"Linguistic Cleansing": Strategies for Redesigning Human Perception and Behavior

David Barnhizer
“Linguistic Cleansing”

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Abstract

James Madison recognized the need to balance competing interests in his analysis of factious groups. In Federalist No. 10, Madison sets out the idea of faction in the following words. “By a faction I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.” Madison goes on to describe two “cures” for faction. One is to “destroy the liberty” that allows it to bloom, the other is to give “to every citizen the same opinions, the same passions, and the same interests.” The idea is that free speech serves to protect and enrich the social community. This presumably occurs through the education of participants, and the venting of potentially explosive internal hostilities. America is failing on both fronts.

I am not in favor of vile, malicious or “nasty” speech but am opposed to the use of the formal or discretionary power of law and government to intimidate and punish anyone who voices a view that a favored identity group considers inappropriate, mean-spirited, offensive or the like. This opposition to “linguistic cleansing” includes antagonism toward what can be described as the “privatization” of speech control through large-scale collective organization on the Internet and its associated applications. That phenomenon has swept over us with such speed and force that it should not simply be thought of as “private” action in some instances but might even be considered an added component of governmental action when left unregulated.

Granting “sensitive” and “hyper-sensitive” identity groups the power of government in ways that allow them the ability to define and determine what “insults” or “offends” them is an

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1 Federalist # 10 (November 22, 1787) The Federalist, Edited and introduced by Jacob E. Cooke (1961), at 56.
2 Federalist # 10, id, at 58.
unwise delegation of the massive instrumentality of law and its accompanying threat of force or other harmful consequences. This delegation not only grants defensive power but provides an offensive weapon that can be used to acquire power. And of course that power is the “Holy Grail” of political activism. But such unbalanced use of public power creates divisiveness, tribalism and social aggressiveness. On the scale this is now occurring it destroys the ability of individuals to trust and compromise. Little wonder that American society has devolved to its current state or that the strategies to rely on accusations of “hate”, “insult”, and “insensitivity” have in many ways produced a society in which hate has intensified, insult is everywhere, and insensitivity and discourtesy abounds.

“Linguistic Cleansing” as the New Social Engineering

In the same way that a specific ethnic identity group seeks to “cleanse” a territory of other identity groups in what has come to be known as “ethnic cleansing” there are rapidly evolving language control strategies being implemented by aggressive special interests that are fairly described as “linguistic cleansing”. The aim of “linguistic cleansing” is to gain power over others’ speech and re-engineer culture into a form desired by the identity group implementing the strategy. This extends to the desire to eradicate traditional modes of expression that are claimed to “insult”, offend, emotionally harm or demean. The real aim is to shape thought and consciousness by controlling the use of language and acquiring power through control of discourse.

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3 This has extended even to the traditional dependence on rational thought and discourse as well as the belief that it is important to seek to come as close to the “truth” of a matter as possible. In commenting on the positions taken by some radical scholars, Martha Nussbaum suggests that: “Socratic argument is suspected … of being arrogant and elitist…. [T]he elitism is seen as that of a dominant Western intellectual tradition that has persistently marginalized outsiders. The very pretense that one is engaged in the disinterested pursuit of truth can be a handy screen for prejudice.” Martha C. Nussbaum, *Cultivating Humanity: A Classical Defense of Reform in Liberal Education* (Harvard University Press, 1997). Of course this argument can also be seen as a combination of overstatement and the attempt to delegitimize any critiques an opponent might levy against the soundness of your work.

4 The language used by each collective movement (and counter-movement) has been language of attack, protest and opposition. It is language as a weapon employed to gain or defend power. On this theme see, Max Lerner, *Ideas Are Weapons: The History and Uses of Ideas* (Transition, 1991).
“Hate” speech prohibitions endanger the liberty of discourse that is at the base of our
democratic system. James Madison recognized the need to balance competing interests in
his analysis of factious groups. In *Federalist No. 10*, Madison sets out the idea of faction in
the following words. “By a faction I understand a number of citizens, whether amounting
to a majority or minority of the whole, who are united and actuated by some common
impulse of passion, or of interest, adverse to the rights of other citizens, or to the
permanent and aggregate interests of the community.” 5 Madison goes on to describe two
“cures” for faction. One is to “destroy the liberty” that allows it to bloom, the other is to
give “to every citizen the same opinions, the same passions, and the same interests.” 6 The
idea is that free speech serves to protect and enrich the social community. This
presumably occurs through the education of participants, and the venting of potentially
explosive internal hostilities. America is failing on both fronts.

Even though I have contempt for people who spew malicious bile, I also have enormous
resistance for governmental intervention into that realm in any but the most serious
situations of inciting and organizing for violence or serious criminal conspiracies. The
upshot of the speech criminalization movement will be the further repression of critical
speech. This is because, since sensitivity is in the perception of the listener, there is a
highly discretionary zone in which any reasonably intelligent speaker will look at what he
or she might want to say and think that it is safer to remain silent.

Part of the “rational discourse as the core of democracy” argument is obviously flawed. It is
impossible to have fully rational discourse in a complex community. Emotions, ignorance,
bias and self-interest all erect barriers to discourse and they are barriers we seldom if ever
transcend in any matter of consequence. It may be impossible to have real discourse
relating to issues of core social behavior and belief because the deep value systems upon
which our individual systems of ultimate truths are grounded are not rational or even
necessarily consistent with other clusters of belief containing potentially competing

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5 *Federalist No. 10* (November 22, 1787) *The Federalist*, Edited and introduced by Jacob E. Cooke (1961), at 56.
Federalist # 10, id, at 58.
6 Federalist, *Id.*
deep-values. One of the hardest and most troubling questions we should try to answer is, if full and honest discourse is no longer possible do we fight to keep that ideal or restructure the doctrines of the community to reflect the new reality of group politics? 7

Granting any political faction the power of the State in ways that allow that special interest group to intimidate, shape and suppress speech because it subjectively offends, makes someone “feel bad”, supposedly incites others to violence, or is rude, “insensitive” (or any number of other pejorative labels) is a corruption of Western democracy. 8 This effort is considerably farther along in Europe and the United Kingdom than America but the US is experiencing a rapid advance toward official speech suppression through law and bureaucracy as well as large-scale organized private group action to intimidate and repress.9

The conflicts produced by the tensions of expansive doctrines involving free speech aimed at allowing the introduction of controversial positions in the face of the disapproval of dominant interests are forms of ordered conflict designed into our political system. This allows for the venting of hostility that—if repressed by powerful interests that disapprove of the particular position—tend to generate internal stresses that weaken the spirit of the democratic system. At a certain level of discursive rigidity intransigent value conflicts

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7 See also Thurman W. Arnold, The Folklore of Capitalism 9-10 (1967). He asks: “How do men actually choose … creeds? The answer is that they do not choose them. Men become bound by loyalties and enthusiasms to existing organizations. If they are successful in obtaining prestige and security from these organizations, they come to regard them as the ultimate in spiritual and moral perfection. This attitude is necessary for the morale of these institutions.”


9 Leader, “Blows to democracy,” The Guardian [online], Saturday, September 17, 2005, where the argument is made that there are: “three ways fundamental democratic principles are being quite unnecessarily damaged by this week’s moves. First, free speech. Under the proposed law anyone who “glorifies, exalts or celebrates” any terrorist act committed over the past 20 years could face a sentence of up to five years. Rarely, even within notorious conspiracy legislation, has there been such a broadly drafted clause.”
emerge that allow for no face-saving and compromise. This renders what should be a
dynamic and adaptive society brittle and fragile.

Using governmental power to formally carve out “hate” offenses takes sides in the process
of political discourse in ways that favor the interests of factions that have been successful
in gaining the power of law to advance their agenda. The term “hate” in this context is
nothing more than a propaganda tool that condemns and obstructs discourse by labeling it
pejoratively. More accurately, in many instances, there is a blurring between truly
irrational animosity and legitimate (or even illegitimate) criticism whereby it is convenient
for interested parties to condemn anything that challenges or obstructs their agenda as
“hatred” or bigotry.  

The problem is not that a limited number of expressions, the “N” word immediately comes
to mind, should be used in our discourse. I consider that term an obscenity regardless of
who uses it, including Americans of African ancestry. But once we move beyond that
specific context the efforts to control language have spread so far into the subjective realms
of special interests and identity groups that a Pandora’s Box of taboo and subjective words
and phrases has been opened. That “box” is one in which anyone who claims that a word
or phrase “offends” them, or in some way hurts, diminishes, insults or is simply insensitive
to them or their identity group’s interests or beliefs now feels entitled to demand that
others refrain from use of that language or suffer significant consequences.

As an abstraction this assertion concerning “linguistic cleansing” and social engineering
through language control might seem ephemeral. But language is an integral part of how
humans function and perceive. As Rush Anshen once observed, humans do not only use
language, they are language.  

The ability to dictate and control the language that is
allowed to be used is therefore the power to design not only what we say or are even able

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10 Jung warns: “Rational argument can be conducted with some prospect of success only so long as the
emotionality of a given situation does not exceed a certain critical degree. If the affective temperature rises above
this level, the possibility of reason’s having any effect ceases and its place is taken by slogans and chimerical wish-

to say as particular language is erased from our culture but to define who we are, how we think and even what we are able to think about.

Peter Drucker describes what is happening as the “new realities” of an increasingly pluralist democracy. He explains that: “The new pluralism ... focuses on power. It is a pluralism of single-cause, single-interest groups—the “mass movements” of small but highly disciplined minorities. Each of them tries to obtain through power what it could not obtain through numbers or through persuasion. Each is exclusively political.” 12 Forcing others to operate within their linguistic agenda and therefore being shaped into that identity construct and set of dominant values and way of perceiving the world is at the core of the strategies.

A challenge to the ability to dictate the subjective content and form of controlling and taboo language, along with a reemphasis of the importance of open discourse has been argued by Daphne Patai in the context of a challenge to the frequently voiced assertion that those who are from a subordinated class have the right to use offensive speech against other dominant groups. 13 The other side of that claim is that members of those historically dominant (or now previously dominant) groups must be condemned severely if they have

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13 I for one am “offended” [but no one cares] by claims that essentially say that: “all white males are the source of all evil in the world”. This seems to paint with a “slightly” too large a brush. Yet some variation on this theme can be found in many places. Consider the following report by Todd Starnes, undeniably a conservative voice but that does not erase the reality of his description of the content of an official military training document. See, Todd Starnes, “Pentagon training manual: white males have unfair advantages”, Todd’s American Dispatch, October 31, 2013, FoxNews.com. Starnes reports: “A controversial 600-plus page manual used by the military to train its Equal Opportunity officers teaches that “healthy, white, heterosexual, Christian” men hold an unfair advantage over other races, and warns in great detail about a so-called “White Male Club.” “Simply put, a healthy, white, heterosexual, Christian male receives many unearned advantages of social privilege, whereas a black, homosexual, atheist female in poor health receives many unearned disadvantages of social privilege,” reads a statement in the manual created by the Defense Equal Opportunity Management Institute (DEOMI).” Starnes indicates he: “obtained a copy of the manual from an Equal Opportunity officer who was disturbed by the course content and furious over the DEOMI’s reliance on the Southern Poverty Law Center for information on “extremist” groups. “I’m participating in teaching things that are not true,” the instructor told me. He asked not to be identified because he feared reprisals. “I should not be in a position to do that,” he said. “It violates Constitutional principles, but it also violates my conscience. And I’m not going to do it – not going to do it.” DEOMI instructors were also responsible for briefings at bases around the country that falsely labeled evangelical Christians, Catholics and a number of high-profile Christian ministries as domestic hate groups.”
ever used a disfavored term at any point in their life and in any context or culture.¹⁴ She reports that: “[Harvey] Silverglate … rejected the arguments of critical race theorists that offensive speech uttered by historically oppressed minorities should be protected, while comparable speech by their supposed oppressors can be suppressed.”¹⁵

The “social engineering” of the human through language control is being done through a wide-ranging variety of techniques. These include outright criminalization of speech, interpretations of civil and regulatory laws consistent with the disfavored speech that consider language as a verbal act, media-driven “political correctness” in which stories are being selected and slanted to create subjective impressions, and organized strategies by aggressive special interest and identity groups.¹⁶ A critical element in what is occurring involves the transfer to private interest groups of the subjective unilateral ability to condemn and sanction disfavored speech. This variation can be termed the “privatization” of the power of "linguistic cleansing”. This is occurring both through large-scale and coordinated use of the Internet and through special rules created by government that confer what is in essence “public” power on the groups.

A common tactic of the identity groups is to react venomously to any speech considered within their particular subjective perspective to be “offensive”, insulting, insensitive, or

¹⁴ Daphne Patai, “Within the Speech Code,” . One need only think about the history of language in the South and the effects on Paula Deen based on words used years earlier.

¹⁵ Patai, id. A stunning variation on the theme is as follows. “In this new scholarship, factual accuracy is no longer important. Writes Stuart Alan Clarke in the Yale Journal of Law and the Humanities: “It is naive, if not disingenuous, to suggest that all that matters is the promotion of the truth.” Patricia Williams’s portrayal à clef her teaching stint at Stanford Law School is deeply distorted, according to former colleagues there—leftists all. Williams fittingly takes refuge against such charges in the shadow of Tawana Brawley: “When students . . . believed and then claimed that I had made… up [another of her personal victimization stories], they put me in a position like that of Tawana Brawley.” Indeed, Brawley, whom Williams beatifies as the patron saint of victimized black women, is the perfect symbol of the movement: as Brawley’s supporters on the radical left would have it, it didn’t matter if her story of racial brutalization wasn’t actually true, because it could have happened that way.” [emphasis added]

“phobic” or that simply challenges their views and agendas. The quite unpleasant reality is that in many ways there is a close similarity between the practitioners of “linguistic cleansing” of the Left and Right and the behavior of fanatics. Taken together these strategies have coalesced into the large scale “privatization” of speech repression. This occurs even though much of the strategy is only made possible through use of the Internet as a vehicle functioning through public airways in much the same way as radio and television broadcasts that are subject to regulation. This Internet-based organization and vilification is done through a combination of intimidation, propaganda and “linguistic cleansing” to eliminate words, phrases and even concepts from ordinary discourse by rendering them “taboo”.

The strategy of linguistic cleansing works by imposing social and legal punishments if taboo words, phrases are uttered or verbal acts performed. The important aspect is that this is not simply an issue of one-to-one disapproval of other’s speech as has been the situation in the past. The ability to organize, mobilize, intimidate, condemn and sanction has been changed in its fundamental character by the scale, comprehensiveness and intensity of what has come into being through the communications and organizational mechanism of the Internet. Just as so many are now recoiling from the vast expansion in surveillance powers of governments that has resulted from the combination of the Internet and information acquisition and management technologies, a shift has also occurred in the empowerment of special interest and identity groups to wield its power to intimidate and punish.

17 Gabriel Marcel warns of the improbability of having effective discourse in a politically polarized environment. “The … fanatic never sees himself as a fanatic; it is only the non-fanatic who can recognize him as a fanatic; so that when this judgment, or this accusation, is made the fanatic can always say that he is misunderstood and slandered.” Gabriel Marcel, Man Against Mass Society 136, 137 (1969).

18 See Jacques Ellul, Propaganda 57 (1965). In Propaganda, Ellul reminds us: “A stereotype is a seeming value judgment, acquired by belonging to a group, without any intellectual labor …. The stereotype arises from feelings one has for one’s own group, or against the “out-group”. Man attaches himself passionately to the values represented by his group and rejects the cliches of the out-groups…. The stereotype, … helps man to avoid thinking, to take a personal position, to form his own opinion.”
The fundamental issue is the shift from people having the right to say what they want, to offer opinions whether insightful or asinine, and to say things that are claimed to “insult”, “offend” or display insensitivity. The seemingly odd thing is that the move toward diversity, multiculturalism and “difference” that Europe and the US have experienced in the past several decades was claimed to be something in which new variations on traditional cultures were supposed to enrich the existing overall culture into which the “differences” were injected. 19 Diversity was not intended to be a mechanism for allowing cultural variations “veto power” over the system because they do not like how the members of that traditional culture speak. 20

A Host of “New Taboos”

Along with this has come the discovery of strategies to suppress others’ critical speech. How long this will be allowed to endure is open to question. There is also an intriguing phenomenon in which even as “polite” society strains to accommodate the demands of those who indicate they are offended by particular language, much of American, British and Western European society seems to be producing a significant number of people and organized “counter-groups” intent on challenging the “new taboos” and intensifying their responses often from behind the mask of anonymity. All-in-all it seems in many ways that interest and identity group social animosity and incivility are increasing rather than decreasing. It is even worth asking whether the attempts to control people through language are producing heightened tension and intolerance in Western society rather than quelling such behavior.

19 For an example of how many in Europe are reacting see, AP, “Geert Wilders to spread his anti-Muslim movement west. Dutch far-right politician forms international alliance to attempt to ban immigration from Islamic countries”, Friday, July 16, 2010, The Guardian; Kate Connolly, “Angela Merkel declares death of German multiculturalism: Chancellor’s remarks, which claimed multiculturalism had ‘failed utterly’, interpreted as a shift rightwards from previous views”, Monday, October 18, 2010, The Guardian. http://www.guardian.co.uk/world/2010/oct/17/angela-merkel-germany-multiculturalism-failures. Merkel is quoted: “We kidded ourselves for a while that they [foreign Muslim guest workers] wouldn’t stay, but that’s not the reality,” she said…. “Of course the tendency had been to say, ‘let’s adopt the multicultural concept and live happily side by side, and be happy to be living with each other’. But this concept has failed, and failed utterly,” she said. See also, Jon Henley, “France prepares to expel radical Islamist leaders,” The Guardian [online], 8/2/05.

The concern over whether subjective taboos or “civility rules” help or hinder was the subject of an analysis in *The Detroit News*, “Losing Liberty: First Amendment: Rules Stifling Free Speech Damage Democracy.” The conclusions offered there were that: “Activists have … exploited exceptions to the First Amendment to silence voices counter to their ideology. And they have persuaded universities to impose drastic speech codes on students and faculty, turning institutions that were supposed to be bastions of free speech into enclaves of repressed speech.”

The analysis continued: “For example, the harassment policy of New York’s Bard College forbids conduct that ‘causes embarrassment, discomfort, or injury to other individuals or the community.’ In essence, the contrived right not to be offended is trumping the expressed right to free speech, the crown jewel of the Constitution. Instead of being places where even the most obnoxious ideas are dissected and debated, college campuses now are cloaked in self-imposed silence.”

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**Protecting the Right to “Call a Fool a Fool”**

It is a dangerous time for Western society because our traditional rules are no longer entirely applicable. But the assumptions ought to be in favor of allowing speech and the burden of proof whenever speech is sought to be restricted must be a strong one borne by those who seek to restrict free expression. This does not mean that people who engage in contemptible speech behavior are not appropriately thought of as boors, bigots, racists and the like. But it does mean that “speech crimes” or an expansion in civil suits backed by governmental authority are not the way the ends of tolerance should be pursued.

*Guardian* columnist Polly Toynbee has argued for the importance of preserving our “right to offend a fool.” I agree with her viewpoint but would add that it is equally important to not restrict the right to be a “fool” in one’s speech and to allow ignorant and stupid remarks as well. There are of course limits to speech and the most obvious are the classic ban against falsely “shouting fire in a crowded theater,” the incitement to violence, overt sexual

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harassment, libel, protection of government secrets, or the plotting of criminal conspiracies. These restrictions clearly generate some kind of "chilling effect" on what we say and the sanctions that attend their violation are intended. I argue that those categories are as far as we ought to go in the arena of inhibiting political speech. Other limits are simply too susceptible to abuse, create divisiveness, and produce an undesirable expansion of governmental power.

Except in very specific circumstances the criminalization of criticism and grant of litigation rights to supposedly offended parties—even if that criticism is ignorant, mean spirited or foolish—is likely to produce more divisiveness and ignorance than without such laws. It has become a culture whose intelligentsia and political leaders are driven by a value of "don’t offend anyone" on the one hand, and "don’t you dare say anything I don’t like!" or "you’ll be sorry" on the other. We have gone too far in allowing identity groups to be "thin skinned" and creating authoritative mechanisms by which their “sensitivities” can be protected.

A driving force behind the increased use of law and the growing political power of identity collectives to silence critics is that we are no longer satisfied to look at the boors and bigots, judge them deficient and then go on with our lives. The First Amendment Center offers the position that:

An offended person’s decision not to speak is hardly a reason to suppress the speech of others. Those who find an idea, epithet, literary work or other form of expression offensive can oppose, counteract and perhaps refute it with further speech — not by banning the speech deemed to be offensive. As Justice Louis Brandeis said in a famous quote, ‘If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.’  

The power of the “hate strategy” is that accusations of being “phobic” or bigoted are not disprovable. They produce an emotional response as if the targeted person was a rabid dog that ought to be “put down” or is afflicted with a communicable disease that requires

perpetual quarantine. Such charges are used to sanction anyone who questions the motives or arguments of the special interest group. Or the situation may be one where the unfortunate accused may simply be perceived as in the way of the accusers’ path to power. “All’s fair in love or war,” and many of the ideologically-driven identity groups see the struggles within modern society as a sort of guerrilla war in which the end does justify nearly any strategy and tactic that might be required.

Examples of “Framing”, “Hate” and Behavioral Control and Redesign

Some examples from Europe, the United Kingdom, the US and elsewhere are offered below. They demonstrate the scope of what has become an effort to “social engineer” a culture by redefining what is allowable in speech and behavior. It may also be useful to note at this point that when using the term “linguistic cleansing” I am including expression through behavior as well. This would include, for example, situations where a child is sent home from school because he drew a picture of a gun in a “zero tolerance” elementary school or sought to wear a T-shirt with an American flag depiction or gave another student a hug when six years old and was accused of sexual harassment. 24

Below are some examples that provide a small taste of what has swept through American and Western European societies in ways that are rending our democratic social fabric.

- “Big Brother Really IS Watching: In the UK there have been continual expansions of governmental power over speech justified by the need to provide enhanced security against terroristic threats. 25 The expansion of monitoring capacity reached a new high with the recent introduction in the UK of CCTV cameras that talk to offenders. The UK has installed thousands of CCTV cameras in public areas
and has now pioneered ones through which a monitoring officer can talk in real time to people engaging in anti-social behavior.\(^\text{26}\)

- **“Cowboy Up”:** At the University of Colorado students have been told not to wear “offensive” Halloween costumes. This includes cowboys and Indian “getups” and (apparently) anything involving a sombrero. The report states: “A university spokesman called cowboy costumes a ‘crude stereotype.’”\(^\text{27}\) I have no doubt that the “Cowboys Union” was behind the banning of such outfits.

- **Some Cartoons Apparently aren’t Funny:** When a Danish newspaper published cartoons that resulted in violent reactions in the Islamic world many Westerners educated in cultures that set free speech as a central principle of democracy supported the publication. *The Economist* commented on the Cartoon Riots that: “Freedom of expression, including the freedom to poke fun at religion, is not just a hard-won human right but the defining freedom of liberal societies. When such a freedom comes under threat of violence, the job of governments should be to defend it without reservation.”\(^\text{28}\) In its unique way of protecting freedom of expression the U.S. State Department immediately announced it was ‘unacceptable’ to incite religious hatred by publishing such pictures” and “Britain’s foreign secretary, called their publication unnecessary, insensitive, disrespectful and wrong.”\(^\text{29}\)

- **Rushdie Just won’t Shut Up:** The “insensitive” writer Salman Rushdie spent years in hiding after the Iranian Ayatollah Khomeini issued a *fatwa* calling for his death for writing *The Satanic Verses*. Rushdie criticized the British government for failing to protect freedom of expression when it banned the staging of a play due to threats of violence from some fanatical Sikhs in London. “It’s been horrifying to see the response,” he said. “It is pretty terrible to hear government ministers expressing approval of the ban and failing to condemn the violence when they should be supporting freedom of expression.”\(^\text{30}\)

- **Burn a Flag or Bible, but the Qur’an is Protected:** Rushdie presumably would not have voiced much support for US Supreme Court Justice Stephen Breyer’s suggestion that burning a Qur’an in the United States could be an act not protected by the First Amendment.\(^\text{31}\) Apparently it is OK to burn a flag and the Bible in America but not the Qur’an.

- **Leave Mmme. Bardot alone:** Brigitte Bardot was charged with crimes by the French government due to a book she published. Bardot’s “crime” was based on her criticism of


\(^\text{27}\) Lucy Kinder, 24 Oct 2013.


\(^\text{31}\) “Justice Breyer Suggests That Burning a Quran Could be Like Shouting ‘Fire’ in a Crowded Theatre--Thus Not Protected by 1st Amendment,” Wednesday, September 15, 2010, *Chris Neefus*. Muslims believe the Quran, in the original Arabic, to be the infallible “final revelation” of Allah to Mohammed. (CNSNews.com) – Supreme Court Associate Justice Stephen Breyer said on Tuesday that globalization may change the way the First Amendment applies in the United States, and he suggested that Pastor Terry Jones’ proposed Quran-burning may or may not be protected under the First Amendment.
Muslims in France and the suggestion that they might not be the best of her country’s recent imports. After authoring a book titled *Un Cri dans le Silence* (A Cry in the Silence) in which she criticized the Islamization of Europe, Bardot found herself prosecuted by French authorities for her critical remarks, convicted, and fined.

- **Homophobia and Sexism:** The French cabinet proposed to the legislature a new “gay insult” law that would impose heavy fines and criminal penalties for words that an American would consider tasteless but never think of as actionable. Dominique Perben, the Justice Minister, asserts: “This law puts the fight against homophobia and sexism on the same footing, legally speaking, as the fight against racism and anti-semitism.” Uttering an anti-gay insult in public - including any remark “of a more general nature tending to denigrate homosexuals as a whole” could result in a fine of up to euro 22,500 and six months in jail. I wonder if the recently popular TV show, “A Queer Eye for the Straight Guy” where there was a complete fashion “redo” each week aimed at the “fashion challenged” would run afoul of the French law or even whether “straight guys” could sue the producers and actors due to their biased comments on the lack of a “fashion sense” on the part of “straights”? This must be a form of bigoted “hate” directed toward heterosexual males. I for one feel offended that someone would condemn my exquisite taste in clothing myself with any one of my 100 black shirts, suits and slacks.

- **The Irrational Indictment of Oriana Fallacci:** Following 9/11 the late Italian journalist Oriana Fallaci authored several books relating to the collision between the Islamic and Western worlds. The books had sales of over a million copies, presumably indicating a substantial degree of public interest in the issues she addressed. In *The Force of Reason* Fallaci criticized Europeans for surrendering their culture to the “sons of Allah.” Among her comments deemed offensive were: “Europe is no longer Europe, it is ‘Eurabia,’ a colony of Islam, where the Islamic invasion does not proceed only in a physical sense, but also in a mental and cultural sense. Servility to the invaders has poisoned democracy, with obvious consequences for the freedom of thought, and for the concept itself of liberty.” Fallaci was charged with a criminal offense for her writing.

- **How Did John Cleese Escape Prosecution:** Given what has occurred with Bardot, Fallacci, and Geert Wilders I have absolutely no idea how Monty Python troupe actor and comedian John Cleese escaped prosecution for his comments that London isn’t English anymore, adding: “I’m not sure what’s going on in Britain. Or, let me

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34 Henly, *id.*

35 France and Italy not the only countries where anti-vilification laws are being used to punish critics. Ben Knight, “Pastors refuse to apologise for vilification,” Australian Broadcasting Corporation, broadcast 6/22/05, http://www.abc.net.au/lateline/content/2005/s1398445.htm. visited 7/11/05.

36 She also warned: “You cannot survive if you do not know the past. We know why all the other civilizations have collapsed—from an excess of welfare, of richness, and from lack of morality, of spirituality.” ...” The moment you give up your principles, and your values ... the moment you laugh at those principles, and those values, you are dead, your culture is dead, your civilization is dead. Period.” http://www.worldmagblog.com/blog/archives/015541.html. June 23, 2005/ visited 7/11/05. “How civilizations die,” Posted by Veith at June 23, 2005 02:04 PM.
say this – I don’t know what’s going on in London, because London is no longer an English city. 'They said we were the most cosmopolitan city on Earth. But it doesn’t feel English. 'I had a Californian friend come over two months ago, walk down the King’s Road and say, "Where are all the English people?" 'I mean, I love having different cultures around. But when the parent culture kind of dissipates, you’re left thinking, "Well, what’s going on?"' The concern about the parent culture disintegrating is pretty much the issue with Bardot et al.

- **What’s Your Problem, It’s Only Prayer, For God’s Sake:** In the UK two boys were given detention after refusing to kneel down and ‘pray to Allah’ during a religious education lesson.  

- **The “Al Capone” Tax Evasion Strategy:** Federal agents in the US raided a reporter’s home before dawn, ostensibly to check on weapons matters concerning her husband. In the process they seize the reporter’s computer and notes after one agent makes a comment that she knows the journalist has written articles critical of the government. The report makes one consider the possibility that the US government (and others) is using an “Al Capone Strategy” where, unable to “get” Capone for his violent racketeering, he was convicted of tax evasion and sent to prison. China, Russia and Vietnam are also using the “Capone” strategy to pursue political dissidents and individuals who don’t “play ball” with the regime. The somewhat “unique” Florida pastor, Terry Jones, who had threatened to burn a Qur’an was recently arrested on September 11, 2013 for the offense of transporting flammable materials without a permit. He was on his way to burn Qur’ans at a gathering to commemorate the 3,000 9/11 deaths.

- **The “Heckler’s Veto:** A California school district sent three students home on Cinco de Mayo Day for wearing shirts depicting the American flag. A US Federal court judge dismissed the students’ lawsuit but the US Court of Appeals reinstated it. The lower court judge noted that “our Constitution grants public school children only limited First Amendment rights when they enter the schoolhouse gates,” while conceding this particular case has landed in “important legal territory.” [UCLA] law professor and free speech expert Eugene Volokh calls such punishment a “heckler's veto.” In public,

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39 Todd Starnes, “Federal agents' pre-dawn raid on reporter's home raises question,” Todd's American Dispatch, October 28, 2013, FoxNews.com. Starnes reports: “Audrey Hudson’s husband had just left for work on August 6 when suddenly, her dog began barking. The nationally-known journalist walked over to the curtains and peeked outside to discover her Chesapeake Bay home was surrounded by law enforcement officers wearing full body armor. The phone rang. It was her husband. “I’m in the driveway,” he said. “The police are here. Open the door.” And so began Hudson’s nightmare – held captive by armed agents of the U.S. Coast Guard, Maryland State Police and the Department of Homeland Security as they staged a pre-dawn raid in search of unregistered firearms and a “potato gun.” “I think they found a great way to get into my house and get a hold of my confidential notes and go through every other file in my office.” But instead of taking the potato gun, agents seized unrelated government documents and notes from the former Washington Times journalist.”
speakers are protected from such a restriction and allowed to voice most opinions. On-campus students don’t enjoy the same free speech rights. … Volokh said administrators can -- and sometimes do -- go too far and overreact to a perceived threat that may not cause a big enough on-campus stir to warrant the censorship. “The fact of the matter is that these Americans were punished for wearing the American flag at an American school”. 40

- **Eat Chik’n:** “[R]emarks made by Chick-fil-A president Dan Cathy defending traditional marriage have sparked controversy all over the nation. Many Americans have expressed support for his remarks and many have expressed disdain for his remarks. And all of that is fine, because in the United States people are supposed to be able to express their opinions. But in Chicago, Boston and other U.S. cities, politicians are actually promising to keep any more Chick-fil-A stores from opening because their CEO does not support gay marriage, and that crosses the line. When politicians threaten to ban a business from their cities just because the CEO does not hold the “politically correct” position on a social issue that is an attack on the freedom of speech of every American. You see, the truth is that the enforcers of political correctness in America are very “tolerant” except when somebody disagrees with them. …. They want to end debate on these social issues by shutting down the free speech of the opposition. In the end, if America continues to go down this path it will end up looking just like many of the other totalitarian regimes throughout history where free speech has been banned.” 41

- **Privatizing the Suppression of Free Speech:** “The Christian Science Monitor has posted an interesting article entitled “Free Speech: What if Terry Jones Went to Sweden?” The author, Mike Sacks, compares the right to free speech in the United States with the more limited versions granted in other countries, particularly European ones. The CSM article, like so many others on this topic, ignores the fact that there is more than one way to skin a cat when suppressing freedom of speech. Formal criminal charges are not even the best method of enforcing silence on those whose expressions are unwelcome. There are numerous other techniques that can be brought to bear, and in a Western society such means are usually more effective than simple prosecution. In fact, the United States is often better than Europe at silencing dissent using alternative methods. Take, for example, the Danish Mohammed cartoons. Virtually no major American media outlet showed a single one of the cartoons. How many Americans actually saw a cartoon, except on the internet? Yet numerous European newspapers — even in politically correct strongholds like Norway — printed at least some of the cartoons at one time or another.” 42

- **No more Huckleberry Finn:** In the US Peter Suber suggests that it is important not to allow discourse to be subordinated to repression and speech codes, even while

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acknowledging that some restrictions on the deliberately harmful speech are possible. He offers: “If this book, or that epithet, or that photograph, offends me, should we punish the offender? The question arises because everyone is offended by something, and offense hurts. But the absurdity of treating offended sensibilities as true injuries is shown by the converse fact: that anything will offend someone. None of us could teach anything if an offended student sufficed to stop us. No professor of literature could assign Salman Rushdie’s Satanic Verses, or even Huckleberry Finn. No religion professor could assign any book of the Bible. No biology professor could teach evolution. Even if we could find pabulum that would pass the no-offense test, we would eviscerate our mission to fill our curriculum with it.”

- **Global “Blasphemy” Jurisdiction:** Krysia Diver reports on a blasphemy case in Greece relating: “[the author] meant it as a piece of religious satire, a playful look at the life of Jesus. But Gerhard Haderer’s depiction of Christ as a binge-drinking friend of Jimi Hendrix and naked surfer high on cannabis has caused a furore that could potentially land the cartoonist in jail. Haderer did not even know that his book, The Life of Jesus, had been published in Greece until he received a summons to appear in court in Athens in January charged with blasphemy.”

- **Atheists Beware--No Religious Criticism other than Your Own:** The UK has sought to enact a “religious hatred” law that penalizes criticism of a religion. Matthew Tempest reports that: “A coalition of some of Britain’s most prominent actors, artists and writers will today make a last-minute attempt to persuade the government to amend its plans for a new law banning “incitement to religious hatred”. He adds: “The proposal [religious hatred bill] has come under attack from critics, including the comedian Rowan Atkinson, who argue it will undermine free speech by inhibiting discussion of religion. They cite recent furores over BBC2’s televising of Jerry Springer - The Opera and Sikh protests against the play Behzti as indications that religious groups have taken the government proposals as a green light to try to stamp out critical or irreverent commentary on their faith.”

- **Be Careful what You Wish:** Following the July 2005 London bombings laws were proposed that included the provision that anyone who “glorifies, exalts or celebrates” any terrorist act committed over the past 20 years could face a sentence of up to five years.” The Guardian responded that there are: “three ways fundamental democratic principles [that] are being quite unnecessarily damaged by this week’s moves. First, free speech. Under the proposed law Rarely, even within notorious conspiracy legislation, has there been such a broadly drafted clause.”

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43 Peter Suber, in “Unsimplifying Political Correctness: When the Right and Left are Right and Wrong.”


46 Tempest, “Religious hatred”, id.

47 Leader, “Blows to democracy,” The Guardian [online], Saturday, September 17, 2005. How the fear of being criminalised has forced Muslims into silence. We have more Muslim MPs than ever. But there is a growing belief that dissent risks falling foul of terror laws.” Mehdi Hasan Friday September 9 2011, The Guardian. 27 October 2011.
• **Where are All these Damn Atheists Coming From:** The mayor of Whiteville, Tenn. said his community is under attack from a national atheist organization that is threatening to sue unless they remove a cross atop the town’s water tower. Maybe the town should have made it into a cross-shaped weather vane.

• **That Issue Really “Bombed”:** Charlie Hebdo, the French satirical magazine based in Paris had its offices firebombed after publishing an issue about Islam and Muhammad.

• **The Wilders Man:** Last year the report was: “Dutch anti-Islam politician Geert Wilders went on trial Monday for alleged hate speech, even as his popularity and influence in the Netherlands are near all time highs. Prosecutors say Wilders incited hatred against Muslims with remarks comparing Islam to Nazism and by calling for a ban on the Quran. Wilders argues he has a right to freedom of speech and his remarks were within the bounds of the law. If convicted, he faces up to a year in prison. He could keep his seat in parliament.” Wilders said: “The freedom of expression of at least 1.5 million people is standing trial together with me,” he wrote, referring to the voters that made his Freedom Party the third-largest in national elections in June.”

• **Individualized, Subjective Criminal Offenses:** An individual was recently arrested in London under the “hate speech” laws for standing in public and preaching against what he considered the evils of abortion. The arrest occurred because a woman indicated to the police that she felt offended. This appears to the untrained eye to offer an example of grotesque speech intimidation and the “chilling” of communication. Such dangers of personal and subjective individual power to condemn and prohibit were warned against when the UK proposed “hate speech” legislation.

• **Islamic Council of Victoria [Australia] v. Catch the Fire Ministries,** where two Catch the
Fire ministers were convicted under the newly amended law and ordered to publicly apologize for their statements. Danny Nalliah, one of the convicted pastors, stated publicly that he would not obey the court order, stating: “Right from the inception we had stated that this law is a foul law. This law is not a law, which brings unity - it causes disunity. And as far as we are concerned, right from the beginning we have stated we will not apologise. We will go to prison for standing for the truth.”

- The Dixie Chicks “Bite the Dust”: Everyone seems to be engaging in speech repression and sanctioning of disliked remarks. “According to a story from americannewsreel.com, “Phone calls originating from Republican Party headquarters in Washington went out to country [music] stations, urging them to remove the Chicks from their playlists.” This was after a member of the trio criticized George Bush’s invasion of Iraq.

- Mel Gibson’s “Passion” or It Can Happen Here: The Left and the American Jewish community went berserk over Mel Gibson’s film, The Passion, portraying the hours leading up to the death of Christ. Prior to its release and at a point where they had not even seen the film but were being inflamed by leaders’ opinions, Jewish groups protested that it would stir up bitterness against Jews and should be boycotted. This brings to mind the much-criticized violent demonstrations in Egypt and Afghanistan over a silly [but unseen] film depicting Islam unfavorably, and the threatened burning of a Qur’an in the US. The Internet is being used as an organizing vehicle by propagandists and in an incredibly dishonest fashion in which actual facts and evidence are entirely irrelevant.

- Malaysia and No “Christian” in Christmas: The government of Indonesia issued a ruling that The Passion could be shown in that country but only Christians would be allowed to watch. The government of Malaysia recently invited diplomats to a Christmas reception while simultaneously insisting that any references to Jesus and Christianity be deleted from carols.

- No Freedom of Thought in Universities: The power to condemn has been demonstrated in university speech codes that reflect academics’ agreement with the suppression of open discourse. It is also, quite troublingly seen by the identity collectives as a one-way street in which scathing criticism and accusations flow only in one direction. Although as a matter of reason and logic this seems to erect a double standard, one critic of such behavior observes: “These codes have their roots in theories, which gained favor with campus radicals in the 1960s, contending that (as Silverglate and Kors put it in a book they cowrote) “[i]f the powerful and the weak were required to play by the same rules . . . the powerful always would win.” In other words, this theory goes, the disadvantaged need different rules. What’s


55 John Aglionby, “Jettisoning Jesus: The Malaysian government wants references to Christ to be removed from carols when it hosts an open house reception this weekend,” The Guardian [online], Thursday, December 23, 2004. Also, Malaysian religious authority says non-Muslims can’t use the word ‘Allah’, Tuesday, 15 January 201; http://www.alarabiya.net/articles/2013/01/15/260482.html.
more, these rules should extend to speech, not just to actions, because speech can be just as powerful and hurtful."  

The New Courts of Star Chamber—Public and Private

Several centuries ago England established a separate legal system represented in the Court of Star Chamber designed to handle cases of sedition and libel against the Crown. Seditious libel against the King or a powerful private person could be punished because the person might seek revenge for the insult resulting in a breach of the peace. If the statement was made against a governmental official the idea is that it could undermine the relationship between citizen and government. Historically, criticizing government in England was considered more problematic if the criticisms were true than if false. The simple reason was that true criticisms could not be effectively disputed and the integrity of government (or the Crown) was therefore undermined.

One commentator explains that: “The rules in the [Court of] Star Chamber developed differently from those in the common law courts. For example, it was sufficient if the libel were published to the victim only; neither did it matter whether the victim was alive or dead. Of extreme importance is the rule that truth was not a defence; indeed the contrary principle was expressed in the well-known phrase—“The greater the truth, the greater the libel.” The often-cited example given to explain this is provided by Hudson—for, as the woman said, she would never grieve to have been told of her red nose if she had not one indeed.”

A true libel was therefore a “greater” offense because of its higher potential to provoke a breach of the peace. This reinforces the obvious fact that the developing criminal offence of libel had little to do with reputation and much more to do with maintenance of the public peace.”

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58 See, “Consultation Paper on the Crime of Libel,” The Law Reform Commission, Dublin, Ireland 1991, http://www.lawreform.ie/publications/data/volume10/lrc_65.html (8/24/05), where it is stated that: “In 1476, Caxton set up the first printing press at Westminster and in 1488, the Star Chamber was set up in order to monitor and suppress criticism of Church and State, which were at that time closely interwoven. The primary libels with which it was concerned were therefore libels of a seditious or blasphemous nature. However, the Star Chamber also wished to suppress duelling, which was the fashionable means of vindicating attacks upon honour or reputation, and to
It is a fascinating parallel that the doctrines relating to speech suppression and punishment today and at the time of the Star Chamber have to deal with the development of technology. The system of the Star Chamber was created to be independent of the Common Law courts. This was apparently in response to the heightened capability of mass printing and the ability to spread criticism more widely than by word of mouth. Although the rules have changed, European discourse still labors under this history of restrictions and punishment of speech.

It is also a parallel that even though established as a secretive part of government the Star Chamber was inextricably linked to a favored class, the Crown and aristocracy, so that in an important sense it represented both formal governmental interests and a dominant cultural group interested in suppressing or punishing utterances it perceived to be against its preferred interests. In speaking in this analysis of the “privatization” of control over speech I am asserting that specific cultural groups have received the power over others in amounts and ways that are describable as “quasi-governmental” and in some instances advance the agendas of the controlling governmental actors.

Constructive treason involved the offense of criticizing the Crown, speaking in favor of the King's death or aiding his enemies. Many Americans who have been silly enough to suggest in some form of public context that the nation's president should suffer a dire fate have discovered that any threat against the president is taken quite seriously even if there is no reason to believe the person is serious or has the capacity to act on the threat. Former Egyptian President Mohamed Morsi initiated a number of criminal prosecutions against critics who “insulted” the office of the president (him). 59 Thailand regularly prosecutes individuals who disrespect or criticize the nation's King.

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Nor should we conclude the doctrine of seditious libel has been abandoned. The initial attempts to vilify NSA “whistleblower” Edward Snowden offer an example of revelations containing such fundamental truths that the system’s masters responded with greater condemnation because they knew them to be true and therefore more damaging to their activities and power than if false.

One of the most difficult questions to deal with in America is that of press freedom that has risen to an all-intrusive state in which everyone apparently has the right to know everything about everyone under the rubric of “the public’s right to know”. Given the enormous volume of sensationalized “yellow” journalism that has exploded into the American media it seems fair to ask whether we are better off knowing our leaders are flawed humans. It is extremely difficult retaining respect for our leaders and government when modern informational transparency demonstrates by the hour just how flawed, incapable and corrupt many are.

I have absolutely no idea what can be done about the “albatross” of “TMI” [Too Much Information] because whenever I try thinking about it I come up against a personal belief on my part revering freedom of speech and information. But in the irreverent world of new technology, power politics and information and disinformation overload, we find ourselves wandering without guidance through a fog that obscures the unknown social territory we are attempting to traverse.

The “Framing” Wars

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60 See, e.g., the opinions of Taschereau, J. and other jurists in Boucher v. R., (Supreme Court of Canada), [1951] S.C.R. 265, where on appeal Taschereau, J. observed: “At the first hearing of this appeal, the Court did not agree as to the ingredients that are necessary to constitute the offence of seditious libel. Upon application, a new hearing was granted and heard by the full Court, and in view of the opinions now expressed by the majority, it is settled I think that generally speaking, the writings complained of must, in addition to being calculated to promote feelings of ill-will and hostility between different classes of His Majesty’s subjects, be intended to produce disturbance of or resistance to the lawfully constituted authority.” [Taschereau continued] “But as pointed out by my brother Cartwright, there is another definition of seditious intention which I think, must be accepted. I agree with him that an intention to bring the administration of justice into hatred or contempt or to excite disaffection against it, is a seditious intention. In the present case, there is I think sufficient evidence upon which a properly instructed jury could find that there was a seditious intention.”
“Framing” and labeling are central to such strategies. These involve the use of “hate”, “phobic” and bigotry labels in which the highly sophisticated “framing” of disputes in ways that are designed to capture the moral high ground or taint opponents with emotionally-laden characteristics dominate. Such devices have become commonplace mechanisms for controlling our discourse.\textsuperscript{61} A result has been the rapid disappearance of intelligent communication on matters of consequence as actual interchanges of substantive ideas and facts has been replaced by the launching of propaganda missiles at anyone who disagrees with us. It also includes “shout downs” of speakers whose views are disapproved of by some of an audience.\textsuperscript{62} Research suggests that such “shout downs” of public speech are almost uniformly directed at conservative speakers and oddly it might seem are often on university campuses that in theory are intended to be open fora for discourse.

Where, one might ask, is all this strategy of thought control going? Just how far will we intrude into a person’s ability to “speak their mind” and express their thoughts? Apparently quite far.\textsuperscript{63} I think that particularly since the US Supreme Court’s 1973 decision

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\textsuperscript{61} Truth, empirical or political, is a casualty of the dominant strategy because truth "gets in the way". Diggins concludes: "Writers, composers, and performers who use language to speak truth to power know whereof they speak. The modernist, antihumanist dictum, however, declares that the subject has disappeared from history; therefore, knowledge can have no object, because the act of thinking cannot transcend its own discursive practices to get at the truth of things in the real world and thereby help change conditions in that world. No wonder those who had lived under the conditions of totalitarianism had no patience with poststructuralism." John Patrick Diggins, \textit{The Rise and Fall of the American Left} (W.W. Norton & Co., New York and London, 1992, at 363.

\textsuperscript{62} Associated Press, “NYPD commissioner Ray Kelly shouted down at Brown University lecture: Students force Kelly to cancel lecture with protest of police department’s stop-and-frisk policy and surveillance of Muslims”, Wednesday, 30 October 2013, theguardian.com.http://www.theguardian.com/world/2013/oct/30/nypd-commissioner-ray-kelly-shouted-down-at-brown-university-lecture. “Shout downs” are core elements of the intimidation of public discourse. One writer critiques the process as follows. “Suppression is the flip side of the PC coin. We know it as the practice of quashing ideas that compete with the PC message, usually through speech codes, shout-downs, or smears. The process of suppression creates the conditions essential to the survival of the PC message. If we think of PC as bacteria, suppression is like the dark room and the culture required for the bacteria’s growth and replication. No matter how implausible an idea may seem, it can gain acceptance in the minds of the citizens as the forces of PC relentlessly hype the idea in the public square. Simultaneously, the voices that might challenge and analyze the idea must be suppressed—accusations of bigotry and hatred often do the trick—so that the PC idea has a chance to incubate and then affect public opinion. The twin processes of saturation and suppression, if diligently applied, can produce the illusion of a huge public opinion shift, or a “cascade.”” Stella Morabito, “Dissecting Political Correctness”, Public Discourse, August 13th, 2013. http://www.thepublicdiscourse.com/2013/08/10737/.

\textsuperscript{63} See, Press Association, "Religious hatred bill unveiled today," The Guardian [online], Thursday, June 9, 2005. It reports: “The home secretary, Charles Clarke, will today publish a controversial bill banning incitement to hatred on the basis of religious belief, which opponents believe will outlaw religious jokes and curtail free speech. The racial and religious hatred bill will extend current offences on incitement to racial hatred under the 1986 Public Order Act to cover the stirring up of hatred against people of any religious faith. The offence will carry a maximum seven-year jail sentence. The government argues the present law is unsatisfactory because it covers followers of some faiths, such as Jews and Sikhs who are also considered as racial groups, while giving no protection to Muslims, who come from many racial
on abortion in *Roe v. Wade* we have seen a continual struggle over how to “frame” sensitive issues to gain political advantage by making your position look good and undermining opponents. Certainly this is obvious in the fact that one way to express the competing positions is “opposition to terminating a developing entity that allowed to evolve in the way designed by nature would become “Us” [Right to Life]” and “allowing a woman to extinguish that developing entity in order to avoid the consequences, responsibilities and burdens of allowing the entity to enter our world” [Freedom of Choice].

I am not taking a position one way or another but the “framing” slogans with which we are continually assaulted depersonalize and dehumanize the situation for purposes of political propaganda and effect. They also, for many, produce a rising level of anger at those holding opposing positions to the point that we come to label them as ignorant, ill-willed, malicious, stupid, mindless, mean-spirited or the like. In such a climate it is inevitable that there is no longer any middle ground for rational discussion, airing of legitimate perspectives or compromise.

When everything is a pre-judged propaganda slogan there is no real rational understanding or openness to data. Minds cannot be changed because we are operating on an emotional level that unfolds through entirely different processes and stimuli than our rational minds. It is irrational and is designed to be that way by seizing us on the level of animal emotion, urges and biases that deliberately bypass our intellectual understanding.

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For an overview, see, Matt Bai, “The Framing Wars”, New York Times, July 17, 2005. http://www.nytimes.com/2005/07/17/magazine/17DEMOCRATS.html?pagewanted=all&_r=0. In the context of Democratic strategies developed after a series of uncomfortable defeats, Bai observes: “Republicans, of course, were the ones who had always excelled at framing controversial issues, having invented and popularized loaded phrases like “tax relief” and “partial-birth abortion” and having achieved a kind of Pravda-esque discipline for disseminating them. But now Democrats said that they had learned to fight back. “The Democrats have finally reached a level of outrage with what Republicans were doing to them with language,” Geoff Garin, a leading Democratic pollster, told me in May.”
The strategic behavior involved in “framing” has created a sophisticated and pervasive propaganda industry that now controls what passes for social discourse but is actually something akin to “mixed martial arts” or “no holds barred” fighting. The problem with such control in a system predicated on democratic discourse is that the “framing”, propaganda and “spin” determines, shapes and restricts what is said. It does not facilitate the exchange of ideas and information in a search for social compromise and in fact such an exchange is the enemy of those who seek to control our law and policy. In such a system the intent is to destroy true discourse because the truth is often inconvenient and threatens those who hold power, just as with the rules of the Court of Star Chamber.

“Fire Away”: I Have No Right Not to be Insulted

I argue that whatever is the case in a theocratic state such as the Ayatollahs’ Iran or a dictatorial state such as Vladimir Putin’s Russia, that in a legitimate democratic system people do not have the right to be free from insult. In Snyder v. Phelps, the Supreme Court held that speech uttered on a public sidewalk about a public issue cannot create liability for

65 "Justice Breyer Suggests That Burning a Quran Could be Like Shouting ‘Fire’ in a Crowded Theatre--Thus Not Protected by 1st Amendment," Wednesday, September 15, 2010, Chris Neefus. Muslims believe the Quran, in the original Arabic, to be the infallible “final revelation” of Allah to Mohammed. (CNSNews.com) – Supreme Court Associate Justice Stephen Breyer said on Tuesday that globalization may change the way the First Amendment applies in the United States, and he suggested that Pastor Terry Jones’ proposed Quran-burning may or may not be protected under the First Amendment.

66 Matt Bai, supra n. , explains how the Democrats developed the strategies through the ideas of academician George Lakoff relating to language use and enhanced impacts gained through thematically-based messages with strong emotional impact. Bai relates: “The father of framing is a man named George Lakoff, and his spectacular ascent over the last eight months in many ways tells the story of where Democrats have been since the election. A year ago, Lakoff was an obscure linguistics professor at Berkeley, renowned as one of the great, if controversial, minds in cognitive science but largely unknown outside of it. When he, like many liberals, became exasperated over the drift of the Kerry campaign last summer -- “I went to bed angry every night,” he told me -- Lakoff decided to bang out a short book about politics and language, based on theories he had already published with academic presses, that could serve as a kind of handbook for Democratic activists. His agent couldn’t find a publishing house that wanted it. Lakoff ended up more or less giving it away to Chelsea Green, a tiny liberal publisher in Vermont. That book, “Don't Think of an Elephant!” is now in its eighth printing, having sold nearly 200,000 copies, first through liberal word of mouth and the blogosphere and then through reviews and the lecture circuit. (On the eve of last fall’s election, I came across a Democratic volunteer in Ohio who was handing out a boxful of copies to her friends.)"

the tort of emotional distress even if the speech is “outrageous” which nearly any reasonable person would conclude in the specific situation. At issue in the case (which is often thought of as the Westboro Church case) was whether the First Amendment protected protests made by public protestors at a funeral from being held liable in tort. Snyder involved a claim of the intentional infliction of emotional distress made by Albert Snyder, the father of a Marine, Matthew Snyder, who died in the Iraq War. The claim was made against the Phelps family, Fred Phelps, and Phelps’ Westboro Baptist Church (WBC). The Court ruled 8-1 in favor of Phelps. The holding was that the speech related to a public issue and took place on a public sidewalk. 68

From my personal point of view are the Westboro protesters unforgivably vile? Of course they are. Is what they do offensive? Yes. If they did it to me while I was burying my child would I feel an intense urge to take out a weapon and execute them? You betcha’! But do I want the State “picking and choosing sides”? No. Do I value freedom of speech to the point that it seems clear the Court decided correctly in Snyder? Yes. Does this have implications for the numerous other situations in which speech is being intimidated and suppressed in the US? Of course it does, but the reality is that other forms of speech repression have become so prevalent that Snyder will have little effect on how American culture operates either legally or through the privatization of speech intimidation and repression. Snyder is pretty much a “one-off” case where the protesters, who seem vile and almost irrational, are in a strange way to be admired for their persistence in the face of overwhelming revulsion and condemnation that faced the Westboro Church fanatics wherever they appeared. Few have the combination of courage and irrational commitment required to persist in the face of such condemnation and concerted opposition.

Enacting legal sanctions against insult—whether by statute, judicial interpretation or bureaucratic fiat—kills the spirit of democracy. 69 Guardian columnist Polly Toynbee


69 See, e.g., Polly Toynbee, “My right to offend a fool: Race and religion are different - which is why Islamophobia is a nonsense and religious hatred must not be outlawed,” The Guardian [online], Friday June 10, 2005.
captures the consequences of such restrictive laws in her observation that: “Laws change
cultural climates: it’s what they are for. Religion will become out of bounds in many
spheres. Schools, universities, the arts, broadcasting, will feel social pressures that induce
self-censorship. A small example: if you wonder why there have been no penetrating
exposes of cults like Scientology in recent years, it is because they have sued so often that
the media caved in - fear of litigation outweighs the story. That is how the law cast its
shadow.”

The problem is that control of language for political advantage is about dominance, not
discourse. We see this in carefully designed “framings” such as “freedom of choice” v. “right
to life”. It arises in the terms such as “homophobia”, “sexism”, “racism”, “Islamophobia”,
and much, much more including according to something I just read, “Lesbophobia”. After
all, if I am a “phobe” of one sort or another it is a sign of prejudice, irrationality, dark
motivations or worse. Being labeled as such is something from which we emotionally
recoil. We now live in an historical moment that has so many linguistic taboos that we walk
through a verbal “minefield” if we attempt to have honest discussion in any situation of
conflicted politicized dispute. Of course the “fighters” on either side really do not want
reasoned dialogue. It is now all about dominance of discourse and “shaming” as opposed to
an actual “can we talk about this” interaction.

In the context of immigration, for example, there has been a deliberate effort to recast or
“reframe” the meaning of law-breaking from “illegal” aliens to “undocumented” aliens. The
problem is that most of the people in question are undocumented because they committed
the illegal acts of entering or remaining in the US in violation of the nation’s immigration
laws. Golly! When I break the law it is called an illegal act. When others who are part of an
organized political movement favored by the government in power do it, it is called
something different for purposes of political “reframing” to alter its impact and perception.

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71 A prescient Albert Schweitzer argued several decades go: “The past has, no doubt, seen the struggle of the free-
thinking individual against the fettered spirit of a whole society, but the problem has never presented itself on the scale
on which it does to-day, because the fettering of the collective spirit ... by modern organizations, [by] modern
unreflectiveness, and [by] modern popular passions, is a phenomenon without precedent in history.” Quoted in Erich
The mantra of the burgeoning immigration legalization movement is now focused on asserting it is only fair and just that the “undocumented” be allowed to “come out of the shadows”. This ignores the undeniable fact that it was their own illegal actions that placed them in that situation by deliberately entering a country in violation of its laws.

On the other side of the political equation the ability to “frame” extremely complex situations as matters of “National Security”, “War on Terror”, the “Market Economy” or “Capitalism” manipulates our thought and judgment processes. This occurs to the point that it is difficult to sort out the real and concrete issues from interests that are served by the way in which matters are framed. The result is a flood of propaganda-driven “missile strikes” utilizing words and symbols designed to penetrate us on a deep emotional level while bypassing conscious thought. The sad fact is that many of our schools and universities are to a disturbing extent institutions that have also fallen prey to educating based on such “ballistic mantras”. This means that we aren’t even educating our youth or teachers into critical and honest modes of thought, judgment and communication. Our society is one in which nearly all people and educational programs are becoming progressively more superficial and anti-intellectual in the sense they really do not think and in fact are largely incapable of doing so. I actually think we are rapidly devolving in terms of our ability to think and analyze.

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72 On this topic see, Dominic Raab, GCHQ leaks: we can’t just guillotine all debate with the phrase ‘national security’”, theguardian.com, Friday 1 November, 2013. http://www.theguardian.com/commentisfree/2013/nov/01/gchq-national-security-intelligence-dominic-raab. Raab, who has an extensive background in the UK’s Foreign Office, explains his concern as one where: “any democratic government must be accountable to their citizens, particularly if they impinge on their citizens’ freedoms in the necessary pursuit of security. In recent years, UK surveillance of its citizens has increased exponentially, and the legal basis has sometimes, and now regularly, appeared strained at best. Oversight is frayed and legitimate debate is at risk of being drowned out by frankly untested assertions of national security.

73 Raab, id, concludes his analysis with the urging: “Above all, we must take this debate forward, away from the polarised and untested assertions on either side, and place the work of those who would protect us on a firmer footing. Karl Popper said: “We must plan for freedom, and not only for security, if for no other reason than only freedom can make security more secure.” [Adding] “We need to pursue our security in a way that respects our freedoms, limits incursions to genuine cases of national security and does so under a regime that commands the rule of law. Failing to do that would be the real gift to the terrorists – a victory for everything that they believe in and a blow against everything we stand for.”
There are two related issues at play. One is the overt use of governmental power under the concept of preventing or punishing hate speech and behavior. That occurs both overtly and subtly. As the examples demonstrate this is occurring in the US, UK, Western Europe, China, Russia and even tiny Grenada. The overt use of formal law is clear. But the delegated and considerably subtler use of law and legal interpretations are at least as powerful as tools of repression and social engineering. The subtlety comes into play in many workplace contexts in which the “environment” must be reformed in order to protect the “sensitivities” of employees from exposure to expression they find uncomfortable. Allowing a right of action because someone is uncomfortable with others’ workplace behavior creates a powerful means of control and intimidation through awards of damages, bureaucratic hostility and legal fees.

The other issue, and one surprisingly more compelling and intrusive by anyone understandably concerned about the rapid and vast expansion of governmental power, is the rise of concerted private action by groups designed to intimidate or punish speech and action by those with whom they disagree. Historically, an individual critic was a person voicing his or her opinion about a person, condition or matter. Generally this power of the traditional critic is comparable compared to a pebble being thrown into a pond. There are ripples from the impact but they are weak, do not travel very far and quickly dissipate. Depending on a particular critic’s reputation and ability to publicize the observations, there is no question an individual critic exercising the right to free speech and voicing an opinion could have a significant effect in a limited set of conditions.

The film or theater critic for the *New York Times* could, for example, play a substantial role in the success or failure of a Broadway play or cinematic offering as could an investment

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74 In Russia, “Vlad the Impaler” Putin imprisoned the members of a “girl band” that insults him with their music and charged Greenpeace activists with terrorism for approaching an oil platform in frigid waters. China is cracking down on the spreading of “rumors” on the Internet that it decides are against the interests of the Party, and has jailed its most prominent blogger who has a following of millions.
guru for the *Wall Street Journal* or *Forbes*. But most of our individual opinions and criticisms historically “played” to a very small (or non-existent) audience. Others can accept or reject the characterization and draw their own conclusions and respond with criticism, agreement, condemnation, political support or steps short of violence. This can enlarge and facilitate actual social discourse because what is voiced is an individual’s opinion that we all knew was subject to reasoned response. This is contrary to the current situation where formal public power exercised through law is delegated to favored groups and used to suppress and punish. It is also the case that the concerted concentration of special interest and identity groups operates on a different level of power and intimidation to the point that one disagrees with the positions at your peril or only as a response by a competing group engaged in the same types of behavior.

The situation of the individual critic versus the coordinated large group in pursuit of a specific agenda has changed dramatically with the onset of the Internet. The “pebble in the pond” became a boulder and the boulder a mountain. The Internet has enhanced almost beyond fathoming our ability to construct “instant” networks of special interests that are viciously committed to protecting their “turf” and “trashing” anyone foolhardy enough to challenge their positions and desires. The effects are pervasive and most likely permanent. That medium of group connectivity, along with its relationship building, broadcasting, information gathering, and willingness to distort or ignore evidence has changed the “rules of the game” in ways we could have never anticipated. This includes intimidation, propaganda, criminal activity, terrorism and just plain meanness and stupidity.

One very critical aspect of the new phenomenon is that the Internet has created a “Permanent Record” for all of us. Anyone silly or reckless enough to say something without fully thinking it through or who takes a position in which criticisms are made of a group’s agenda or thinking they are engaging in “off the record” remarks may find that they become an “instant media star” as their actions or deeds “go viral”. Just ask Mitt Romney how he feels about his off the cuff remarks about who pays taxes in America being surreptitiously recorded and then broadcast on the Internet throughout the presidential campaign. The politician’s long-favored ploy of saying different things to different audiences has now
become an explosive trap because nothing is really off-the-record. On one level this “instant transparency” is admirable. But the fact is that politics is a human system and the fact that nothing is “off-the-record” has changed the dynamics to the extent that there is no longer subtlety, nuance or the kinds of “non-accountable hypocrisy” that may have been integral to compromise and dialogue.

How to deal with this transformation in the use of the mediums of electronic communication to intimidate, sanction and hold people to account for a lifetime of claims and statements is something we do not yet understand. It is also a matter that must be approached with extreme care. From a legal perspective in the US, if a group acting in a private capacity wants to condemn someone’s statements for whatever reason that is entirely within its free speech rights bounded almost entirely by the limits created by defamation laws. But even those limits have become exceedingly tenuous given the anonymity that accompanies many of the worst attacks. When considerations are factored in such as the costs and uncertainties of potential litigation, the expense of determining who specifically said what, the physical and jurisdictional location of the parties, and the fact that even if something is removed by the hosting server on complaint it almost certainly has been preserved somewhere on the Internet system. The current system of liability and accountability is not viable as a matter of fairness or effective regulation.

Today, “strident” voices instantaneously respond with outbreaks of “insult”, “outrage”, demands for speakers being fired from their positions of employment, threats of violence and real violence. There is a direct relationship between the emergence of the Internet and its capacity for instant mobilization and the expression of irrational and primordial anger if anyone dares say anything an organized political group considers offensive. There are no

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“governors” that seem to be capable of mediating disputes on the Internet. That fact, coupled with the medium’s immediacy and ability to remain anonymous, has reduced our social and political discourse to base levels.

**Conclusion: The “Argument Culture”**

Rarely has the situation prevailing among politicians and intellectuals in Western society been put more clearly than by Deborah Tannen. She describes what has developed as a “culture of argument” in which we approach public dialogue as a fight. Tannen explains what helped her reach this insight. During a conference she asked a writer who she felt had clearly misrepresented Tannen’s work: “Why do you need to make others wrong for you to be right?” Her critic’s response: “It’s an argument!” This caused Tannen to realize that her opponent was engaged in something other than reasoned discourse and that everything was a fight in which anything goes.

This confrontational mindset has dominated our “debates” for more than a decade and is becoming worse. One consequence is that our leaders, political representatives and even our teachers have become ideologues who aren’t even aware of their behavior because it is all they know. At this point our political, intellectual and moral guides and leaders do not even know how to produce evidentiary content or offer rational justifications for their positions. This is due to seeing every interaction as a conflict in which someone offers a fixed ideological position voiced as an inevitable conclusion with which others would be idiots or mean-spirited bigots if they dared to disagree. Of course, those who do not disagree respond from behind the barriers of their own ideological rigidity and condemn the others as irrational, Leftist, “Pinko”, “Tea Party” morons, Right wing, Fundamentalist, Atheist, Racist, Greedy, Capitalists, Socialist and so forth. We are left with nothing but vitriolic argumentation without substance.

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78 Tannen, Argument Culture, id.
79 Tannen, Argument Culture, id.
This transformation to a culture of continual ideological argumentation rather than reasoned discourse based on best evidence changes the way people communicate. It justifies the use of partial truths and propaganda, and blocks the exchange of real ideas and workable solutions based on evidence. As Tannen observes: “[w]hen you’re having an argument with someone, your goal is not to listen and understand. Instead, you use every tactic you can think of—including distorting what your opponent just said—in order to win the argument.” 80 She concludes: “In the argument culture, criticism, attack, or opposition are the predominant if not the only ways of responding to people or ideas.” 81

The argument culture is a culture of the advocate and propagandist. It is the context through which we have been attempting to renegotiate the terms of a new social contract over the last twenty years or so. Strauss and Howe observe: “By the early 1990s, America’s niche group conflict came to be known as the Culture Wars, defined by Irving Kristol as a “profound division over what kind of country we are, what kind of people we are, and what we mean by ‘The American Way of Life.’” 82 The conflict pervades American society, with the behavior being one in which: “As each group exalted its own authenticity, it defined its adversary’s values as indecent, stupid, obscene, or … evil.” 83

We are in a competition for power, prestige and privilege. The problem is that we aren’t any good at reasoned argumentation that operates according to substantive rules and standards. In fact, I wish we had more of a real “argument culture” based on legitimate-evidence-based critique rather than the one of degraded argumentation and no-holds-barred verbal and political warfare that we have developed. Honest argumentation and critique has recognized rules by which disputes are processed. Evidence plays a role and some degree of honesty is demanded. We have slid into a system of supposed “discourse” in which the advocates lie, lie and lie some more, or simply attempt to drown out their opponents by shouting or chanting slogans. A result

80 Tannen, Argument Culture, id, at 5.
81 Tannen, Argument Culture, supra, n. , at 7.
82 See, Strauss and Howe, The Fourth Turning, supra, n. , at 202, 203.
83 Strauss and Howe, The Fourth Turning, id.
of our becoming the “Propaganda State” is that there is no real public discourse in America, only verbal aggression, intimidation and dishonest spin and interpretation. In such a corrupted context the idea of honest argumentation based on proof and rational decision-making sounds idyllic. Instead we throw verbal bombs, lie and deceive to the extent it seems as if Machiavelli is the new patron saint of American culture, although based on my own interpretation of his work I think that is a disservice to the author of *The Prince*.

Ayn Rand described the social responsibility of the intellectual. She states that: “The intellectual is the eyes, ears and voice of a free society: it is [the intellectual’s] … job to observe the events of the world, to evaluate their meaning and to inform the men in all the other fields. A free society has to be an informed society.” 84 Rand adds: “The more specialized and diversified a society, the greater its need for the integrating power of knowledge; but the acquisition of knowledge on so wide a scale is a full-time profession. A free society has to count on the honor of its intellectuals: it has to expect them to be as efficient, reliable, precise and objective as the printing presses and the television sets that carry their voices.” 85

Instead of the balance and objectivity Rand urges, we [“intellectuals”, media, academics, politicians, activists] have degenerated into “throwers” of polemic and propaganda. Propaganda is defined as the deliberate spreading of “information, ideas, or rumors” “to help a person, group, [or] movement.” An ideologue is one who “zealously advocates an ideology” [and] a demagogue is a “person, esp. an orator or political leader, who gains power and popularity by arousing the emotions, passions, and prejudices of the people.” 86 This is who we are and what we have become.

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85 Rand, *For the New Intellectual* 27, *id*.