difficult to obtain, and is obtainable only through certain people and sources. Again, the technicist rationality of diversity understood from the point of view of scarcity narrows the circumference and scope of our conversation by playing into the hands of definitions that feature diversity as something we don't have, hence narrowing our vision. It hinders forward movement on social justice issues by keeping our attention diverted from difference, increases frustration by pitting us in competition with each other, marks some members of the community as bearers of the scarce resource (increasing their burden and at the same time excusing others), and keeps us constantly dissatisfied with, and melancholic about, our efforts.

In an environment that fetishizes diversity in such ways, calling into question the homologies established between diversity, multiculturalism, inclusivity, justice, and pluralistic values is not often welcome by any side. Diversity as technicist rationality aids institutional laggardness by rendering it a "difficult" issue that we must treat in carefully measured ways so as to not cause too much dislocation. It also polarizes a community that does not understand why diversity occupies such a central point in our conversations, and that supposed that we to to great lengths in order to be politically correct.

It is not surprising that operating from such a limited understanding of diversity, we encounter arguments about the "dumbing down" of the student body by seeking to recruit members of minority populations, or that hiring faculty members of historically underrepresented groups results from less than meritorious evaluation. By the same token, reaffirming diversity as technicist rationality has two seemingly contradictory libidinal effects: it reiterates the melancholy felt by advocates about the futility of initiatives undertaken, while it continues to feed the perverse pleasure some find in continuing an

increasingly fruitless academic debate.

The point is not that we are missing diversity, but that when we transform the notion of difference into diversity as technicist rationality we eschew full engagement with it as constituted by the three main strands of active engagement with difference, inclusivity of historically or traditionally marginalized and underrepresented groups, and the foregrounding of an understanding of how structures, habits, institutions, and modes of discourse support oppression, privilege, and injustice. As an initial step we ought to think of diversity as encapsulating those three domains and associated issues that would expand an authentic multicultural ethos on campus. Diversity conceived through the lens of "visible diversity" or only as scarce resource, abets an academic multiculturalism that is all too happy to remain caught up in discussions regarding whether diversity is pedagogically valuable or not. A reorientation of the notion of diversity will help us be more critically minded about the twin poles of either overemphasizing difference, or pretending cultural differences away, that we find when we fetishize diversity.

None of this means that we should not look at our recruitment and retention practices regarding members of historically underrepresented communities, or that we should not measure and manage enrollment and faculty hiring with an eye toward diversifying our population. It should remind us however, that we need to be much more sensitive to how the narrowing of a politics of difference limits our understanding of how race, ethnicity, identity, culture, religion, and sexual identity are themselves defined and shaped by a wider political environment that we ought not ignore or dismiss.

Between Freedom of Expression and Multiculturalism

Among the many value orientations that multiculturalism entails, we find a call for *recognition of the right to enunciation and representation of cultural difference*. This call is often coupled with the expectation of the protection of civil liberties by democratic regimes. Consequently, such a right to enunciation of cultural difference is, in effect, often a demand for freedom of expression, an individual or collective right to speak. Difficulty arises, however, when we mix our traditional understanding of freedom of

speech with a notion of freedom of expression as *the right to enunciation and representation of cultural difference*. Potential difficulties are exacerbated when we conceive of freedom of expression within the popular language of the "free flow of ideas" and, thus, as part of a "national" culture rather than referring to difference and its demands for recognition (Albro 2005).

Conversations about the right to an enunciation of cultural difference get narrowly circumscribed and polarized by our focus on freedom of expression within a dualistic mode of what can or cannot be enunciated (most often driven by legal concerns). Far from a nuanced exploration about difference and cultural diversity, the conversation about freedom of expression devolves into who or what is offensive or not. What gets occluded or marginalized is how cultural difference and its expression might be recognized as integral to an individual's and a community's understanding of the available range of options for both examining and pursuing, that is, co-constructing a good life.

Besides the unhealthy circumspection about what we feel we can say, a further consequence of the reduction of freedom of expression to what can or cannot be said, is a failure to recognize the essential embeddedness of individuals in social communicative contexts. Conversations about freedom of expression conceived within the realm of an abstract individualism tend to arise at the limits, at those moments in which a challenge occurs. Yet, it is precisely at this point, as important as it is, at which questions of social embeddedness and difference are easily forgotten. What's more, the usual end to these conversations remains the deployment of the freedom of speech trump card traditionally articulated either by reminding ourselves of legal dicta, or by a customary repetition of the vocabulary of "free speech." Neither of these approaches explores substantially, questions about the limits of speech in a community, how we can respond to the claims of a politics of difference, nor how notions of enunciation of cultural difference might help us understand the communicative transactions that make possible the complex relationship between liberal democratic political ideals and their contextual implementation.

Conceived within this dualistic mode, freedom of expression stands in

opposition to a multiculturalist emphasis on a politics of difference. Such a politics of difference challenges liberal theory notions of impartiality precisely because those notions tend to deny the embeddedness of the self in social relationships (Benhabib 1992). A long history links this concern over inclusion with discriminatory and oppressive policies and attitudes that emerge when dominant groups feel uncomfortable about difference. Claims to recognition of difference are basically claims to the relevance of the relationship between individual and community, and the significance of cultural identity as a primary good for democratic life (Kymlicka 1989). When we take freedom of expression in the mode of what can or cannot be said we tend to reduce our understanding of how the articulation of cultural membership is important to community life, and with freedom of expression as the representation and enunciation of cultural difference and what difference that might make. This is a significant point, for in our contemporary world, issues of democratic life and social futures are indelibly connected to fundamental assumptions about cultural identity, privilege, inclusivity, democratic principles, and the deepening complexity between and across increasingly intertwined cultural groups.

Hence, the dualistic mode in which we often take freedom of expression is also a sign of the bureaucratization of our multicultural and democratic imagination. Among the dangers brought about by that bureaucratization we find a privatization of the self, the cultivation of a narrow version of a politics of cultural recognition, increased bitterness and lack of vision for a broader politics of engagement, and the diminution of difference to a passionless (and often legalistic) formalism. Three serious concerns that emerge as the price of such bureaucratization include the reaffirmation of multiculturalism in the university as celebratory assertion of cultural identity solely as transgressive aesthetic, a continued entrenchment of abstract liberal individualism rather than a substantive investment in interdependence, and the concomitant formation of students into consuming subjects of just such an understanding of cultural identity.

Implicit in Practices: Commitment to a Politics of Difference

One of the challenges that the bureaucratization of the multicultural imagination, and the identity politics that emerge as a result, pose for us, is that the quality of our conversation on campus suffers tremendously when we become too circumspect about these subjects. The willingness to sustain a productive conversation is lost when participants are representatives of fixed camps, judgment is quickly rendered, personal attacks follow, and an attitude of avoiding the discomfort of delving into difficult matters reigns. If we wish to participate in a community that values rational ethical reflection, we need to establish traditions, practices, and spaces that sustain the ethical reflection we desire, and include difference. The challenge of communicating across difference is not lightly taken, but neither are we free to ignore it because of whatever difficulty it might raise. What's more, our attitudes cannot just be embodied in practices, but must also be supported and sustained by institutions.

A campus culture committed to multiculturalism and freedom of expression, especially a small liberal arts campus, would do well to cultivate an agonistic culture that not only optimizes the opportunities for all members to express disagreement, but actively features differences of perspective. Discursive contestation is crucial for developing, and modeling for our students, a healthy and democratic participatory culture. An agonistic culture stands in opposition to antagonism, preferring a view of principled disagreement by strong adversaries, than quarrels by enemies. However, while agreement or consensus are not necessarily the top priorities of agonism, it recognizes that discursive contestation is less about fighting an enemy, and more about having the opportunity to engage in the kind of deliberation that might increase our chances at gaining adherence for our positions. However, within an agonistic framework the assumption exists that we cannot take deliberation as the panacea for all that ails us. Conflicting positions, the grief over whatever sacrifices the adjustments of pluralism demand of us, do not stand to disappear if we just pour enough time into rational deliberation. There are no easy answers, we must commit ourselves to an open-ended and humble revision of our communicative practices and our positions if we truly

are committed to a meaningful pluralism or multiculturalism.

In our own campus, the incidents of the past year and a half, while obtaining much attention from the point of view of the demand for a disciplining of particular voices, saw relatively little sustained discussion of the issues at stake. The public conversations that ensued, either via email or through other venues, were quite short-lived. In some instances, the language used pushed the boundaries of civil engagement. The disruption brought about by the unrest on campus effectively rendered electronic forms of communication unhelpful at best in allowing good deliberation to flourish. Faced with such a lack of deliberative spaces, individuals quickly retreated from public conversation, or the conversation became individual, secretive, and circumspect rather than broad and inclusive. What's more, although living under an ideal of the university campus as a bastion of cultural vitality and freedom of speech, very little engagement or support for the disruptive voices was forthcoming. Sadly, the result of this lack of communicative venues, and the lack of strong support for a culture that valued discursive contestation, was the drawing up of battle lines between students and faculty, students and other student groups, and faculty and other faculty, not to mention staff and administrators. The lack of communication led to wild speculation and unfriendly assumptions about motives and secret agendas. In short, our inability to sustain the conversation increased, rather than reduced the confusion and uncertainty of the moment.

Some of the responses to the "Most Offensive Halloween Party Ever" event during the Fall 2006 semester might help to elucidate the need to foster an agonistic culture on campus that values a politics of difference. Response to the Halloween party was swift and strong. Many members of the campus community were offended by the insensitivity seemingly displayed by some students as these purportedly attempted to enact a satirical performance. Various voices decrying the situation were raised, but some in particular tried to make sense of why student members of socially disadvantaged groups would participate in such a party. Apparently, there was an expectation that because of both, the particular group membership of some of these students, as well as their supposed self-identification with a larger solidarity group,

no participation in the party by these students should have taken place. In short, the expectation was that an inter-group affinity would somehow trump the diversity present individually. This perspective granted too little weight to local circumstances and attachments, homogenized the diversity of membership (i.e., membership in multiple groups or hybrid identities), and dismissed the explanations of the participants that they were engaged in an act of creative transgression. The situation could be read as harboring more than a little elitism in the response to a student vernacular understanding of diversity as protection of freedom of expression. The fact that a video had been produced and published online exacerbated the feelings of victimization and offense, and the fear of the damage such a video would have for the university's reputation.

Judging from the video publicly posted online, the "Most Offensive Halloween Party Ever" was distasteful, poorly conceived as a creative act of transgression, and falling well short of the standard for satire. It was rude, crude, insensitive, and an example of the ways in which the participants internalized some of the worst stereotypes of dominant culture. The participants failed to critically examine a crucial component of rhetorical sensitivity: what is it that rhetoric (discourse) wills as it works. Furthermore, they failed to take into consideration any sense of responsibility for the reasonable consequences of their actions, especially since they claimed the party was a strategic performance. The initial response by participating students, and the subsequent response by other students on campus that responded adversely to the call for disciplining the organizers of the party, provides further evidence of the negative effects of the reduction of difference into an identity politics. In their reactionary call of any questioning about the insensitivity of the party, the overwhelming attitude was to assume a position of victimage by claiming that others were attempting to silence them through attitudes of political correctness. Those who expressed offense at the antics of the participants in the party were quickly dubbed humorless, politically correct, and attempting to curtail freedom of expression. The responses by both sides reveal a tragic outcome of the devaluation of difference as a community (political) resource. Both sides responded by playing identity and freedom of expression trump

cards to challenge legitimacy and silence each other.

The Conscious Tension activities during the Spring 2007 semester, in particular the displaying of lynching effigies hanging from various trees on campus, also caused the campus community to erupt in a cacophony of claims to political correctness and freedom of expression. The response to the lynching effigies, if anything, was more forceful than to the "Halloween Party" as all of a sudden campus was confronted with quite a complex symbolic entanglement to parse. The same limiting pattern of communication ensued, with brief electronic mail surges, and much conversation apparently taking place, but little substantive engagement as a whole with issues such as what might constitute appropriate limits to expression within the community, within a liberal arts tradition, and in a university campus that is not just responsive locally but committed to the development of responsible global citizens.

In my estimation, however, neither the party, nor the case of the lynching effigies should be taken as example of Willamette as a bastion of racism, discrimination, and insensitivity. Nor should these events be launching pads for calls to mute voices that somehow don't meet the threshold of a politics of cultural authenticity. As a result of these events various initiatives were undertaken to enhance communication and promote awareness of multicultural issues. A Council for Diversity and Social Justice, and a series of initiatives, one of which this volume of essays on multiculturalism and freedom of expression is a part, were instituted. If there was a common denominator to all these events, however, it was the lack of an ethos of agonism in the engagement. Many of the conversations to which I was privy were prefigured as, or ended in, antagonistic encounters, thus reinforcing suspicion and distrust. What complicated matters also was that the discourse deployed by both sides, emerging as it was out of a context in which multiculturalism and cultural diversity had become bureaucratized into an identity politics, tended toward the strategy of trumping the other's identity, and painting others into corners, thus refusing outright to encounter the other as co-constructor of a common ground from which the possibility of social justice could arise. In addition, missing from all these events was a lack of understanding of

civic voice, an inability to "foster cross-cultural communication in places of identification, disidentification, and non-identification," and ignorance about how to listen metonymically to public debate (Ratcliffe 2005, 78).

Conclusion: Learning to Dwell

Understanding the challenges posed by multiculturalism and freedom of expression in today's world, with the attendant notions of civic engagement, identity, citizenship, inclusivity, and diversity, requires rhetorical sensitivity over just how we construct our dwelling spaces with others, to questions of human existence in the midst of difference. It also requires that we not bureaucratize the multicultural imagination in ways that limit our understanding of who we are as individuals and members of collectives. After all, a concern about how we ought to live, Heidegger reminded us, follows from questions concerning who we are (Heidegger 1996, 51).

Explicit attention to matters of human existence and just lifeworlds requires that we reconsider the notion of ethos as the essential character of human being-in-the-world. This view of ethos, however, is not the traditional understanding of the concept. In the rhetorical tradition, for example, ethos has customarily been understood as "credibility" and, thus, moral character or ethics, which along with *logos* and *pathos* form Aristotle's three artistics proofs (*pistis*) as central components to argumentation. As Michael Hyde notes in *The Ethos of Rhetoric* (2004) however, ethos has a primordial meaning as dwelling place, different from its familiar use by rhetoricians:

> Abiding by this more 'primordial' meaning of the term, one can understand the phrase 'the ethos of rhetoric' to refer to the way discourse is used to transform space and time into 'dwelling places' (ethos; pl. ethea) where people can deliberate about and 'know together' (con-scientia) some matter of interest. Such dwelling places define the grounds, the abodes or habitats, where a person's ethics and moral character take form and develop (Hyde 2004, xiii).

This primordial meaning, Hyde reminds us, gives presence to the architectonic nature of rhetoric which helps us understand it best as an art of invention, or the design of dwelling spaces and landscapes of being with others:

"[t]he ethos of rhetoric… mark out the boundaries and domains of thought that, depending on how their specific discourses are designed and arranged, may be particularly inviting and moving for some audience" (xiii). Hyde further locates this understanding of ethos in Heidegger's consideration of Aristotle's *Rhetoric* as the 'the first systematic hermeneutic of the everydayness of Being with one another" (Heidegger 1962, 178).

In order to have a robust multiculturalism, and an agonistic culture on a campus that values difference we must attend to some foundational rhetorical concerns quite explicitly as architectonic practices through which ethos is understood as revealing the "open region in which man [sic] dwells" and thus from which he/she launches transformative ethical projects (Heidegger 1977, 233). This *re*-cognition of ethos gives primacy to the multiply layered practices of cultivating the relationships essential to building diverse communities. In our recognition of difference and multiple ways of meaning-making, we must understand how our discourse "transforms the spatial and temporal orientation of an audience, its way of being situated or placed in relationship to things and others" (Hyde, xviii). Heidegger already points to the same relationship, albeit by reminding us of the distinction between building, a technical endeavor, and dwelling: "These buildings house man. He inhabits them and yet does not dwell in them, when to dwell means merely that we take shelter in them…do the houses in themselves hold any guarantee that dwelling occurs in them?" This distinction is of critical importance because it calls us to a critical multiculturalism full of self-reflexivity and that explicitly engages its own contingency as a way to facilitate dwelling with others. It also calls on us to reject freedom of expression as comprised by a dual mode of what can be said or not. A bureaucratized multicultural imagination as identity politics, much like a crippled notion of freedom of expression, does not facilitate our recognition of the other as co-constructor of the landscapes we inhabit, and does not help us make our community a dwelling place.

A sensitivity, and perhaps a pre-requisite, to the deep connection to which Hyde and Heidegger commend us, requires that we learn to listen metonymically, the taking up of the challenge that a "text or person is associated with—but not necessarily representative of—an entire cultural

group" (Ratcliffe, 78). Krista Ratcliffe encourages us to adopt a practice of listening metonymically as a way to break out of what she calls a rhetoric of dysfunctional silence: "such dysfunctional silence is not happenstance; it functions via a rhetorical structure that plays out again and again, reinscribing a powerful cultural desire in the U.S. not to talk publicly and cross-culturally about how gender and race intersect" (79). We can highlight how the rhetorical structures that keep us in dysfunctional silence are those that set us apart by bureaucratizing our vision and imagination and, thus, isolating and prefiguring the resulting conversations as unproductive antagonistic encounters that we are doomed to repeat. These dysfunctional silences and encounters continue to harm us by reading the call to dialogue, or agonistic exchange, not as invitation to reconsider our epistemic ground, but as blame for privilege and identity. In order to listen metonymically we must recognize difference, be explicitly self-conscious and open about the contingencies of our claims to power, offer "rhetorical stances of recognition, critique, and accountability," and work at developing a civic voice that does not amount solely to the supposed introduction of new principles while "theoretically remaining faithful to old principles" (Burke 1937, 229).

At the outset of this monograph I expressed a concern for how we in the academy, and especially in the liberal arts, could contribute to a refurbished vocabulary, a new language of liberation that recognized the importance of cultural diversity, minority rights, and social justice, while rejecting essentialism and separatism. Some of the questions that animate my thinking include: In what way can the liberal arts university strengthen its role as incubator of an agonistic culture that seriously challenges us to live a pluralism that finds productive potential in subverting and disrupting rather than securing binary oppositions? How might we best dispense with the reified notions that beset us, and move forward with an inclusive and just conception of a plural community? The answers, if any, were focused on the local level as I developed a critique of academic multiculturalism and our own practices. And yet, a proper response to these questions requires that we address ourselves to the role higher education ought to play as global citizen. These issues must be addressed within conceptual frameworks that directly focus on what kind of

civic engagement we nourish, what kind of citizens we produce, what is the global social responsibility of higher education, and what kind of pedagogy best responds to the needs of an emerging global society. We cannot get at the substratum of what makes for an inclusively excellent campus, one with a multicultural ethos, if we do not address ourselves beyond the blinders we have imposed on these issues.

The bureaucratization of the multicultural imagination fails to generate the promise of restorative justice and liberation that we need in pluralistic society and in our community. The liberal arts university stands well poised to be the cultural incubator for carrying out and modeling the conversations that will help us break through the current impasse in which the slack in the discourse of multiculturalism has placed us. We need to re-orient ourselves to a strong pluralism that still seeks to protect the least among us, and that shuns the essentialist moves that hinder our ability to see, and listen to, each other as co-constructors of liberatory social landscapes.

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Great Liberty, Greater Responsibility:
Free Expression at Willamette University

Shannon Lawless

"No law shall be passed restraining the free expression of opinion…but every person shall be responsible for the abuse of this right." — The Oregon State Constitution, Art. 1, § 8:

This year, the Iranian government arrested 300 women for "un-Islamic dress"; they wore headscarves that were too revealing or clothes that were too tight. Squelching dissent, the Iranian government forced its people to comply with Muslim values ("Uncovered" 2007).

This year, images of underweight models bombarded women in the United States, pressuring them to comply with unnatural standards of beauty. Around 7 million of these women suffered an eating disorder; millions more suffered low self-esteem (National Association of Anorexia Nervosa 2007). The U.S. government did nothing to censor these messages despite their negative influence on its citizens.

In the United States, a country founded on a belief in freedom of expression, we often take for granted that free expression is a given right and an inherent good. We forget that if neglected by its beneficiaries, freedom of speech can wound members of our society as deeply as censorship. As citizens, it falls to us, not the government, to hold each other accountable for the views and values we promote. Only if we recognize and shoulder this responsibility by carefully considering the consequences of our speech can free expression be the gift we presume it to be.

During the 2006-2007 school year, Willamette community members exercised freedom of expression in controversial ways. The "Most Offensive Costume Party Ever," the Concerned Students for Social Justice protest, and the staged lynching demonstration challenged the Willamette community and forced us to look critically at tenets of our value system. To truly understand the implications of these acts and the University's response to them, we

cannot default to a knee-jerk, emotional reaction. Rather, we must analyze how these acts represent or challenge our values, and what place those values have in a multicultural democracy. To undertake this analysis, I will begin by proposing a basic theoretical framework for evaluating whether the students' and University's actions were appropriate or not. This philosophical structure will be the basis for the normative statements I make throughout the essay, and it will reveal why I think the events warrant an in-depth analysis. I will then turn to the events themselves, describing each as objectively as possible. Rumors abound surrounding these events; dispelling them is vital to any productive discussion. Finally, I will discuss what implications the students' actions and the institutional and community responses hold for a just and peaceful multicultural democracy. My conclusions are no more than my own opinion, but they are backed by research and consideration.

Willamette has never held an essay contest like this one. It was instigated by specific events that cannot be effectively responded to with statements of lofty ideals and broad theories. Neither can they be addressed by a simple reiteration of the facts and policies already in place. We must fuse theory with reality, examining the role of freedom of expression in our society, and then directly applying our insights to what happened at the University this year. I will argue that certain actions by individuals and the institution were appropriate while others were not. I hope these conclusions can bring closure to the events of the 2006-2007 school year and serve as a guide for dealing with future controversial exercises of free expression.

The Weight of Free Expression: Creating our own Ethic

When we speak about controversial issues in the United States, we do more than just exercise our First Amendment rights; we collectively create the ethical system that grounds our society. For this reason, we bear great responsibility for the messages we present. If this idea seems overblown or moralistic, consider the contrast between our country and societies in which speech is government-controlled.

Governments that strictly control expression do so to promote particular values. Mao's China is one good example. In an attempt to promote a singular

faith in the power of the dictator and his policies, Mao's government forbade any expression that challenged the government. At various points during his regime, the People's Republic of China banned unique clothing, long hair, any book deemed "anti-Communist," and realistic assessments of the economy, to name just a few. To flout any of these restrictions was considered a direct contravention of the only permissible ethical system. Government-sanctioned speech narrowly limited acceptable behavior to conform to a single system of values.

In the absence of strict mandates from the government, the indirect censorship of social pressure plays a critical role in defining our values. The United States Government certainly regulates some expression in the interest of promoting certain values, such as prohibiting slander and libel to encourage honesty. On the whole, however, the US allows a much greater range of expression and values than do governments like Mao's China. Within the realm of legal behavior, we can choose to practice any of an array of religions with varying value systems, we may openly revere or despise our leaders, and we can dress and assess the economy as we please. At some point, we must decide which of these many options we want to take, and the government will not choose for us.

The lack of government control in the United States does not mean we are left to our own devices. In the vacuum of direct regulation, a subtle system of social norms and pressures pushes us toward certain choices and repels us from others. What sets that system apart from governmental control is that every citizen, in her capacity as a private individual and as a participant in mass media, has a hand in defining what is acceptable and what is taboo. It is in this role, as definers of our own social ethic, that our acts of free expression become truly significant.

While the social pressures that regulate our value system do not use direct force like government controls, we should not dismiss their power lightly. In many matters, we are legally free to speak our minds, yet are restrained by a complex interaction of social pressures. Politics and religions are two such subjects. Large organizations, such as TV stations or churches, often use sophisticated tools of persuasion to inculcate their audiences with

particular beliefs. The behavior of individuals, through comments, attitudes and actions, either reinforces the larger organization's attitude within their peer group or rejects it. A person subject to this combination of large-scale and individual pressure may feel affirmed and welcome, or ostracized and mocked, depending on how well she conforms to the social norm of acceptable behavior. Humans are social animals by nature, and to deprive them of acceptance into a community cuts off a vital line to a sense of fulfillment. Some communities have so effectively used the system of social pressure that their members are as hesitant to express certain opinions about politics and religion as Chinese citizens were to criticize Mao or profess religion during his regime. While these pressures ripple out to affect larger American culture, they are most strongly felt in our immediate communities, such as our families, neighborhoods and universities. As such, each member of the Willamette community takes part in a subtle system of social pressure with extreme persuasive value.

Though it may seem onerous to think of all of our actions as morally significant, I am not advocating that we do the impossible or that we take ourselves too seriously. I do think that we should consider not only the immediate effects of our words and actions, but the larger value system they encourage or discourage. We are more than capable of simply thinking through the larger effects of our acts of expression, and when we do so, the added work will prove worth the effort. Particularly in an age when technology allows us to disseminate information to millions of people instantaneously, our statements can have a profound influence on others. We need not agree on what should be acceptable, but we have a responsibility to each other to argue and live with reason and sensitivity. As members of a multicultural society, this guideline particularly applies to condemnation or praise of others. Opinions about what is acceptable are likely to vary widely. It is important to consider the intentions and reasoning behind an action before we accept or condemn it because our statements can deeply affect the thinking and behavior of our fellow citizens.

To promote a just and peaceful multicultural democracy, we must accept our ability to profoundly influence the ethics of those around us

through simple words and actions. Exactly which attitudes and ethics would provide the strongest foundation for such a society warrants an essay of its own. But to adequately explain why I commend or critique the events at Willamette as I do, I must mention two values I believe are paramount. First, we must respect knowledge and strive to be educated. If we are ignorant of our history or of the stunning variety of beliefs and practices that characterize our country, we will struggle to react with tolerance to ideas or actions that are alien to us. Second, we must be deliberate and reasoned in our actions and reactions. No matter how educated we are, we are bound to often confront acts of expression that surprise us. Before we judge them, we must thoroughly investigate the reasons people acted as they did; when we act, we must strive to be clear about our motivations and intentions. Just as education and patience in understanding and communicating with others are necessary for a healthy multicultural democracy, they are also important goals of a liberal arts education. Thus, these attributes are doubly applicable to the discussion of controversial acts of expression at Willamette. They are essential to our society and are goals we have willingly taken on as members of the University.

When we examine the controversial acts and the responses to them at Willamette last year, their contribution to our overall value system will help determine whether they were appropriate or not. Do they promote values that facilitate a peaceful and just democratic, multicultural society? I believe when we think through the events, the actual ethical implications are drastically different than many people hastily concluded.

The Most Offensive Costume Party Ever

The recent intense discussion of free expression at Willamette did not arise from a simple upwelling of liberal-minded conviction—it was started by a Halloween party. The "Most Offensive Costume Party Ever" (henceforth, MOCPE) rocked the Willamette community last October, and to have an honest, open and informed conversation about diversity at our University, we must start by acknowledging what exactly happened at the party and the chain of reactions it set off. In my attempt to learn the full story, I referred to information on the Willamette website (http://www.willamette.edu/

president/social_justice/), and corresponded with various involved parties, including President Pelton, multiple attendees, and a host of the party. The following is my attempt to recreate the events as accurately and objectively as possible based on the information I received.

On a weekend close to Halloween of 2006, three Willamette seniors hosted an off-campus party dubbed "The Most Offensive Costume Party Ever," promising prizes to the students with the most offensive costumes. The party's intent was satire; it provided a chance to mock the prevalence of political correctness, the stupid themes of many Halloween parties, as well as particular offensive phenomena. The party's guests rose to the challenge; Hitler, a Ku Klux Klan member, the Twin Towers, and an aborted fetus were among the attendees. At the heart of the controversy were students dressed in black face, one of whom wore a suit and nametag indicating that he was President Pelton. One student videotaped the party and posted parts of it on YouTube.com on November 8. According to a host of the party, none of the attendees knew ahead of time that they would be videotaped. For a short time, the video was on YouTube™'s most viewed list.

President Pelton was informed by a student that the video existed and that he was the target of one of the costumes. He responded by emailing a condemnation of the video to the Willamette community. Images of Willamette students wearing black face and posing as Hitler, he wrote, are "by any reasonable standard…deeply offensive to our community's values of diversity and inclusion. I applaud the actions of students, faculty and staff who have already expressed their disapprobation of this video and the ignorance and bigotry that under girds much of its content" (Pelton, email of 11/06/06). The video was removed from YouTube™ by its creator soon after the email, and in the following days, two forums were held to discuss the MOCPE. These events were not widely publicized and the party's hosts were not invited. To express their point of view, the hosts responded with a statement explaining the party's satirical intent (also available on the Willamette website). They wrote,

> When seeing images of Hitler goose-stepping around our
> party, the only way that one can hold that this supports

racism is by affirming that the student that dressed as one of the worst genocidal dictators in history actually agrees with his insane Nazi views. This is obviously a mistaken assumption. Would the student have dressed up as Hitler for the MOCPE if he agreed with the late German? Or does it make more sense (and is it more funny) to assume that he was actually directly mocking everything that Hitler stood for? (Yunker 2006)

According to President Pelton, no disciplinary action was taken against the students because they did not violate a University policy. They did face an outpouring of animosity, anger, and rumors. One host was asked to take a week off of work at Telefund for fear that the party would become a major public issue and higher administration would not want him to represent Willamette. The protest by the Concerned Students for Social Justice, just a few weeks later, was seen by many as a direct reaction to the party. At a teach-in organized to discuss social justice and diversity the next semester, anti-racism speaker Tim Wise condemned the party at a convocation attended by hundreds of students, claiming that the party's participants were incurable racists and bigots with whom the rest of the Willamette community should refuse to interact. In sum, although the consequences were not official, they were strong for the students involved.

While particular acts at the MOCPE were ill-considered and crossed the line from satire to stupidity or meanness, I stand strongly in defense of the idea of MOCPE and its hosts. To say that the concept of the party is inherently bigoted belies a simple failure to think through the idea of a Most Offensive Costume Party Ever. The party's intent is satirical, as its hosts explained, and many students demonstrated a profound understanding of this. One student of Indian descent, for example, explained her Native American costume:

> My costume was a Post-Columbus Indian. I wore terribly stereotypical 'Indian' gear, like Disney Pocahontas- tattered brown skirt, no shoes, two braids, a feathered-headband. I had 'war-paint' on my face and a bloody handprint on my top. I had many ideas. Generally, I hate how Americans think it's okay to dress as an ethnic identity for Halloween. So I put on the stereotypical outfit that most kids wear, then

> I made it realistic with the blood and torn clothes. I called it Post-Columbus to comment on the bloody genocide of Native Americans. Also, on a personal note, the Indian dressed as an Indian thing I found funny.

This student was clearly aware of historical and current discrimination, and by crafting a costume that embodies this discrimination, she implicitly labeled it as offensive. Moreover, by using satire, she acknowledged the discrimination directly and confronted it with humor, an approach I argue we should admire and try to emulate.

Satire performs several critical functions in a society that values intelligence and humor, and I believe it is critical to the functioning of a democratic, multicultural society. First, satire is widely used to address difficult social issues, and is often a valuable part of the healing process after great social injustice. Last January, for example, the movie "Mein Fuehrer —the Truly Truest Truth about Adolf Hitler," premiered in Germany, which poked fun at the dictator by portraying him as a sexually impotent, bed-wetting, "bumbling baffoon." The year before, German Rudolph Herzog published a book of Hitler jokes (Rosenburg 2007). Clearly, these acts do not support Nazism but rather continue conversation about Hitler's regime without wearying people with a constantly serious approach. Most of the costumes at the MOCPE can be regarded in the same way. No matter how much we care about an issue, few people can tolerate the emotional drain of unrelenting solemn and guarded conversation. Satire draws more people to reengage with difficult parts of our history and to learn from atrocities like Hitler's dictatorship rather than to stamp out conversation about them.

Satire, including the MOCPE, also serves as an important antidote to the political correctness that pervades our society. Political correctness, in American society, means making statements and using vocabulary that is well-accepted within mainstream culture to minimize offense. Political correctness is not without value; its existence acknowledges sensitivity towards others' histories and emotions, particularly those of the minority. However, the pressure to be politically correct is often taken to a harmful extreme. People feel so afraid to be "un-PC" when discussing sensitive issues that they either

avoid important conversations altogether or make bland statements that mean nothing and lead to no progress. This uncritical discussion is clearly counter to the values of a liberal arts education, which values openness, challenging assumptions, and debate. It would be tragic for political correctness to destroy our ability to understand and appreciate satire. As the hosts explained in their statement, the MOCPE requires us to acknowledge and mock the things we find most offensive. If the attendees were blind to the current problems of racism and anti-Semitism, for example, they would have seen the Ku Klux Klan or Hitler as distant facts of history rather than evocative symbols for hate. Rather than gossiping about the most recent Willamette romance, these students were challenging norms about controversial speech.

The MOCPE also challenges us to think about the place of purposely offending people in a society with free speech. We often use an indirect form of purposeful offense to gain support for a cause; politicians misquote their opponents to offend and rile up their bases, and workers recount a boss's offensive behavior to dismay their coworkers and build solidarity. In these cases, the speaker benefits from an offense caused by someone else. Direct, purposeful offense is a much braver undertaking, for the speaker shoulders not only the benefits but the burdens of the offensive act. As listeners, confronting direct offensiveness tests our reactions. We must face a situation we could more easily condemn from afar. Do we speak up? Are our emotions backed by reasoned thought? The MOCPE makes us think deeply about these questions.

That said, offense, by definition, is hurtful, and we must use discretion when deciding which controversial acts incite productive conversation and which cross the line between satire and mean-heartedness. The costume mocking President Pelton is a good example of the latter. Rather than mocking something truly offensive, like a dictator who killed millions of people, it targets a human being who caused no such offense. If this costume had been addressed directly in the university-wide criticisms of the party, I would find them much more compelling. The costume of one individual, however, is not a reason to condemn the party's hosts or their ideas.

The most obvious misstep regarding the MOCPE was posting a video

of it on a highly-used public website in association with the University and without the permission of the students in the video. I do not mean to say the video should never have been public; on the contrary, I believe it could, and did for many, perform the valuable functions of satire I previously mentioned. However, in a society dominated by political correctness, it was obvious the party would cause a stir. The students involved should have been afforded the chance to decide whether they wanted to risk the inevitable backlash. While I wish every viewer would recognize the party's satirical intent from the video's title, a reasonable person should be well aware that not everyone would understand. Moreover, the general public could not know the generally tolerant and thoughtful nature of the students who hosted and attended the party, leaving them in the dark on a revealing factor about the host's real intent. I do not think that posting the video was ill-intentioned, but simply not considered much at all. If the video had been presented with more context and had not been publicallypublicly linked to the University, the controversy might have been avoided. The unnecessary backlash caused by posting the video online demonstrates the importance of thinking through the social implications of our actions.

What *is* a threat to our value system, much more than the MOCPE itself, is a dangerous quickness to condemn without knowing all the facts. Many people reacted this way to the party, but convocation speaker Tim Wise epitomizes this fault. When he condemned the party and its creators, he clearly did not understand the situation or know the students he suggested shunning. If he had, he would have realized that they include intelligent and considerate students who never intended to hurt people, much less have their offensive costumes taken as endorsements of prejudice. If Willamette students took his call to ostracize participants in the party seriously, that would be a step toward intolerance and ignorance, two values a multicultural democracy cannot promote if we desire peace and justice.

The University's response, publicly headed by President Pelton, is an understandable but less than exemplary use of free speech. The consternation and emotion the President must have felt, as the target of a personal attack, certainly warrants a strong reaction on a personal level. He also faced pressure

from the Faculty and Board of Trustees, two powerful groups in the University, to condemn the party. Yet as president of the University, Pelton is responsible for the well-being of all of his students. A nuanced response, one which acknowledged the context in which the party took place and distinguished between its good and bad elements, might have avoided causing a ripple effect of anger toward the participants. Instead, his initial email encouraged us to "express our disapprobation" without further investigation, advice that too many members of the Willamette community followed. Forums to discuss the events were another positive idea, for the party posed many important and intriguing questions. But failing to include students who represented the party in these events encouraged them to become one-sided, unchallenging venting sessions rather than balanced and critical discussions. While President Pelton's quick condemnation of the party is understandable, it was not an ideal model of how to react in situations of controversial speech.

More disturbing than the University's response was the reaction of many students in condemnation of their peers. They took the party to be evidence of racism and bigotry at Willamette, inciting righteously indignant criticisms backed up by little critical thinking. While the student protest at Willamette included many different people with a multitude of reasons for participating, in too many cases their primary motivation was to denounce people and actions they misunderstood. We will turn to the protest now.

The Protest by the Concerned Students for Social Justice

A professor commented after the Concerned Students for Social Justice (CSSJ) protest that he was excited to see a fiery, youthful drive for reform in Willamette students, for this spirit has achieved many valuable changes in our society. He is right to embrace the potency of discontent and its great potential for progress. But this passion is easily led off-track and, without reasonable plans, it is unlikely to achieve its lofty goals. Such is the case of the CSSJ protest; its ill-planned and often childish nature counteracted and contradicted the movement's objectives of improved diversity and tolerance at Willamette. Before I explain why I believe this is so, I will briefly describe the protest. After my analysis, I will discuss the University's reaction and its

implications.

According to one member of the CSSJ, the idea for the protest came from a discussion about how Willamette students talk a lot about social justice but seldom act on it. The students decided to reverse this trend by acting, and planned the protest late into the night. The next day, on Thursday, November 16, 2006, the newly formed "Concerned Students for Social Justice" group arrived in Jackson Plaza wearing red t-shirts and holding signs. They talked to passersby at that site throughout the day. At the beginning of each class period, representatives of the protest abandoned the plaza to interrupt classes, encouraging students to show solidarity by leaving class to join the demonstration. At the heart of the protest was a letter, circulated by email and in print, which listed several demands. Although it is long, I am including the entire letter here because of its central role in the protests, because I believe it embodies the character of the protests, and because I discuss it extensively in the analysis that follows. The letter, which can be found on the Willamette website, reads:

> Dear Willamette University,
>
> We are students who are ready to seek change. We will not be attending our work or our classes today, as we are visibly taking a step toward fighting oppression on this campus. Please understand our intentions. We respect the difficulty of your professional obligations and we are inviting each of you to join us in this movement to raise awareness of the injustices that are occurring daily in our community. Today, we are demanding that a Social Justice Council (similar to the Sustainability Council that already exists) be formed, by Monday November 20th, to immediately address the following changes, which must occur on our campus. We would like the first action of the Social Justice Council to be an organized teach-in scheduled before winter break. Announced by Monday, we would like a scheduled meeting with the Board of Trustees to discuss our plan of action.
>
> These are issues that we demand be addressed:
> • Creation of MOI and mandatory convocations regarding all levels of social inequality and injustice

- Expansion of curriculum and faculty addressing sexual identity, race and ethnic studies, and women and gender studies
- Creation of an American Ethnic Studies Major
- Hiring of a significant number of staff and faculty of color and different sexual identities
- Update the hiring practices of administrators, staff, and faculty to include awareness of social injustice issues
- Social Justice/Diversity Training required for all staff, administrators, and faculty
- Revising admission efforts at increasing diversity at Willamette
- Director of Multicultural Affairs to report directly to the President of the University
- Adequate funding to enact these needed reforms
- Reforming of the Opening Days program to include social justice education
- Gender Blind Housing
- Creation of a visible, well-funded, and well-staffed Social Justice Office

This is a growing list, knowing full well that there are many other issues that have and will arise when dealing with this topic.

With hope,

Concerned Students for Social Justice

P.S. Please come wearing red in solidarity.

A close analysis of this letter reveals much about the CSSJ's strengths and weaknesses. I will begin by discussing the weak points. The CSSJ (1) asserts that a problem exists without proving or explaining it, (2) uses rhetoric that alienates its most likely allies, (3) is unclear on what exactly the changes mean, and (4) has no pragmatic plan of how reforms could be implemented. These weaknesses are significant, for if movements for justice are to actually achieve their goal, they cannot have so many pitfalls. I will examine these shortcomings in detail to show where they lack care and thought, and how this hastiness backfires against the very goals of diversity and justice that the

CSSJ hoped to promote. I do not dwell on this point to criticize the students involved, but because the errors of the protest teach important lessons about how to achieve social reform.

First, the letter says that the students are "visibly fighting oppression" by not attending classes. Presumably, being expected to go to class is not oppressive, as the students are paying large sums of money for the privilege of doing so. The question remains: what oppression are they fighting? Perhaps the "injustices that are occurring daily in our community"—but what exactly are these? Their letter does not provide a clear answer, and the protestors I spoke with explained injustice with intangible generalizations. I am not trying to insinuate that injustices do not exist. Most people would acknowledge without hesitation that American society is not entirely fair. But the letter makes a strong claim by implying that systemic injustice plagues the Willamette University campus in particular. For those who have found Willamette to be a welcoming place, and vastly more accepting than American society as a whole, it is not sufficient to simply assert that the University is a hotbed for oppression. We need a detailed explanation and proof. If these allegations were put in specific terms, such as "minority students feel that they are ignored in class" or even "the MOCPE demonstrates that Willamette students are not sensitive to minorities," we could start to have a discussion about whether this is true and how it might be changed. If proof were included (for example, "here are the testimonies of a significant portion of Willamette's minority population expressing their feelings"), we would be well on the way to understanding the problem and taking action against it. Instead, by proclaiming that people are oppressed at Willamette without explaining how, the CSSJ made many members of the campus feel defensive, skeptical, and impotent to change a wrong they could not even define. Because people felt accused and wanted to avoid being "oppressors," they often denied outright that oppression occurred. Their alienation stifled productive discussion and embittered potential advocates rather than opening their eyes to a problem. This point leads to the second major error of the CSSJ: its accusatory stance toward the people best equipped to help them.

While the letter is addressed to "Willamette University" as a whole,

its demands are directed only toward the faculty and administration. These groups have the greatest influence over change at Willamette and they have historically been the strongest proponents of the type of changes the CSSJ wants. Despite this, multiple aspects of the letter alienate faculty and administration. The word "demand," used multiple times, implies that they are unwilling to participate in reforms and have resisted them in the past. Many felt hurt by this combative tone; I saw one faculty member in tears of frustration as she explained the insult this demand was to those who have spent years working for more diversity and less discrimination at Willamette. Moreover, many demands ignored the efforts faculty and administration had already made toward increasing diversity. For example, two demands regarded updating hiring practices, but they nowhere acknowledged that diversity has been a goal of hiring for years. The departmental chair's manual provides detailed guidelines on strategies to recruit minority candidates[1]. A Minority Affairs Committee helps departmental search committees attract minority candidates. All position openings include the statement, "Willamette University has made a strong institutional commitment to diversifying its faculty, student body, and undergraduate curriculum. We encourage qualified candidates from minority communities to apply." This statement has been expanded for next year's position openings in a further effort to draw in diverse candidates. The effort to diversify has met with some success; during the same year as the protest, Willamette hired an African American professor of philosophy and an African American novelist as the Hallie Ford Chair in Writing. The previous year, Willamette hired a Senegalese, Muslim professor of French. These new faculty and efforts toward diversity do not make Willamette as diverse as we would like, but they are significant and positive steps which should be acknowledged. They also demonstrate that the faculty is in favor of making progress. The CSSJ completely fails to recognize that drawing diversity to a relatively homogenous campus is extremely difficult, and that a lack of drastic improvement does not mean a lack of effort.

The demand that Willamette revise "admission efforts at increasing

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[1] From the Chair's manual, prepared by the Dean's Office: "Suggestions for Increasing Minority Applications for Faculty Positions"

diversity at Willamette" is similarly ill-informed and caused frustration in the Office of Admission, another potential source of support, whose cooperation is critical to achieving the CSSJ's goals. Diversity has been a goal of the office for decades, which the CSSJ's letter of demands never recognized. Among its many strategies for increasing diversity, the Office of Admission pays for some students of color to attend Admission Preview days, prints a Spanish-language version of the parents' brochure and employs some Spanish-speaking counselors, and works extensively with organizations dedicated to equal educational opportunities for youth whose economic and racial demographics are underrepresented in higher education. Although the Office of Admission's strategies may not achieve our desired level of diversity, they are solid efforts that take energy and funds. They deserve recognition that they did not receive. As Teresa Hudkins, Director of Admissions, writes,

> We have provided a great deal of data and copies of publications to several different students working on this research. I'm sorry we have been unable to convince them that we are making every effort to increase the diversity on this campus. Students need to be aware that we are not the only place in the country doing this. The competition among colleges is fierce for students who might make a campus more "diverse" than others. We are always thinking about how we might do better at meeting this goal, but it's a constant battle. There is never enough time or money to do everything we would like to do (from anHudkins email of 08/09/07).

Considering its desire to improve diversity at Willamette, the Admissions Office should have been one of the first allies of the CSSJ. Instead, it was treated as an impediment to the CSSJ's goals. The hurt and resentment this approach caused did not increase diversity at Willamette, and the CSSJ was pushed further from achieving its goal by the animosity it created.

Admittedly, the faculty and administration share some of the burden for failing to sufficiently publicize their strategies and efforts toward increasing diversity and social justice among the student body. But the responsibility for investigation ultimately falls to the students who initiated the protest. At a university as small as Willamette, we cannot afford divisiveness among

the students, professors and administrators. The strength of the University is based on the close and cooperative relationship between students and faculty. Lasting resentment between these groups would harm not only the goal of improved social justice, but the entire educational process. If the CSSJ is serious about improving Willamette, its members should seek cooperation with those who can actually enact change rather than treating them as enemies. Trying to achieve goals by antagonizing others is an ineffective tactic.

The letter's third major error was the astounding lack of clarity or explanation of its demands. Does "expansion of curriculum and faculty addressing sexual identity, race and ethnic studies, and women and gender studies" mean adding faculty or educating existing faculty? What does it mean to "update hiring practices of to include awareness of social injustice issues?" What functions would the Office of Social Justice serve? Would the Director of Multicultural Affairs maintain the same responsibilities, and how would reporting directly to the President change his position? In sum: how can we be persuaded by demands that are not even phrased clearly? Without explanation, these ideas smell of useless bureaucracy and empty talk. In a few cases, the protesters actually did have a plan behind their poor word choice. They demanded, for example, "Gender Blind Housing," a term many students did not know. When I asked, a protester explained that this meant changing policy to allow roommates to be of the opposite sex in University housing, which would avoid the current hetero-normative assumption that same-sex pairs do not have romantic relationships. When explained, the demand seemed reasonable and compelling. Without explanation, many students assumed that CSSJ wanted housing to be assigned with no regard to gender, a very different scenario and likely less appealing to most students. The ambiguity robs the protest of legitimacy and makes the entire affair harder to take seriously. In writing this essay, I have had trouble addressing all of the CSSJ's agenda because I, like the protesters, still have an unclear understanding of what "social justice" is. I have mostly addressed diversity, as this seems to be the most quantifiable aspect of "social justice." It is representative of the movement that even its title is unclear.

The fourth crippling error of the CSSJ's demands is that even when the

demands are clear, they generally lack realistic plans for implementation. The most obvious example is the demand for funding. Money is mentioned twice: once in the umbrella request for "adequate funding to enact these needed reforms," and again in reference to the need for a "visible, well-funded, and well-staffed Social Justice Office." A moment of analysis shows this could mean an enormous cost, although the demands' ambiguity makes it hard to come up with any solid numbers. An American Ethnic Studies Major would probably require adding several faculty members. The creation of several new administrative positions, including the staff of the Social Justice Office, would further increase costs. The expansion of curriculum, hiring of speakers for mandatory convocations on social justice, and the development and implementation of Social Justice/Diversity training for faculty would push the price even higher. While some of these recommendations might prove worth the cost, we need to know where the money would come from and an estimated price before we can decide. What the University spends on such programs, remote as it may seem from student life, translates into tuition increases and financial aid decreases. A large increase in cost would make Willamette even more difficult to attend for the diverse group the CSSJ purports to support, for minority communities are disproportionately economically disadvantaged. A tuition increase and its effects are directly counterproductive to the goal of making the student body more diverse. Demanding reform can happen in a night of frenzied-poster making, but implementing it takes discipline and less exciting work. That the CSSJ entirely ignored this reality rendered the protest naïve and largely ineffectual.

Despite these flaws, certain aspects of the protest merit respect. Most of the protesters were motivated by good intentions and a real enthusiasm for improving the University. The general goal of increasing diversity and equal treatment of all at Willamette is an admirable one that, with a thoughtful and realistic approach, we should embrace. However intangible, an atmosphere of awareness and concern about the diversity of campus is also important. Before the protest, faculty and administration may have felt that they were alone in pushing for recruiting more minority candidates and students, or in advocating education about historically oppressed groups. Knowing that

students are also willing to work for these goals gives energy to their cause and can propel concrete changes to happen.

The University's response to the protest was, especially in contrast, reasoned and respectable. President Pelton's letter in response to the CSSJ, rather than taking a defensive or combative tone, commended the good intentions behind the protest. He emphasized that students, faculty and administration were united in their goals, saying "I appreciate the efforts of these students and others to reaffirm our commitment to values of diversity and social justice."[2] (Pelton 2006, letter). In doing so, he took the opposite approach of the divisive demands. President Pelton's letter also acknowledged the lack of publicity regarding the existing programs and progress toward the CSSJ's goals. To address this problem, he briefly described some of Willamette's current efforts and commissioned the development of a Resource Guide on Diversity and an annual report by the Office of Human Resources regarding the progress toward increasing faculty and staff diversity. The creation of these guides directly addresses the communication gap that divided faculty, administration and student protestors who would have ideally worked together. The President listed several other concrete, clear measures that the University would implement to improve social justice, and acceded to certain key demands, including the creation of a Council on Diversity and Social Justice (CDSJ). Unlike the CSSJ's tactic, President Pelton's approach modeled a constructive response to controversy in a multicultural democracy.

The Council for the Development of Social Justice (CDSJ), formed by the University in response to the protest, is an interesting mix of the positive elements of the protest, such as its spirit for change, and its ineffectual points. The council is comprised of members of all different campus communities, including students, faculty members, admissions staff, alumni representatives, as well as Law and MAT school representatives. Because of the need for so many different groups to cooperate, the Council moves slowly. Like the protest, it also lacks the authority to implement many (if any) changes. But Council members are convinced that the CDSJ does not meet in vain. Charlie Wallace, leader of the Council, explained that the group's job is to "coordinate

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[2] This letter is available online at http://willamette.edu/president/social_justice/2006-11-18.

and advocate" for change at Willamette. The students' enthusiasm, he believes, can lead to suggestions for improvement and motivate those with power to take reforms from the idea stage to implementation. With the University's support, for example, the Council planned the teach-in in March which featured several successful, educational forums to discuss issues like diversity and discrimination. The CDSJ offers "mini-grants" for students with ideas on how to improve diversity and social justice at Willamette. Overall, the CDSJ is a positive result of the protest, which continues its strengths while avoiding its most destructive flaws.

The "Lynchings" Demonstration

A while after the CSSJ protest, a Willamette community member took a strikingly different tactic in the discussion about diversity. On a Friday, students left their dorms to discover mannequins hanging from various locations on campus. The "bodies" were accompanied by signs which told the story of a recent, racially-motivated lynching in the United States. The signs went on to discuss the ineffectiveness of the CSSJ protest in creating an awareness of diversity, and a promise to continue similar acts to create "conscious tension" on campus. The demonstration shocked and offended many community members, and the mannequins were quickly taken down by Residence Life.

My earlier comments about purposeful, direct offense are even more relevant to the lynching demonstration than to the MOCPE. Purposeful offense can be effective, but can also be so hurtful it does not serve to convey a message. To stage lynchings on campus toes this line; the bodies' shock value undeniably garners attention and discussion, but the use of a historical symbol for hate could be too painful to be effective. But when we consider the values needed for a healthy multicultural democracy, the fake hangings become much more understandable, for they serve to educate us about a current reality vital to understanding one another. As the sign points out, racial violence is not only a historical but a present phenomenon. The need for a widespread realization that racism still exists in such an extreme form, especially in a community that has largely been sheltered from such violence,

trumps the need to protect our own emotions.

The staged lynchings, like the protest, could have been better planned. Perhaps most important, the stories accompanying the bodies should have been more obvious and widespread, for they are the difference between the demonstration as a symbol for hate and as a tool for education. Perhaps faculty could have been warned so that the figures would have remained in place longer and the message they were to convey could have reached more students. But, on the whole, the lynching demonstration still performed a function the protest did not; it provided compelling evidence that "oppression" takes a concrete form that we should care about. We may not feel compelled to act against vaguely-defined oppression, but we are roused and angry when we discover that a real human being suffered and died because of intolerance and discrimination. Unlike the protest, the lynching demonstration is unlikely to make specific people feel accused but is rather a starting point for a discussion which we can all agree on: racial violence such as this exists and it is unacceptable. The realization that racism can, even now, escalate to such a tragic and bloody crime motivates us to discover and root out its subtler, but insidious, forms in our own community. As it was, the Willamette community seemed jaded in the aftermath of the protest, and the lynching demonstration failed to provoke the conversation and action that it should have. Despite this reaction, the lynching demonstration has a power and insight that the protest lacked. I hope discussion about discrimination on campus will follow one valuable lesson of the lynching demonstration, which is to begin to understand oppression by learning about concrete, undeniable instances of it. It is from such instances that we can discover the true nature of the problem and begin thinking of solutions.

A Wiser University

This essay will be published during 2007-2008 school year. Though the effects of last year's events will spill over, the new year signals a fresh start. New minds have joined the University, and new leadership has the opportunity to shape the movements of the 2007-2008 year. If we use our analysis of the MOCPE, the CSSJ protest and the lynching demonstration in an effort to

improve our use of freedom of expression, the controversy, high emotion, and turmoil of this year will not go to waste. I hope that the conversation about difficult topics will continue, but that it will be characterized by tolerance and consideration rather than division and condemnation. I hope that the students, faculty, administration, and staff channel their energy and excitement about increasing diversity and decreasing discrimination into effective action by making clear, realistic plans and acting on them. I commend the professors, administrators, staff and students who have already done so; we should acknowledge and praise our colleagues for their current and future efforts. I hope we will continue to shock each other into seeing the harsh realities of our world, and continue to reason with each other until we have ideas for mitigating these realities. In this way, we can mold a value system appropriate for a community in which we would like to live.

Conclusion

My evaluations of the controversial incidents at Willamette last year can, and should, be debated. But if we wish to be responsible citizens in a peaceful and just multicultural democracy, we must debate with the intent of understanding, not of condemning, and only after investigating the facts as thoroughly as possible. If we use this method, we will prove worthy of the simultaneous gift and burden of free expression, for we will have used our liberty to promote a value system of tolerance and justice in our country. I do not hope that my essay comes to the "right" conclusion (if such a thing as exists), so much as that it provides a model of this reasoned, responsible approach. I can testify that in writing it, my opinions have been shaped, shattered, and reformed more than I at first considered possible.

The most interesting exercises of free expression are rarely easily accepted; if they were, our country would be quite boring, and our freedom to speak and act, meaningless. The Most Offensive Costume Party Ever, the Concerned Students for Social Justice Protest, and the lynching demonstration are, beyond a doubt, fascinating uses of liberty. If we refuse to be governed by our immediate and emotional reactions, we can find value in aspects of these events that originally disgusted us. We can avoid mistakes that hurt worthy

causes by discarding ineffective approaches to advocacy. We can embrace satire and react to it calmly, plan clear and cooperative reforms, and use our freedom of speech to draw attention to ugly realities we should recognize. If we take these lessons from the controversy at Willamette, we will have used our freedom of expression wisely: as a step toward a fair, harmonious, and diverse democracy.

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About the Essayists

Peter A. Harmer is a professor in the Department of Exercise Science. He views critical thinking as the foundation of his approach to teaching as it is at the heart of a liberal arts education. Professor Harmer is a Fellow of both the American College of Sports Medicine and the Research Consortium of AAHPERD.

Sammy Basu received a B.A. and M.A. in political science from the University of Calgary, and an M.A. and Ph.D. in politics from Princeton University. His research and teaching interests encompass historical and thematic approaches to the study of Western political philosophy from the ancients to the moderns, as well as ethics and public policy, with particular attention to mid-17th century English political thought, death, and humor. He is a distinguished fellow of absolutely no national or international associations and would like to keep it that way.

Arminda Lathrop taught English composition at the college level for four years before taking the position of Communications Director and Project Coordinator for International Debate Education Association (IDEA) at Willamette University. After a good deal of time spent memorizing her job title, Arminda now coordinates international projects in an eclectic assortment of countries and enjoys traveling to far-off places that boast delicious and exotic entrées she cannot pronounce. Arminda can be seen roaming about the Willamette campus with a toy-sized mutt and a large man in a suit—her dog and husband, respectively.

Christopher Hanson is a senior at Willamette majoring in English and minoring in sociology. He is the creator and editor of a popular satirical newspaper on campus, *The Mill Stream Report*, which has been published weekly for over a year. After graduating, Chris hopes to find a position in an independent newspaper and continue his various artistic endeavors.

Tobias Menely received a B.A. in literary studies from Beloit College and a Ph.D. in English at Indiana University. An Assistant Professor of English at Willamette, he teaches courses on the literature and culture of the long eighteenth century. He is currently completing a book, *Sympathy's Kingdom: Sentimental Culture and the Birth of Animal Rights*.

Warren Binford holds a B.A., *summa cum laude* with distinction, and an Ed.M. from Boston University and a J.D. from Harvard Law School. She is an Assistant Professor of Law and Director of the Clinical Law Program at Willamette University College of Law where she also teaches international children's rights. Professor Binford has traveled extensively to research, lecture, and publish on children's issues and continues her advocacy for children and families through the university's legal clinic. Her interest in freedom of expression stems from her familiarity with research suggesting that children are harmed by unbridled free expression and a concern that our society's value of free expression, in too many circumstances, seems to trump the well-being of our children and other disempowered groups.

Joseph Kaczmarek graduated from Willamette University in 2007 with a degree in rhetoric and media studies and a minor in economics. He is now living and working in the Portland area. He has no firm plans for the future, but would not be averse to saving the world some day.

Douglas R McGaughey completed his Ph.D. under Paul Ricoeur at the Divinity School of the University of Chicago. He is the author of a three-book trilogy in philosophical theology (1997), systematic theology (1998), and practical theology (2007). In 2006 he was among the prize winners of an essay contest sponsored by the Philosophy Research Institute in Hannover, Germany, on the theme "Does Moral Development Need Religion?" He has taught at Willamette University in the Department of Religious Studies since the fall of 1988.

Cassandra Farrin currently serves as the Interim Director of Community Service Learning for Willamette University. After graduating from Willamette in 2005 with a B.A. in religious studies, Cassandra taught English in the shadow of Mt. Fuji for a year and learned about the people and culture of Japan. Following that, she served as the Campus Life Assistant at Tokyo International University of America, where her primary role was to assist TIUA students in integrating into an American campus. Besides traveling around the world, learning to cook exotic dishes, and dabbling in creative writing, Cassandra hopes to eventually pursue a Ph.D. in religious studies with an emphasis on the relationship between religion, culture, and society.

Rich Schmidt used to attend Willamette but now he doesn't any more. He exited in 2003 armed with an English degree, and now spends much of his time in the Hatfield Library, where he is in charge of Interlibrary Loan and Electronic Reserves. He plans on someday earning a Masters', likely in library science. Despite his English degree, he can't stand Shakespeare and relishes the fact that he will never again spend a week taking apart a poem line by line, word by word. His interests include playing and watching sports, examining popular culture, and eating.

Nathaniel (Nacho) I. Córdova holds an M.A. and a Ph.D. in rhetoric from the University of Maryland, College Park. He teaches courses in contemporary rhetorical theory, Latino discourse, public moral argument, and race, ethnicity and the public sphere, and serves on the faculty of the departments of Media and Rhetoric, Latin American Studies, and the American Ethnic Studies. His primary areas of research revolve around issues of political subjectivity, public memory, religious discourse, and Puerto Rican political identity. Nacho writes and lectures on how public discourse mediates and negotiates political access and participation in society, and has worked extensively throughout his career on minority outreach and public awareness campaigns, including working as a project manager for the National Council of La Raza and other social service agencies in the Washington, D.C. area.

Shannon Lawless graduated from Willamette University in 2007 with majors in English, philosophy, and Spanish. She now lives in Seattle, where she attends University of Washington School of Law. She enjoys hiking, swing dancing, and the pursuit of justice.

Essays

Campus Conversations

Willamette University cherishes the dignity and worth of all individuals, and strives to reflect the diversity of our world.
– Willamette University Mission Statement

In this, the first volume of Campus Conversations, members of the Willamette community explore the concept of freedom of expression. The twelve contributing essayists represent a cross-section of campus and include in their number faculty members, staff, and students. The diverse perspectives arising from the writers' varying disciplines and experiences yield fascinating insights into the complexity of one of America's central freedoms.

These essays, with their disparate views and approaches, illustrate the variety in our campus community; while at the same time, in our desire to explore and embrace our differences, we demonstrate our commonality.

Essayists:
Warren Binford, Law
Sammy Basu, Politics
Nathaniel Córdova, Rhetoric and Media Studies
Cassandra Farrin, TIUA
Chris Hanson, CLA Student
Peter Harmer, Exercise Science
Joseph Kaczmarek, CLA Graduate
Arminda Lathrop, IDEA
Shannon Lawless, CLA Graduate
Douglas McGaughey, Religious Studies
Tobias Menely, English
Rich Schmidt, Hatfield Library