

How can this accelerated post-liberal era best empower those
in need of sanctuary to utilise freedom of speech?

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Philosophy

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Student's signature.....



“I do hereby contest that I am the sole author of this thesis and
That its contents are only the result of the readings and
research I have done.”

D E D I C A T I O N

I would like to dedicate this thesis to my Supervisor, Professor Salvatore Fava and thank him for the patience and time that he kindly invested in me - via Skype and also e mail. I received prompt replies to any matters requiring clarification and his patient reassurance helped me to believe that I could complete this project.

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INTRODUCTION

WHAT IS HATE SPEECH?

Whilst, as yet, there is not an internationally accepted legal definition of hate speech, for the purpose of this thesis, the United Nations' definition – signed by the U.N. Secretary General (Antonio Guterres) in May 2019 will be utilized, as a sound understanding of its meaning is necessary when exploring how to best empower minority groups who perceive their intrinsic right to freedom of expression as being limited by it in their daily existence (this will be explored in greater depth in chapter 3 on Critical Race Theory).

The term hate speech is understood as any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor. This is often rooted in, and generates intolerance and hatred and, in certain contexts, can be demeaning and divisive.¹

RESEARCH QUESTION

How can this accelerated “post neo liberal age”² best empower those in need of sanctuary (as identified above) to utilize their freedom of speech?

¹ Guterres, A. (2019) United Nations Strategy and Plan of Action on Hate Speech. Page 2.

² Lewkowicz, J. (2015) “Post Neo Liberalism”. *Open Democracy UK*. Page 9.

³ Haldane, J. ‘*Is Free Speech in British Universities Under Threat.*’ <http://guardian.com>. 2nd March 2016.

Professor Haldane of St. Andrew's university declares that the solution is not what he perceives as "the growing practice of ... a closing culture"³ in the current post liberal era upon UK campuses. The remedy he posits is to

- (1) counter, and
- (2) reverse the growing limitations upon free speech

by "returning to the roots of Western liberalism, so that we might live at ease with one another under its protective branches."⁴

To facilitate a thorough exegesis of the above research question, this paper will offer 4 chapters, prior to reaching its conclusion. Chapters 1 - 2 will document the continuing need for the development of liberalism; from John Stuart Mill through to the present day and the works of Judith Butler; to facilitate the empowerment of minorities so that they can express their freedom of speech. Having demonstrated the need for continuing development, chapters 3 – 4 will scrutinize post liberal theories prior to reaching its conclusion which will suggest how to use university education as a catalyst for change. For the purposes of clarification, in this thesis the term "minorities" will refer primarily to BAME (Black and Asian minority ethnicities) as this is the focus of Critical Race Theory (see chapter 3), the anti-thesis to liberalism.

For the reason that in the Western world's largest democracy all opinions have the right to be heard, freedom of speech is protected under the first amendment of the U.S. constitution. This includes hate speech, which is tolerated because (it is claimed by neo liberal thinkers) that whilst the logic is both offensive and erroneous, hate speech per se does no harm. Quite simply hate speech is an opinion that may be countered by a multitude of opposing opinions in the marketplace of ideas. The Critical Race Theorists (CRTs') counter argument to this is that *some*

⁴ Haldane, J. 'Is Free Speech in British Universities Under Threat.' <http://guardian.com>. 2nd March 2016.

words, such as hate speech may be employed as “weapons to ambush, terrorize, wound, humiliate and degrade”⁵ those vulnerable groups who are most in need of sanctuary.

This thesis will initially critically examine both arguments and their suggested strategies for addressing hate speech; building upon them to suggest a way forward, utilizing university education as the medium for empowerment of vulnerable minorities.

⁵ Matsuda, M. et al. 1993. ‘Words That Wound: Critical Race Theory, Assaultative Speech and the First Amendment.’ Oxford: Westview. Page 1.

LITERATURE REVIEW

Chapter 1

Critically examine the history of the “liberal roots” referred to by Professor Haldane in the introduction of this thesis and the subsequent development of the tradition of liberal thinking regarding the right to free speech as a means of empowering socially disadvantaged sectors of society.

This chapter will explore liberalism from Mill’s seminal treatise: ‘On Liberty’⁶ through to neo liberal philosophers, such as Butler and demonstrate that liberal ideas surrounding the right to free speech and a non-interventionist policy have altered little in over 140 years, arguing that this is could be a problem for contemporary liberalism, unless it is used as a building block to move beyond reflection regarding hate speech theory - via the active mediums of education and rationalization (as set out in chapters 3 - 5).

Therefore this thesis will commence with a thorough exegesis of “the roots of liberalism” that Professor Haldane urges us to return to, commencing with John Stuart Mill: the man ‘The Liberator’ (the official liberal monthly periodical) describes as “The Greatest Liberal”.⁷ Mill’s career was that of an exemplary liberal role model, devoted to advocating and striving to implement this cause: whether via the medium of ‘*The London and Westminster Review*’; or in Parliament as the M.P. for Westminster. The conclusion of this leading liberal paper was that

⁶ Mill, J.S. [1861] 1991. ‘On Liberty.’ In J.S. Mill and J. Gray (eds.) *On Liberty and Other Essays*. Pp 11 – 28. Oxford University Press.

⁷ Calder, J. ‘Why John Stuart Mill is the Greatest Liberal Ever.’⁷ *Liberator*. September 2007.

“Mill’s is the most powerful voice ever raised in support of the expansion of liberty.”⁸ Hence an exploration of his seminal treatise, ‘On Liberty’⁹, will be undertaken in chapter 1.

Chapter 2

Critically examine neo liberal philosophy, with its emphasis on liberalism - combined with the medium of socio-linguistics and identity politics as agents of empowerment and change.

Selection of Butler and ‘Excitable Speech: a Politics of the Performative’¹⁰, as the touchstone of neo liberalism was the logical choice for a counter argument to the well-established liberal tradition. This was a rational decision, as whilst this work can be read in its own right, it is Butler’s personal response to ‘Words That Wound, Critical Race Theory, Assaultive Speech and the First Amendment’ by Matsuda et al: the Critical Race Theory which is examined in chapter 3.

Chapter 3

Critically examine the history and development of the counter-tradition of critical race theory (CRT) and the argument for state intervention regarding instances of hate speech, citing relevant cases. Demonstrate that this is an organic theory, which is specifically designed to develop and change in response to the needs of individual people and events.

A diametrically opposed philosophy to liberalism was subsequently required, in order to facilitate a balanced critique on the intertwined issues of hate speech/freedom of speech. Hence, chapter 3 examines ‘Words That Wound: Critical Race Theory, Assaultive Speech and the First Amendment’¹¹ By Matsuda et al, who do not concur with liberal philosophy regarding freedom of speech. Indeed, they aver that legislation against hate speech, which they define as “words

¹⁰ Butler, J. ‘Excitable Speech: a Politics of the Performative.’ London: Routledge.

¹¹ Matsuda, M. et al. 1993. ‘Words That Wound: Critical Race Theory, Assaultive Speech and the First Amendment.’ Page 1. Oxford: Westview.

that are used as weapons to ambush, terrorize, wound, humiliate and degrade”,¹² is essential and furthermore a moral imperative. For both Butler and Matsuda, the terms “hate speech” and “assaultative speech” are used interchangeably. Hate speech may be defined by its

- (1) content,
- (2) intent,
- (3) effect,

or, as is most often the case, the powerful combination of all three. However, what this research demonstrates is that whilst Butler and Matsuda are using the same terminology to describe the same speech acts, their respective perceptions of this phenomenon are not. Although Butler does not seek to negate the harm it can do, and does perceive it as a harmful perlocutionary, she also sees it as an *opportunity* for relexicalisation and thus empowerment, by inverting a negative term into a positive response. Whilst Matsuda et al have a dichotomous position, perceiving hate speech as a means of subjugation, allegedly involving state complicity, and seek to resolve this by amending the law.

Chapter 4

Simpson & Srinivasan, Friere and Vygotsky

Having traced the history of liberalism from its roots to the present day, and its counter thesis of CRT, it is now necessary to look at more contemporaneous work, focused specifically upon campus speech and how to work towards developing an appropriate theory of epistemology to address it.

Simpson & Srinivassan¹³

¹² Matsuda, M. et al. 1993. ‘Words That Wound: Critical Race Theory, Assaultive Speech and the First Amendment.’ Page 1. Oxford: Westview.

Their thesis centres on the premise that treating the university as if it were just another marketplace of ideas is fundamentally flawed. It is (they aver) precisely because universities are specialized technical institutions that exist for the purposes of teaching and research that censorship of speech is not just permissible, but also desirable. They build upon the work of Robert Post, by positing the suggestion that graduate students ought to work alongside senior faculty members in reaching decisions about who should have a voice on campus.

Friere¹⁴

The counter argument will build on Friere's "banking" theory, by contending that knowledge is not something to be imposed by a tutor (or graduate students) upon passive undergraduates: exposed to so much freedom of speech they are rendered passive repositories of education; whose primary function is to be filled to the brim with knowledge; rather than active participants in formulating their own learning experience and having a voice in whose works they explore in their own research.

Vygotsky¹⁵

This thesis will build upon Lev Vygotsky's scaffolding theory regarding children's learning in order to adapt and enhance it for the purpose of facilitating the development of a learning experience which will support those groups in tertiary education who most need sanctuary. The

¹³ Simpson, R. & Srinivasan, A. (2017) No Platforming. Accessed 21/10/2017.

¹⁴ Friere, P. 2017 Pedagogy of the Oppressed. London: Penguin.

¹⁵ Vygotsky, L. 1986 (2nd Edition) 'Thought and Knowledge (Revised and Expanded)'. London: MIT Press.

main locus of attention will be the Vygotskian use of scaffolding to support independent learning, ideally assisted by more senior students or post graduates (as positive role models). In order to achieve this objective, the primary source of reference will be ‘Thought and Language (Revised, Expanded)’.¹⁶

This thesis will demonstrate that a truly liberal educator (particularly within universities) ought to strive to enable disadvantaged students by empowering them in roles of active thinkers - capable of evaluating not just information, but also disinformation; not just news, but also fake news; to equip them with the critical thinking skills needed more than ever in the saturation of material the multi-media 21st century purveys. It is this active, as opposed to laissez faire model of teaching, which can best empower those minorities in need of sanctuary to have the confidence to use their freedom of speech and then perpetuate it by teaching others. This teaching is not purely lecture theatre based, but is about lively discussions and about *some* student led seminars and senior students acting as role models to undergraduates (as explained in greater depth in chapter 4 and the conclusion).

¹⁶ Vygotsky, L. 1986 (2nd Edition) ‘Thought and Knowledge (Revised and Expanded)’. London: MIT Press.

CHAPTER 1

Critically examine the history and development of the tradition of liberal thinking regarding the right of free speech from Mill through to neo liberal philosophers, such as Butler.

This chapter will commence with an exposition of ‘On Liberty’¹⁷ (1856) by J. S. Mill. It will argue that the fundamental non-interventionist philosophy regarding freedom of speech advocated in ‘On Liberty’ in the 19th century, has altered little in content, merely in the terminology used to clarify it by the 21st century, when espoused by contemporary liberals such as Butler in ‘Excitable Speech’¹⁸ (1997). This vigorous upholding of the liberal tradition has resulted in a lack of *significant* change over a period exceeding 140 years which can present problems when applied to contemporary, high profile 21st century issues- such as hate speech towards asylum seekers, BAME and LGBTQ (Lesbian, Gay, Bisexual, Transsexual and Queer persons). Philosophies need to evolve in response to new phenomena, just as life forms must – or face extinction.

Freedom of speech is a right enshrined within liberal constitutions throughout the Western world. Liberal philosophers from Mill through to Butler both vociferously support this right. Mill is adamant that there are at least two hypotheses to every argument and bases his defense of free speech upon 2 premises:

(1) We can never be sure that the opinion we are endeavoring to stifle is a false opinion.”¹⁹ By this he means that opinions regarding established norms and conventions can change and indeed his support of the suffragette cause highlights the fact that entrenched beliefs and state legislation regarding individual rights can be altered.

From the first premise, he moves to the more contentious second premise:

¹⁷ Matsuda, M. et al. 1993. ‘Words That Wound: Critical Race Theory, Assaultative Speech and the First Amendment.’ Oxford: Westview. Page 51.

¹⁸ Mill, J. *On Liberty* in Cahn, S. (Ed.) 2005. ‘Political Philosophy’. Oxford University Press. Page 438.

¹⁹ *Ibid.* Page 443.

(2) That even if an opinion were undoubtedly false, “stifling it would be an evil still.”²⁰ Might this mean that any speech act, even neo-Nazis distributing pamphlets saying “Hitler should have finished the job”²¹ during a proposed march through the village of Skokie (a community inhabited primarily by holocaust survivors and their families) should be permitted by the state? Is Mill suggesting that in years to come we will look back upon such pamphlets and consider them to be a vital contribution to society? Closer examination of ‘On Liberty’ suggests that this is not the case.

1(i) Mill and Moral Responsibility

Mill’s advocacy is also tempered with caution, as the right to freedom *ought* to confer upon one a concomitant moral responsibility. However, we should not luxuriate in our freedom to the extent where we permit ourselves to be lulled into a state of complacency, constant vigilance and scrutiny of moral dilemmas that present themselves are essential. Mill sagely draws our attention to the fact that an individual does *not* have the moral right to call out “fire” in a room full of people, as its consequence would be panic and *distress* to others. It would not be unreasonable to extrapolate from this premise the deduction that placing a caricature of a “sambo” on a black student’s university room door (as in the Ujaama case, which is explained in detail in chapter 3) is also likely to cause *distress*, because of its history of being used as symbol of hatred and violence by racists. Therefore it is unlikely that Mill would condone it, as avoidance of harm to others is a key tenet of his philosophy, so much so that he reiterates it *twice* in his summary of chapter 1 of ‘On Liberty’, where he itemizes three necessary conditions for a liberal democracy, as summarized below

- (1) Liberty of conscience and liberty of the press.
- (2) Liberty of tastes and pursuits “without impediment from our fellow creatures, so long as what we do does *not harm* them.”
- (3) Freedom to unite for any purpose “*not involving harm to others*. The term “harm”

²⁰ Mill, J. *On Liberty* in Cahn, S. (Ed.) 2005. ‘Political Philosophy’. Oxford University Press. Page 438. (my italics).

²¹ Strum, P. 1999. ‘When the Nazis came to Skokie: Freedom for Speech we Hate.’ University of Kansas Press.

is defined as “to injure physically, morally or mentally.”²²

1(ii) Applying Mill’s Theory to Actual Cases

Nevertheless, it is also unlikely that he would wish to suppress such speech without any discussion. A true liberal would believe himself to have sufficient self-control to listen to racist arguments without any anxiety about corruption, or fear about being reduced to their level. Indeed, he may well consider himself to become a better human being for responding to such hateful doctrine with rational discourse as the sole weapon in his armory. However, there is a significant difference between placing hateful messages in someone’s living area, where the threat of intimidation cannot be avoided and banning racist meetings where only those who are interested will hear their noxious views and protest groups have the opportunity to organize and to use their freedom of speech to disrupt the meeting by regularly interjecting with flaws in the argument, or to picket outside to deter people from entering, thus sending a clear message that racism is unwelcome and unacceptable. The crucial point or qualification of Mill’s liberal argument within the parameters of this dissertation must be the caveat which appears in point (2) and is reiterated in point (3) that “harm to others” is to be avoided. This can present a problem for Mill’s theory of free speech, because if it is not studied in its entirety and is merely quoted ad hoc, then it is liable to misinterpretation or abuse and at risk of being used to justify acts that Mill might have deemed unjustifiable. Indeed to be more specific, Mill actually states that “if anyone does an act hurtful to others, then there is a prima facie case for punishing him by law.”²³ This is a quotation which, interestingly, Butler elects *not* to use when quoting Mill and liberal history in her books, whilst advocating avoidance of litigation.

Curiously, it is this very avoidance of harm that neo liberal free speech purists either choose to ignore or deny exists; proclaiming that words cannot wound (see chapter 2), whilst demanding that all speech has the right to be heard. They deny any causal link between racist speech and racially motivated attacks, avowing there is no relationship between what is said and the actions of some violent racist individuals.

²² Mill, J. ‘On Liberty’ in Cahn, S (Ed.) 2005. *Political Philosophy*. Page 438. Oxford University Press.

²³ Ibid.

This is a problematic claim for their theory, because the ability of words to cause harm apparently depends upon the venue they are spoken in. Waldron directs our attention to the fact that with regards to political meetings, “American civil liberties scholars have no difficulty at all in seeing a connection between speech and the possibility of violence.”²⁴ Apparently “heckling presages disorder and disorder threatens security” therefore any hecklers are forcibly removed by the police without the first amendment being compromised.

The Nazis can disrupt the streets of Skokie, but those who disrupt Rumsfeld’s [or any politicians’] message will be carried away with the hands of secret service agents clamped over their mouths.²⁵

Alternatively, if Mill’s philosophy were to be followed to its extreme, one might deduce that all hate speech should be legislated against, as it could conceivably lead to the harm of others by militant groups. One might well question how tolerating noxious speech of any kind can contribute towards his aspiration of striving towards the “greater good” of society. However, Mill (as demonstrated above) would most emphatically *disagree* with such a deduction. Indeed Voltaire’s much quoted maxim “I disapprove of what you say, but I will defend to the death your right to say it,”²⁶ might be applied to Mill, but with the afore-mentioned caveat that *what you say must not harm others*. Clearly manifesting the complexity of this moral issue, Mill avows what could be perceived as (in the short term at least) the antithesis of his “greater good” theory in maintaining that veracity cannot become apparent, other than through the medium of, “the rough process of a struggle between combatants fighting under hostile banners”²⁷ and that furthermore, even if a doctrine is true, the necessity of engaging in metaphorical combat with real adversaries is fundamental to the continuing maintenance of its inherent vitality. This is critical, since “both teachers and learners go to sleep at their posts, as soon as there is no enemy in the field.”²⁸ Mill is counseling against complacency, as he is aware that not all members of society aspire towards

²⁴ Waldron, J. ‘Boutique Faith.’ Pp. 22-23. in *London Review of Books*, 20 July 06.

²⁵ Ibid.

²⁶ Voltaire, quoted in Reynolds, R. 02 November 2007 ‘Academe is Guilty of Institutional Cowardice.’ *The Times*.

²⁷ Mill, J. ‘On Liberty’ in Cahn, S. (Ed.). 2005. *Political Philosophy*. Oxford University Press. Page 438 (my italics).

²⁸ Ibid.

altruism and that constant vigilance and the use of reason are the best defense strategies towards hateful language.

However, this thesis would attest that for a “struggle between combatants”²⁹ to be of any real worth, it is a necessary and sufficient condition that the fight must be a fair one, where the parties are equally matched and have equal weaponry or resources at their disposal. If this is not so, then it is vital that education (as detailed in chapter 4) is undertaken to empower those who need it most.

Mill is greatly opposed to the oppression of minority groups, indeed Isaiah Berlin pronounced Mill to be “the most passionate and best-known champion of the insulted and the oppressed.”³⁰ His belief is that words are a medium of liberation, a means of righting wrongs and as such ought *not* to be used as an instrument of subjugation and/or harm. If they are being misused for harmful purposes, then the proper arena in which to address them (ideally) is the public domain, not within the confines of the court room.

1(iii) Summary of Chapter 1

What this thesis finds disconcerting about this liberal theory is that, 140 years later (as elucidated in chapter 2) neo liberals’ solution to offensive speech remains fundamentally unchanged: namely no state censorship and the remedy for offensive speech ought to be ... *more speech*, albeit under the new appellation of “talk back.” This thesis aims to suggest a cost and time effective means of commencing the empowerment of disempowered groups in need of sanctuary by suggesting the requisite education, means and platform(s) to initiate a reasoned response to hate speech (as set out in chapter 4 and the conclusion).

²⁹ Mill, J. ‘On Liberty’ in Cahn, S. (Ed.). 2005. *Political Philosophy*. Oxford University Press. Page 438.

³⁰ Ibid.

Chapter 2

An exposition of Western neo liberal philosophy.

2(i) Butler the Politics of Recognition

Butler perceives identity as being inextricably linked to the operation of societal norms. These norms determine who matters and who actually counts as being human. This normativity therefore determines not merely “what I can ‘be’ but also whether or not I can recognise myself, or be recognised by another.”³¹ The problem presented here is that not all persons are recognizable because not everyone features as normatively human within society at present. This philosophy has enormous ramifications for politics, because if language can be implemented effectively in order to render marginalized groups equal status as human beings, then the concomitant result might conceivably be the emergence of a sense of ethical responsibility towards that group. It is this aspiration that this thesis seeks to address via the medium of university education, as explored in the conclusion. However, at the present, we have a different situation where the lives of marginalized groups that somehow fail to be recognised as fully human (by themselves as well as by the state) are being violated! An example of this would be the notorious RAV cross burning case (explored in greater depth below) where Butler sagely observes that the marginalised black Jones family “had their lives, which were not normatively recognised as lives, violated.”³² In Butler’s opinion, if violent acts are committed against “those who are unreal, then, from the perspective of violence, it fails to injure or negate those lives since those lives are already negated.” This issue is defined as the “violence of derealisation”³³ and later becomes intertwined with the politics of recognition.

Butler avers, “One exists not only by virtue of being recognized, but, in a prior sense, by being recognizable.”³⁴ This exploration of the politics of personal identity (which is Hegelian in its origin) has recently been focused upon in identifying ways in which every person within a

³¹ Butler, J. 2004. ‘Precarious Life: the Powers of Mourning and Violence.’ London: Verso. Page 33.

³² Ibid.

³³ Ibid.

³⁴ Butler, J. 2005. ‘Giving an Account of Oneself.’ New York: Fordham. Page 27.

democracy; with particular emphasis on those from marginalized groups, can be recognised by themselves (as well as by others), as equal to everyone else within that democracy. Butler defines the concept of recognition as being a reciprocal, as opposed to a one-sided process: by which she means people see themselves as others perceive them to be; “the process by which I become other than what I was and so cease to be able to return to what I was.”³⁵ This argument is inextricably linked to the political issue of free speech, in so far as whatever affects the morale of the individual will be conveyed via conversation and body language to; their family, their friends, their community and ultimately the sense of cultural identity of that particular social demographic (see also chapter 3). This is a crucial point upon which Butler and CRTs are in agreement, she is not deliberately trying to deny the harm involved or intended by hate speech, it is the preferred venue of resolution which is the primary focus of contention.

2(ii) Butler and the “Vulnerability” of Hate Speech

If the subject is produced by the ways they are recognised through speech acts then “it is by being interpellated within the terms of language that a certain social existence of the body first becomes possible.”³⁶ This link between speech acts and identity poses the question, what about subjects who are identified first and foremost through derisory language, via terms that wound and subjugate? To furnish the reader with an answer, Butler utilizes the example of “queer” politics (homosexuals being yet another target of hate speech). She concurs with the sociolinguistic premise that hate speech, in common with all speech acts is “vulnerable” to failure because the object of the verbal assault may rise above the intended insult; or might respond with a cutting rejoinder, resulting in the failure of the perpetrators’ linguistic goals. To be absolutely clear, Butler’s opinion is not that words do not hurt, but that they are “vulnerable,” they need not hurt and her theory explains how this change could happen. Butler insists that “it is that vulnerability that must be exploited to counter the threat,”³⁷ and herein lies what CRTs

³⁵ Butler, J. 2005. ‘Giving an Account of Oneself.’ New York: Fordham. Page 27.

³⁶ Butler, J. 2006. ‘Excitable Speech: a Politics of the Performative.’ London: Routledge.

³⁷ Ibid. Page 12

perceive as the weakness, or naivety in her theory.³⁸ As Matsuda's co-author (Delgado) elucidates:

a white male teaching at a major law school, has little use for rights. Those with whom he comes into contact in his everyday life – landlords, employers, public authorities, generally treat him with respect and deference. Rarely is he the victim of coercion, revilement, or contempt.³⁹

2(iii) State Speech and “Vulnerability”

‘Excitable Speech’ highlights another contentious issue in Butler’s philosophy. In claiming that the language of hate speech is “vulnerable” to failure, when she later addresses the issue of state speech or state laws, this “vulnerability” to failure is not countenanced. In stating that “state speech is sovereign when its deliberations are acts of law”,⁴⁰ Butler implies that the state is always successful in its speech acts, that it actually possesses the illocutionary power to achieve what it says. The same opportunities for inversion or resignification that Butler claims exist for hate speech are not mentioned with regard to state speech in ‘Excitable Speech’ Chapter 6, regarding this issue. When addressing the “performative speaking of the law” Butler claims that it works “only by reworking a set of already operative conventions.”⁴¹ To take this argument to its logical conclusion means that state speech is iterable and therefore this can only mean that (just like hate speech) it too can be resignified. Clearly Butler cannot have it both ways

- (1) either *both* forms of speech have the power succeed, or
- (2) hate speech and state speech are *both* “vulnerable” to failure.

³⁸ Whilst within the realms of academia inhabited by Butler and Foucault, surrounded (perhaps even cosseted) by contact with intelligent and civilised fellow academics it might well prove possible to discuss and thereby locate the “vulnerability” of hate speech and to reinvent linguistic terminology, thereby altering the perception of marginalized groups: they are both surely inhabiting a dream-like world if they imagine that it is possible to achieve the same effects without undergoing considerable intimidation, isolation, ridicule or violence in the everyday world.

³⁹ Delgado, R. 1987. Pp 305-306 ‘The Ethereal Scholar: Does Civil Legal Studies Have What Minorities Want?’ Issue 22, *Harvard Civil Rights – Civil Liberties Law Review*. (This issue is explored in greater depth in chapter 2).

⁴⁰ Butler, J. 2006. ‘Excitable Speech: a Politics of the Performative.’ London: Routledge. Page 16.

⁴¹ Butler, J. 1993. ‘Bodies That Matter: on the Discursive limits of Sex.’ London: Routledge. Page 107

This claim cannot be logically refuted by Butler, as if she believed that the state failed to make an impact when legislation is implemented then she would have no justification for her protestations regarding its intervention.

2(iv) Contemporary Case Studies

Matsuda's advocacy of exploiting the vulnerability of hate speech, (see chapter 3) which is targeted or "directed against the least powerful segments of our community"⁴² is a cause of concern for Butler. The term "least powerful" refers primarily to women or ethnic groups who tend to have

- (1) less education,
- (2) less disposable income,
- (3) less power and therefore
- (4) less access to forms of support and redress than the instigators of such speech.

Cross Burning and the RAV Case

An example of the afore-mentioned *targeting* occurs when Butler focuses upon cross-burning in 'Excitable Speech.' If we examine the case of RAV in greater depth we discover that on 21st June 1990, a crudely made cross was discovered burning in the front yard of the Jones family. The family of two adults and their children had recently moved into the working-class neighborhood of Dayton's Bluff and was "the *only* black family on the block"⁴³ and were therefore socially isolated. Two weeks after their move, the tires of both their cars were slashed. A few weeks later, a car window was smashed and their 9-year-old son was called a "nigger" by a gang of teenagers. What we learn is that this marginalized family fitted all of the above criteria (1) – (4) as itemized in the previous paragraph and that as such they did not have powerful social, educational or monetary resources at their disposal when being subjected to hate speech

⁴² Butler, J. 2006. 'Excitable Speech: a Politics of the Performative.' London: Routledge. Page 12.

⁴³ Ibid.

(objects such as burning crosses symbolize words and as such are treated according to the first amendment on free speech).

The police arrested two skinhead teenagers and prosecuted them under the “hate crimes ordinance.” This made it unlawful to place on any property a symbol that might arouse “anger, alarm, or resentment in others on the basis of race, color, creed, or gender.”⁴⁴ However, the law actually failed to support the people it was intended to protect. The teenager, Robert Anthony Viktora (referred to in court as “RAV” to protect his identity as a minor), challenged the law as a “content-based violation of the First Amendment.”⁴⁵ This means that cross burning is deemed to be political speech and therefore any ordinance directed against it is illegal. The Minnesota Supreme Court rejected this challenge, quoting Matsuda

Burning the cross in the yard of an African American family’s home is deplorable conduct that the city of St. Paul may without question prohibit. The burning cross itself is an unmistakable symbol of violence and hatred based on virulent notions of racial supremacy. It is the responsibility, even the obligation, of diverse communities to confront such notions in whatever form they appear.⁴⁶

The Minnesota judges researched the history and context of cross burning, to gain an understanding of the effects of such an incident and ruled that:

Crosses burn to warn newcomers out of segregated neighborhoods... to draw upon and promote the fear that began with the nightriders of the reconstruction era and continues to this day in the rituals of Skinheads, Klansmen and local thugs.⁴⁷

⁴⁴ Ibid

⁴⁵ RAV v City of St. Paul, Minnesota. 1992. 505 U.S. Page 377.

⁴⁶ Matsuda, M. et al. 1993. ‘Words That Wound: Critical Race Theory, Assaultative Speech and the First Amendment.’ Oxford: Westview. Page 133.

⁴⁷ Ibid.

To summarize, the court found that the burning cross was specifically employed to cause harm and because of its history of violence and intimidation, this harm was maximized.

However, the Jones family did not find themselves vindicated by the law for long, in 1992 the Supreme Court delivered a unanimous verdict in RAV's favor and he was subsequently acquitted. This was because, as Judge Scalia explained, the Minnesota cross burning ordinance was not content neutral (this term refers to what is deemed to be the clear meaning of the law and does not necessarily reflect the moral judgment of the judiciary). However, this thesis would argue that law and morality are separable and therefore a convincing legal argument is not necessarily a convincing moral argument. Thus, in identifying the cross (with its history of racially motivated intimidation) as a particularly offensive symbol and by therefore proscribing it, the City Court may have engaged in content-based discrimination. Nevertheless, this does not mean that there was not a sound moral basis (the prevention of intimidation) to their decision. This also demonstrates that although the Supreme Court *might* have succeeded in a content neutral interpretation of the law, they were not necessarily morally correct per se and this appears to be Butler's concern when she recommends not using the law in regard to hate speech: because this outcome could be construed as

- (1) actually legitimizing the detestable actions of RAV, since if he was acquitted in a court of law, then presumably his actions were not illegal; and
- (2) further marginalizing the Jones family, who could no longer trust the state to protect their personal safety.

This is a clear vindication of Butler's earlier claim that state intervention is not necessarily the best way to respond to hate speech. Therefore, this thesis would like to build upon that premise by advocating the empowerment of minority groups, so they can successfully lobby for the amendment the law to obviate the risk of similar miscarriages of justice. This thesis would further suggest in the light of Scalia's ruling regarding the priority of content neutral law, a possible solution might be *not* to prohibit the burning of any symbol with the intention to intimidate, because the blatantly obvious target of such a resolution would in actuality be the cross.

Scalia adjudged that the city of St Paul's ordinance ruling was not in line with the first amendment, as by identifying the symbol of the burning cross as offensive it "raises the specter that the government may effectively drive certain ideas or viewpoints from the marketplace."⁴⁸ This ruling, in particular the emphasis on content neutrality, was enforced by the Supreme Court because of the judges concern regarding the clichéd "slippery slope" argument, which could lead to the banning of any symbol or speech that people find offensive. Might it not be a more logical step to prohibit all intimidating speech that threatens its subjects? Taking this course of action would undoubtedly ban some cross burnings, but not because they are cross burnings. When private actions (or torts) are implemented because of the infliction of deliberate emotional distress; or common law cases instigated because of threats of actual bodily harm, this is not perceived to be an infringement of the first amendment. The same argument could also apply to the more contemporary 2019 placement of a noose, close to a dormitory inhabited by 85% black staff and students in Stanford University (as explored further in Chapter 3).

Butler justly maintains that the law (variable from state to state in the USA) seldom works for those who need its support the most and uses the acquittal of RAV to support her argument. Yet, this failure need not be a necessary and sufficient condition for avoiding legal action. If the justice system is not working, then it could be amended (as explained above) to send out a clear message that the state does not condone the right to be racist and supports those minority groups who are most in need of sanctuary.

2(v) Butler's State Anti-Intervention Argument

In 'Excitable Speech' Butler maintains that reappropriation is most effective within "the domain of protected public discourse," by which she means civilized democratic society. This demonstrates that liberalism has remained largely unchanged since Mill, in so far as the remedy for offensive speech is ... more speech! She argues that when "the state takes sovereign form and tries to curb offensive doctrine, the potential for insurrectionary speech is concomitantly curbed." Whereas, when assaultative speech remains uncensored, this activates and empowers a "radical

⁴⁸ RAV v City of St. Paul, Minnesota. 1992. 505 U.S. Page 387.

democratic contestation”⁴⁹ which ultimately benefits society. However, in common with Strum, this thesis finds that “very few people would assert that causing [holocaust] survivors additional pain constitutes a societal good.”⁵⁰ For this reason; in addition to statistical data, research into local newspaper stories and newsletters was undertaken to decide if there was any veracity in the afore mentioned theory of societal good.

2(vi) Skokie and the Nazis

If we examine the Skokie case first, what we learn from the village newsletter, dated 23rd February 1978, (see relevant extract below)⁵¹ is that Mayor Smith decided to initiate litigation to appeal against the Federal Court’s ruling that, under the terms of the first amendment, they could not prevent the proposed Nazi march through their village.

YOUR SKOKIE REPORT

Residents attend rally at village hall

Skokie residents and a coalition of political groups turned out en mass on Saturday, April 30

following the announcement of an impromptu march by the National Socialist (Nazi) party on the village hall.

The Nazi contingent, however, was stopped from entering the downtown area by Skokie and Lincolnwood police just as their car exited the Edens’ expressway at Touhy avenue, according to police reports.

This information was announced over a loud speaker to persons at the rally at 2:45 pm. “The Nazi’s have been turned back at Touhy avenue. They will not march on Skokie today,” one of the rally marshalls said.

Members of the crowd did not believe the marshall, however, many stayed on until 3:30 pm, when the crowd finally began to disperse.

The Nazis decided to rally Saturday when a judge issued a temporary injunction against their rally on May 1 that had been announced by the group about a month earlier.

Local officials were able to have another injunction issued for Saturday’s march, and served this to the group as they exited the expressway.

⁴⁹ Butler, J. 2006. ‘Excitable Speech: a Politics of the Performative.’ London: Routledge. Page 108.

⁵⁰ Strum, P. 1999. ‘When the Nazis came to Skokie: Freedom for Speech we Hate.’ Page 3. University of Kansas Press.

⁵¹ ‘Your Skokie Report.’ 23 February 1978.

Commenting on local radio programs, a spokesman for the Nazis said that though they had been turned back this time, they would keep trying to hold a rally in Skokie.



Members of the Revolutionary and International Socialist parties and Chutzpah, a Chicago based Jewish organization, occupied the steps of the village hall and carried on a rally against the Nazis during the afternoon. Participants also brought placards and banners with slogans protesting Nazi politics.

We also learn that the local newspaper (*Skokie Life*) whilst not above using emotive headlines, such as the story of a distressed twelve-year-old entitled “Boy Beggars: Stop Nazis” (see next page), was also prepared to present alternative approaches to diffuse the situation. These included rational argument (see highlighted text in documents above and below) and the stoical advice of totally ignoring the Nazis, thus starving them of publicity, “the people of Skokie should make it their business that nobody... be there to give them an audience,” urged former trustee Ed Fleishman.⁵²

⁵² Dubey, D. 23rd June 1977. ‘Boy Beggars: Stop Nazis’ in *Skokie Life*.

Boy begs: Stop Nazis

By DIANE DUBEY
Correspondent

SKOKIE-A 12-year-old resident joined other Skokians on Monday, June 20, in asking the village board to do everything possible to avert a July 4 march-by members of the National Socialist (Nazi) party. The Southwest Chicago group on June 15 announced their intention to assemble in front of Skokie Village Hall, only hours after the U.S. Supreme Court lifted an injunction issued in April by Cook county Circuit Court Judge Joseph Wosik to prevent a Nazi demonstration.

"The first amendment may say freedom of speech, but not the freedom to spread hatred," said Jack Israel, 12, of 8709 East Prairie. "This country was built of immigrants-let's not blow everything away by having people spread hatred of minorities," he added. Reading from a prepared text, Ruth Schaffner, 9515 Leamington, thanked the board for preventing any previous Nazi activities in the village, then called the proposed July 4 march "an exhibition by a few, desiring publicity and inciting trouble."

"Since when is the killing of six million people to be considered 'free speech'? Do we not abhor pornography and other obscenities?" Schaffner asked.

She went on to say that "allowing the Nazi party to march through Skokie, the world's largest village-the 'village of vision'-is only permitting them to curb the very fine traditions of our country.

THE "SILENT treatment" was recommended by former trustee Ed Fleischman who said that "their (the Nazis') objective is to get publicity."

"The people of Skokie should make it their business that nobody-and I mean nobody-be there to give them their audience," he told the board.

Trustee Morris Topol called Fleischman's suggestion "logical and correct" but said that the board realized, after consulting with community leaders, that "it wasn't going to work."

"If you could devise a system where they give a war and no one shows up, we'd like to hear about it," Topol said.

"They're (the television stations) supporting these people-that's what they're doing," Smith said. "Let's see if we could talk sense to them."

According to Mayor Albert Smith, local officials

have been in contact with media representatives and found that “their attitude is that this is news, there are people interested in it, and they have an obligation to report it.”

ALTHOUGH THE village has not yet received a request for a parade permit, Smith told those assembled at Village Hall that “we will do everything in our power to protect the rights of our citizens.”

After attempts to reason with or just starve the Nazis of media publicity failed (see above) it remained Mayor Albert Smith’s opinion that “if there was ever an example of the type of speech that should not be protected, it is the doctrine of Nazism”, hence his litigation against the Nazis via a Class Action (see next page).⁵³

⁵³ Dubey, D. 23rd June 1978. *Skokie Life (History Section)*.

IN THE
CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SOL GOLDSTEIN, on his own behalf)
and on behalf of a class)
similarly situated,)
Plaintiff,)

CLASS ACTION

v.)

No.)

FRANCIS JOSEPH COLLIN, a/k/a)
FRANK COLLIN and all persons)
acting in concert with him under)
the name of the NATIONAL)
SOCIALIST PARTY OF AMERICA,)
Defendants.)

77CH 4367

COMPLAINT

This action is brought on behalf of Jewish residents of Skokie, Illinois, who are survivors of the campaign of racial extermination ("the holocaust") carried on by Adolf Hitler and the National Socialist Party ("the Nazis") during World War II. The action seeks a preliminary and permanent injunction against persons calling themselves the National Socialist Party of America ("the neo-Nazis"), restraining them from intentionally inflicting severe emotional distress upon plaintiff and the plaintiff class by attempting to reenact a Nazi-style rally in Skokie. As his Complaint against defendants, plaintiff states:

VENUE

1. Venue is properly in this Court since the actions sought to be enjoined would take place in Cook County, Illinois, and because one or more of the defendants is a resident of Cook County, Illinois.

⁵⁴ Goldstein, S. Class Action in Skokie Public Library Digital Collections: The Court Cases 1977-1978.

However, what Smith found most memorable and heartening about this distressing and traumatizing experience is that the letters, calls and comments that he received

from across the nation [demonstrate] what Nazism represents is repugnant not just to the people of Illinois, but to virtually every United States citizen and free people everywhere.⁵⁵

The newsletter concluded with the positive summary that local resistance to the Nazi march

has created a bond which typifies the feelings that must have existed when our founding fathers were moulding our nation.⁵⁶

2(vii) RAV and the Cross Burning Incident

Whilst there is little documented evidence regarding the response of the Jones family to the RAV incident, such evidence as does exist demonstrates a positive response to their experience. In ‘Beyond the Burning Cross’, RAV’s lawyer (Cleary) quotes Laura Jones, “If it were just a point of view, it would be fine. But we took this as a threat, and all black people take cross burning as a threat.”⁵⁷ Presumably many people (black and white) agreed with Laura Jones, as she and her family received much support, both on a local and national level. When interviewed by the local St. Paul’s *Pioneer Press* she affirmed “people have been very neighborly.”⁵⁸ Laura Jones also appeared on the *MacNeal/Lehrer Newshour*, describing “the cards, letters and visits her family had received in support of their right to live in the neighborhood unmolested.”⁵⁹

⁵⁵ Dubey, D. 23rd June 1977. ‘Boy Begs: Stop Nazis’ *Skokie Life*. Page 2.

⁵⁶ Ibid.

⁵⁷ Cleary, E. 1994. ‘Beyond the Burning Cross: The First Amendment and the Landmark RAV Case.’ New York: Random House. Page xvi.

⁵⁸ *Pioneer Press*. 20th April 1992. Page 4.

⁵⁹ Cleary, E. 1994. ‘Beyond the Burning Cross: The First Amendment and the Landmark RAV Case.’ New York: Random House. Page 248.

Whilst, on initial reflection this argument of positive public response might be seductive; the problem that remains is that we must also not forget to address the question, what about those who receive *no* support when they are victimized; ought they not to have the right to choose “talk back” and/or the law as their means of restitution and not to have well-meaning liberals choose for them? Furthermore, what if we were to extrapolate this principle to other crimes where victims were well supported by their community, ought we to declare an amnesty to anyone who causes harm, if the subject of that harm emerges feeling well-supported by their community? Finally, in addition to ethnic groups who are offended by certain symbols, what about the ordinary white people who find such symbols offensive and protecting these people from being

(1) offended by and

(2) conflated with those who use these symbols?

This thesis would aver that by educating minority groups whilst they are in tertiary education, so that they feel empowered to challenge racism and to motivate others, whilst leading by example as positive role models when they have attained their Degrees is a rational and achievable method of slowly and steadily instigating change (see conclusion for further detail). Furthermore, this thesis would also recommend tutoring students how to lobby to initiate changes when the law fails to protect vulnerable groups.

2(viii) Illocutionary and Perlocutionary Speech

In ‘Excitable Speech’, Butler directs our attention to the fact that speech is not necessarily of a benevolent nature and therefore questions whether some speech ought to be legislated against, as she admits that words can have the potential to harm. This belief is called the “theory of the performative” and can be explained in so far as performatives are words that when spoken *do* what they say, thus achieving the speakers’ goals. Butler notes that hate speech can be injurious, but she does not conceive of it as being necessarily *illocutionary* (that is immediately successful in causing harm) as Matsuda et al do. By arguing that “hate speech is citational” and defining its

performative power as “*perlocutionary*”⁶⁰, Butler can contend that whilst hate speech (in as much as it can be defined as a cause) may lead to an effect and there is no certainty about what that effect may be

the gap that separates the speech act from its future effects has its auspicious implications: it begins a theory of linguistic agency that creates an alternative to the relentless search for legal remedy.⁶¹

So why then is Butler so convinced that the remedy for hateful speech ought to be more speech? In order to fully comprehend and do justice to Butler’s opinion on this issue, it is useful to provide an exposition of the key italicized terminology used above as devised and utilized by Austin,⁶² then subsequently adapted and explored further by Butler.

The term ‘*perlocutionary*’ refers to the effects of a speech act as a by-product of being spoken. An example of this would be if I were informed by my Head of Faculty at College that Ofsted Inspectors were making a spot-check on Friday. As well as being apprised of that fact, the by-product might be that I feel compelled to re-write my lesson plans and feel stressed; or alternatively delight at the opportunity to prove my worth as an educator.

The term ‘*illocutionary*’ refers to the effect of a speech act that actually does something non-linguistic by being uttered. An example of this is when a bride or groom affirms “I do” in front of witnesses, by speaking they are actually *performing* the act of being joined in marriage. An illocutionary act also invites a response, as Holdcroft⁶³ states in his evaluation and exposition of Austin’s philosophy, “if I give an order, I expect compliance.” Austin avows that in executing an illocutionary act, person S is demonstrating

- (1) to himself,
- (2) to person A and

⁶⁰ Butler, J. 2006. ‘Excitable Speech: a Politics of the Performative.’ London: Routledge. Page 15 (my italics).

⁶¹ Ibid.

⁶² Austin, J.L. ‘How to do Things With Words.’ Second Edition. Oxford: Clarendon

⁶³ Holdcroft, D. 1978. ‘Words and Deeds: Problems in the Theory of Speech Acts.’ Oxford: Clarendon. Page 19.

(3) to others that “he really must be in a position of authority over person A.”⁶⁴

This thesis maintains that to deny person A legal redress in an instance of hate speech is to be complicit in vindicating person S’s verbal assault. Hence the illocutionary effect of the 1968 Ujamaa incident (see chapter 3 for more detail) was that the African American students were being *symbolically* ordered out of the university: the message of the poster effectively being that it was inconceivable that they could rise to the academic rigor required; and the perlocutionary effect was mental distress at being reduced to a stereotype, which might lead to them moving off campus, or even leaving Stanford University. Moving more than 50 years on to the 2019 incident of the noose hanging outside of a predominantly black university building, the message continued to have the identical perlocutionary effect. This lack of progress over half a century manifestly demonstrates the necessity to embark upon an education program that will empower minority groups of students to instigate change.

Butler advocates thorough consideration of the alternatives to legislation: including the possibility that certain speech acts (such as the RAV and Skokie incidents) are so vile that they alienate rather than perpetuate their speakers’ aims - thus obviating the requirement for legislation, as they do more damage to the perpetrators’ aims than to the intended victims. This claim was indisputably vindicated if we examine ‘Beyond the Burning Cross’⁶⁵ (written by the lawyer who defended RAV) where we learn that both RAV and his family suffered social stigmatization as a result of his actions and owing to hate calls “the family soon had to change its phone number.”⁶⁶ Butler further queries whether, when legislation is in place, it is of any use to the marginalized groups who need it most and examines the demoralizing effects upon them when they are failed by the very system that is meant to protect their interests. How then can justice be achieved? Butler counsels against restricting freedom of speech and in favor of the institutional empowerment of hate speech victims by introducing a policy of “talking back”⁶⁷ which aims to empower socially disadvantaged groups by providing a platform to make a reasoned response, thus strengthening their own cause and highlighting the weaknesses of the perpetrators’ arguments.

⁶⁴ Austin, J.L. ‘How to do Things With Words.’ Oxford: Clarendon. Page 116.

⁶⁵ Cleary, E. 1994. ‘Beyond the Burning Cross: The First Amendment and the Landmark RAV Case’. New York: Random House.

⁶⁶ Ibid. Introduction.

⁶⁷ Butler, J. 2006. ‘Excitable Speech: a Politics of the Performative.’ London: Routledge.

2(ix) Butler and “Talking Back”

Butler’s recommended method of resolution is “the institutional empowerment of victims by the introduction of a policy of talking back.”⁶⁸ In common with contemporary thinkers such as Nussbaum and Gelber, who favor the term “speaking back”⁶⁹ this involves issues like government funding (when it can be obtained) for local newsletters to respond to episodes of hate speech in a specific community, or the development of (there is significantly no mention of implementation, or methods of evaluation) an anti-racism program within a workplace where hate speech is problematic. She also proposes that “capability theory”⁷⁰ be implemented, which means motivating people to respond to instances of hate speech. This idea has its genesis in the Aristotelian theories of ethics and was updated and elaborated by Nussbaum, then Gelber, who revived Aristotle’s notion of the “excellent lawgiver...whose job is to ensure that every individual is able to enjoy and engage in activities conducive to human flourishing.”⁷¹ Whilst the above is an excellent idea, there is no reason that amendments to the law (as advocated by CRTs), or talk back and capability theory (as suggested by Butler) should be mutually exclusive - they could *all* be implemented, thus offering maximum support to marginalized groups. It is Butler’s capability theory that this thesis will expand upon in the conclusion, by working on the actual means of implementing and evaluating its success, so that it can be improved upon each academic year it is used (see conclusion).

In examining hate speech, Butler does not deny that the politics of identity or recognition which feature in ‘Excitable Speech’ are an imposition of a vocabulary upon others that actually potentiates existing historically denigrating conventions, such as those regarding black stereotypes expressed by Lawrence regarding the Ujaama incident (see chapter 3). However, Butler maintains that despite the fact that recognition can denigrate, the transitivity of its nature also furnishes the subject with an opportunity for response and even *reconstruction*. Language as

⁶⁸ Butler, J . 2006. ‘Excitable Speech: a Politics of the Performative.’ London: Routledge. Page 77.

⁶⁹ Gelber, K. 2002. ‘Speaking Back: The Free Speech versus Hate Speech Debate, chapter 6. John Benjamin’s Publishing.

⁷⁰ Nussbaum, M. 1990. ‘Aristotelian Social Democracy’ in R Douglass and G Mara (Eds.), ‘Liberalism and the Good.’ London: Routledge.

⁷¹ Ibid.

a tool (Butler asserts) is never fully within the parameters of our control and therefore an opportunity for redress exists, in so far as there is the ever-present possibility within speech acts for a reassertion of meaning by the subject.⁷²

2(x) Relexicalisation

An example of “relexicalisation”, which enables a reassertion of meaning, would be the adoption of the term “queer” politics (homosexuals, in common with BAME groups, being subject to hate speech). Whilst initially this was considered to be a derisory jibe, the term was deliberately inverted by gay thinkers such as Foucault into an affirmative one. What was once designed to be a reductive word, a word that might reduce its’ subjects to the role of victims, by its deliberate inversion became an empowering statement. Therefore, in Butler’s own words, public use of the term “queer... enacts performativity as citationality for the purpose of resignifying the abjection of homosexuality into defiance and legitimacy.”⁷³ She further asserts that this example would remain valid for any marginalized group. She concurs with Halliday’s opinion in ‘Language as Social Semiotic’ that “in all languages, words, sounds and structures tend to become charged with a social value and this value is not constant.”⁷⁴ Quite simply (reaffirms Butler) language is potentially a valuable and empowering social tool, for the subjects of hate speech, as well as its instigators. However this thesis would question the transferability of this premise, on the grounds of the inequality of the two sides. Marginalized groups tend to lack the power and the resources to compete with the dominant hegemony in a fair and equal manner. Therefore, this thesis strives to build upon this theory, by directing its focus upon the education and empowerment of university students, enabling them to be positive role models and agents for change both within the university and also when they finally leave tertiary education and enter the workplace.

Durham-Peters in his evaluation of neo liberal doctrine claims that “*some* liberals celebrate provocation as an opportunity to show off the advanced state of their self-mastery. Their prayer is not to be delivered from evil but to be led into temptation.”⁷⁵ This thesis would aver that

⁷² Halliday, M. 1996. ‘Language as Social Semiotic.’ Oxford University Press. Page 166.

⁷³ Butler, J. 1993. ‘Bodies that Matter: on the Discursive Limits of Sex.’ London: Routledge. Page 21.

⁷⁴ Halliday, M. 1996. ‘Language as Social Semiotic.’ Oxford University Press. Page 166.

⁷⁵ Durham-Peters, J. 2005. ‘Courting the Abyss: Free Speech and the Liberal Tradition.’ Chicago.

whilst “*some*”, or even many, might achieve this “self-mastery” it is an unrealistic or naïve assumption to believe that the entire public will be sufficiently motivated or capable of meeting the conditions of both premises. This thesis argues that whilst this *might* and indeed *ought* to be the case within a civilized society, liberals are inhabiting a Utopian world if they believe that this will always be so. “The opacity of persons,”⁷⁶ cautioned against by Murdoch is such that only the naïve can truly believe that people can be depended upon to be public spirited and altruistic enough to sacrifice their time for a cause, especially one which does not directly impinge upon their own lives. Indeed, what about those individuals who lack sound judgment, education or the ability and/or inclination to empathize with others? This thesis therefore contends that the liberal argument presented by Mill and later by neo-liberals such as Durham-Peters is fundamentally flawed by its failure to deliver serious attention to the possible detrimental influences upon those members of society who are not willing and/or able to meet the conditions explored above when exposed to noxious doctrine and may

(1) actually believe it, or even

(2) choose to act upon it.

2(xi) Summary of Chapters 1 - 2

Butler’s advocacy of resignification in ‘Excitable Speech’ is based upon decidedly similar lines to that of the liberal Mill over a century earlier, in so far as the remedy suggested for noxious speech is ... more speech. This talk back theory refers to the practice of reclaiming words, although in a manner geared towards the empowerment of the oppressed. The most significant difference between her and Mill is that she utilizes linguistic theory and not solely liberal ideology to defend free speech. However, it is the finding of this thesis that ultimately, the outcome is the same and that whether using linguistics or neo liberalism, the fundamental flaw in this viewpoint is idealism. The fact that Butler does not occupy (nor more importantly, present any evidence that has researched and comprehended) world that oppressed minorities do, renders it a challenge. Her research methods never actually mention speaking to those involved in hate crime, to structure and to restructure an organic theory in the manner that CRTs’ (see chapter 3)

⁷⁶ Murdoch, I. 1961. ‘Against Dryness,’ Page 1. London: Penguin.

advocate. CRT “insists on recognition of the experiential knowledge of people of color.”⁷⁷ This thesis would suggest that building upon Butler’s existing theory by actively engaging with the people whom it affects (as the CRTs do) would be a positive adaptation of the worthy and enduring liberal tradition, actively engaging with it so that this philosophy can evolve and proceed usefully throughout the 21st century.

Currently, freedom of speech within the *traditional* liberal mode of Mill is in danger of becoming an anachronism, due to the failure of contemporary liberals to continue developing it as an organic theory and to make significant changes in response to changing political issues. Whilst this philosophy may have been relevant during the laissez-faire era of politics when Mill was writing, this thesis would assert that 21st century developments: such as the monopoly of mass media; including cheap and highly affordable newspapers, books, radio, internet and television access mean that mass communication is located primarily in the hands of media moguls (who are primarily white, affluent and male). Examples given by Wolfson are “NBC, the *New York Times*, Time-Warner or CBS.”⁷⁸ The result of this is that when well-meaning contemporary liberals suggest “talk back” as a means of redress, it is either naïve or inappropriately thought through to believe that minority groups with a lengthy history of oppression will readily have at their disposal the necessary resources such as; funding, education or self-confidence to manipulate the media monopoly in the way that their persecutors can. Indeed, the very media monopoly they need to infiltrate is controlled by predominantly white males who may (consciously or unconsciously) wish to maintain the status quo.

For the purposes of producing a balanced argument, this thesis will now scrutinise the strengths and weaknesses of the counter argument of Critical Race Theory in chapter 3. This philosophy is not primarily concerned with abstract theory, which is subsequently applied to real people, indeed the inverse is true. The stated aims of CRTs are based upon listening to real people and then devising and tailoring a theory to meet their needs. This critical examination will facilitate the presentation of a full exegesis of the suggested strategies for responding to hate speech.

⁷⁷ Matsuda, M. et al. 1993. ‘Words That Wound: Critical Race Theory, Assaultative Speech and the First Amendment.’ Westview: Oxford. Page 6.

⁷⁸ Wolfson, N. 1997. ‘Hate Speech, Sex Speech, Free Speech.’ London: Greenwood Publishing. Page 83

CHAPTER 3

An examination of post neo liberal trends towards ever increasing hate speech legislation, including Critical Race Theory (CRT).

Having critiqued the tradition of liberal thought in Chapters 1 - 2, it is now necessary to trace the considerably briefer history of CRT. This theory evolved gradually, there is not a definite date of inception, but Matsuda et al locate it in the late 1970s. The high profile civil rights action of the 1960s first slowed down and then, in the 1970s, "many of its gains were being rolled back."⁷⁹ By this Matsuda et al mean that whilst in the 60s' the civil rights had a high profile, by the 70s' when (in theory) equal rights were in place and the struggle for equality was abating, old prejudices were beginning to resurface and "majoritarian self-interest"⁸⁰ again became apparent, particularly within interpretations of the law. In response to this, law tutors and students dedicated to racial justice began meeting together. However, even within these meetings black scholars occasionally felt alienated and as a result urged their white colleagues to scrutinize their own, unconscious racist beliefs. By the mid-1980s' what had emerged was a *black* group of progressive legal academics (including Matsuda et al) who were committed to confronting the issue of racism by utilizing their expertise in the law as a key weapon in their struggle. Interestingly, the process of change is so slow in Western Society that over 35 years later, UK author and academic Reni Eddo-Lodge felt driven to write her polemic entitled "Why I'm No Longer Talking To White People About Race".⁸¹

Critical Race Theorists do not agree with liberal philosophy regarding freedom of speech. Matsuda draws

a distinction between dissent – or the right to criticize the *powerful* institutions that govern our lives – and hate speech, which is directed against the *least powerful* segments of our community."⁸²

⁷⁹ Matsuda, M. et al. 1993. 'Words That Wound: Critical Race Theory, Assaultative Speech and the First Amendment.' Page 3. Westview: Oxford.

⁸⁰ Ibid. Page 5.

⁸¹ Eddo-Lodge, R. 2018. 'Why I'm no Longer Talking to White People About Race.'

⁸² Ibid. Page 10.

attesting that legislation against hate speech (which they define as “words that are used as weapons to ambush, terrorize, wound, humiliate and degrade”),⁸³ is essential and furthermore a moral imperative. Waldron explains the CRTs’ moral stance thus

convictions [about rights] are based on a deep ethical view about the respect we owe to one another in virtue of our common humanity, and in virtue of our potential to act morally ...[W]e believe that people have got to be able to retain their dignity, their self-esteem and at least the basic capacity to make a life for themselves.⁸⁴

To elucidate further, hate speech may be defined by its

- (1) content,
- (2) intent,
- (3) effect,

or - as is most often the case, the powerful combination of all three. To reinforce the claim that words can wound, the use of language is skillful. The term of “racist speech” is rarely used: the emotively stronger epithet of “hate speech”; or the more damning appellation of “assaultative speech” are both utilized in its place. Interestingly, the CRTs are availing themselves of the process of relexicalisation advocated by Butler in her liberal argument. However, their response to this observation would be that as well-educated academics this process is an option that is not available to the marginalized sections of society who are most harmed by hate speech.

The history of discrimination, stigmatization, and societally imposed inferiority has left them vulnerable to ‘words that wound’ in a way that is distinguishable from the hurt done to white Americans.⁸⁵

⁸³ Matsuda, M. et al. 1993. ‘Words That Wound: Critical Race Theory, Assaultative Speech and the First Amendment.’ Westview: Oxford. Page 2.

⁸⁴ Waldron, J. 2014. ‘The Harm in Hate Speech.’ Harvard University Press. Page 57.

⁸⁵ Strum, P. 1999. ‘When the Nazis came to Skokie: Freedom for Speech we Hate.’ University of Kansas Press. Page 117.

Critical Race Theory (as created and defined by Matsuda, Lawrence, Delgado and Williams-Crenshaw) is not about an abstract philosophy which is subsequently applied to real case studies, it uses the

experience of subordination to propose a phenomenology of race and law. This phenomenology provides a platform where ‘the victims’ experience reminds us that the harm of racist messages is a real harm to real people.⁸⁶

This is followed by the potentially more contentious claim that “when the legal system offers no redress for that real harm, it perpetuates racism.”⁸⁷ Thus, within one paragraph, Matsuda shifts from her initial premise that words can actually wound (a premise that free speech purists might disagree with, but many individuals might allow) to the more contentious claim that the state is actually an instrument of racist perpetuation. Whilst the reader might initially balk at accepting such a strong claim, upon reflection it cannot be denied that the first amendment as interpreted by Judge Scalia does provide racists with the constitutional right to be racist, as *RAV*’s acquittal demonstrates (as explained in detail in Chapter 1).

To elucidate further, the Neo-Nazis march because doing so publicises and promotes their cause, if this were not so then there would be no logic behind their marching. Public displays in the USA have to be authorised by the state and therefore the message conveyed by permitting an open display - albeit with the police present as agents of the state to keep the peace, is *legitimacy*. Thus, the state (as embodied by the police and the judiciary) can be perceived to be legitimising racism, even if this is not their motive.

During the exposition of Butler’s argument in chapter 2, this thesis demonstrated that she too concurs with this claim regarding the institutional endorsement of racism, so we can identify points of agreement between both parties. However, this agreement does not extend to a unified method of resolution. Butler is determined to maintain the neo-liberal solution of “talk back”, as opposed to the CRTs’ solution of amending existing legislation, so that

(1) the victims’ voices are heard in open court and

⁸⁶ Matsuda, M. et al. 1993. ‘Words That Wound: Critical Race Theory, Assaultative Speech and the First Amendment.’ Oxford: Westview. Page 50.

⁸⁷ Ibid.

- (2) the workings of the justice system can be plainly seen. Hence there is a
- (3) permanent public record of justice or, of injustice being served.

Matsuda's argument now develops into something altogether more contentious, with the introduction of a third premise, which claims that the state deliberately cultivates such speech

In the end, the arguments of the new critics of traditional liberal defences of the First Amendment turn on power. Elite white groups possess power; subjugated minority groups and women lack power. Speech is merely the epiphenomenon of power, to use the language of the older Marxist left. Free speech is merely a cunning device by which the dominant hierarchies cultivate and preserve their dominance.⁸⁸

These are strong words, and whilst using her own empirical evidence in Chapter 2 of 'Words That Wound' and citing several case studies such as the Ujamaa incident (explained below) supports the first and second premises that the state does (perhaps unknowingly) perpetuate racism: what she fails to provide is any evidence, whether documentary or anecdotal, of this being *deliberate* (premise 3) and in so doing a very powerful and logical argument disappointingly descends towards emotive hyperbole.

3(i) Clark's "Doll Experiment"

What Matsuda means by the quotation in the paragraph above is that minority groups lack the means to respond powerfully to offensive doctrines and as such may give up fighting and become progressively more oppressed. The logic behind her assertion is that oppressed groups ultimately internalise the false perceptions of the dominant hegemony, this theory of "internal inferiorization" was developed by Clark.⁸⁹ It refers to the process whereby oppressed people, over a period of time, accept or internalise the notion of their own inferiority, which inexorably

⁸⁸ Matsuda, M. et al. 1993. 'Words That Wound: Critical Race Theory, Assaultative Speech and the First Amendment.' Oxford: Westview. Page 49.

⁸⁹ Clark, K. Nov 1980. 'What do Blacks Think of Themselves?' Pp 176-182. *Ebony*.

leads to the display of patterns of self-hatred and low self-esteem. As part of his research on the psychological harm caused by racism, Clark developed his famous “doll experiments.” Black primary school children were shown dolls that were identical, other than the fact that they were either black or white and asked which they preferred, which was “nice” and which was “bad”. These tests showed that the majority of black children expressed a preference for the white dolls. This report, later revised and developed (at the request of The White House) was called ‘Prejudice and Your Child’ was interpreted as indisputable evidence by Clark of the harmful effects of racism on the personality and psychological development of black children.

To explicate further, the above theory of recognition suggests it is plausible that such internalization regarding inferiority will inevitably lead to a loss of self-esteem, which is unconsciously conveyed to other members of that particular social demographic via such media as; discussion, body language and ultimately a defeatist attitude. As a result of this possibly unintentional social conditioning, “talk back” policies need to be implemented via the essential medium of education (see conclusion) to empower oppressed groups to help and to value themselves, then and only then is giving them a platform of true value.

3(ii) CRT and the First Amendment

It is precisely for the reason stated above that CRTs favour the revision of the first amendment, citing the fourteenth amendment regarding *equality* for all citizens of the USA. In defending and explaining her position, Matsuda draws a distinction between

dissent – or the right to criticize the *powerful* institutions that govern our lives – and hate speech, which is directed against the *least powerful* segments of our community.⁹⁰

This necessitates continued pressure upon the state to reverse the current practice whereby the

⁹⁰ Matsuda, M. et al. 1993. ‘Words That Wound: Critical Race Theory, Assaultative Speech and the First Amendment.’ Oxford: Westview. Page 10.

first amendment is employed to trump or nullify the only substantive meaning of the equal protection clause, that the constitution mandates the disestablishment of the ideology of racism.

CRTs avow that this does not in any way compromise the first amendment because freedom of speech “does not implicate a right to degrade and humiliate another human being any more than it implicates a right to do physical violence to another”⁹¹

3(iii) CRT as an Organic Philosophy

In contrast to the relatively unchanging liberal ideology examined in chapters 1 - 2, CRT (as espoused by Matsuda et al) propounds a more organic philosophy - one that is both expected and designed to evolve: the aim being to construct a theory through reflection upon actions and the effects of these actions upon real people. For example, if at the present the law (specifically the first amendment) “is where racism is, then law is where we must confront it.”⁹² However she acknowledges that in time there may be a change of focus and for that reason, “the doctrinal reconstruction presented [in CRT] is tentative and subject to change as our struggle around this issue continues.”⁹³

What is interesting about CRT is that Matsuda et al immediately feel the need to define themselves according to race in the introduction to ‘Words That Wound.’ Whereas in both ‘On Liberty’ and ‘Excitable Speech,’ the authors make no mention of their race, which leads one to assume that it has not occurred to them this is an issue which is relevant to their philosophy. However, Matsuda et al describe themselves thus, “We are two African Americans, a Chicano and an Asian American,” prior to an exegesis of their theory. This thesis would suggest that the answer as to why this difference exists between CRT and liberalism becomes apparent in the sentence “We are *outsider* law teachers who work at the margins of institutions dominated by

⁹¹ Ibid. Page 15.

⁹² Matsuda, M. et al. 1993. ‘Words That Wound: Critical Race Theory, Assaultative Speech and the First Amendment.’ Westview: Oxford. Page 51.

⁹³ Ibid.

white men.”⁹⁴ This definition would imply that CRTs are approaching hate speech from the perspective of having actually experienced it, whereas the contemporary liberals (who feel no need to define themselves because they are not conceived of as outsiders) are approaching hate speech from a theoretical perspective. It is this abstract theory which the neo liberals develop and then subsequently apply to case studies, tailoring the predominantly white liberal tradition of free speech around them.

Whereas, in direct juxtaposition to this, the CRTs theory is shaped by

life experience: by what parents and neighbors taught us as children; by our early encounters with the more blatant forms of segregation and racial exclusion and the contemporary confrontations with less obvious forms of institutional and culturally ingrained racism and sexism that face us each day, by our participation in the civil rights struggles of the 1960s’ and 1970s’; and by the histories of the communities from which we come.⁹⁵

However, they clearly do not believe themselves to be helpless victims, adding “each of us has chosen to identify with a tradition of radical teaching among subordinated Americans of color, an inheritance of passion and hope.”⁹⁶

The above quotations tell us much about CRT, that its proponents have chosen their path because of “life experience.” Indeed, “life experience” came first and their theory evolved as a response to it. This is distinguished from the liberal theory inherited by Butler, which she subsequently applied to external events. Butler is writing about cases she has *studied* and whilst CRTs also employ this method, crucially they also write about what they actually *experience* in their everyday lives. Thus, the work of CRTs is, paradoxically, both practical and Utopian. Practical, because they strive to respond to the immediate requirements of those experiencing racism, and

⁹⁴ Matsuda, M. et al. 1993. ‘Words That Wound: Critical Race Theory, Assaultative Speech and the First Amendment.’ Oxford: Westview. Page 51 (my italics).

⁹⁵ Ibid. Page 2.

⁹⁶ Ibid.

unashamedly Utopian (for now) because they imagine a world of equality. CRT is distinguished by the fact that there are actions and then there is the process of evaluation and response to actions. This is a theory that is continuously developing in response to current events, a theory that is both pro-active and reactive.

3(iv) CRT and the Effects of Hate Speech - Including Lawrence and the Ujamaa Incident

CRT states that verbal abuse, such as “the experience of being called a ‘nigger,’ spic,’ or ‘Jap’ or ‘kike’ is like receiving a slap in the face. The injury is instantaneous”⁹⁷ Victims are not merely verbally assaulted by such verbal abuse; they are also denigrated by it. Matsuda refers to such words as “a mechanism of subordination”⁹⁸, meaning that by permitting such language the state is effectively *endorsing and perpetuating* the perception of vulnerable demographic groups as inferior to others. MacKinnon takes this claim still further, averring that “social inequality is substantially *created and enforced* – that is done – through words and images.”⁹⁹ Indeed the N***** (see page) word graffitied poster, as well as the culturally inappropriate drawings in Stanford University’s Ujamaa house, resulting in merely the requirement of the two responsible students to apologize (with what was construed as very little sincerity) and with no further action taken by senior management blatantly demonstrates the veracity of her claim. This ruling upheld the right to express racist words and images under the first amendment, when both students responsible were allowed to complete their Degrees, with no disciplinary action taken. Whilst Lawrence does not present proffer evidence that the Stanford University indulged in the deliberate and pre-meditated endorsement of racist acts - the concomitant result of allowing racism to continue with negligible consequences, conveys at best a dichotomous message and at worst a complacent and complicit maintenance of the status quo.

Professor Lawrence describes an incident in Stanford University, which became known as the “Ujamaa incident.”¹⁰⁰ which fulfils all of criteria (1) – (3) as itemized earlier. Following a

⁹⁷ Matsuda, M. et al. 1993. ‘Words That Wound: Critical Race Theory, Assaultative Speech and the First Amendment.’ Oxford: Westview. Page 50.

⁹⁸ Ibid. Page 49

⁹⁹ Mackinnon, C. 1994. ‘Only Words.’ Harper Collins. Page 15 (my italics).

¹⁰⁰ Matsuda, M. et al. 1993. ‘Words That Wound: Critical Race Theory, Assaultative Speech and the First Amendment.’ Oxford: Westview. Page 8.


dispute between two white students and a black student, who had claimed that Beethoven was of African descent, the two white students had defaced a poster of Beethoven. To be more specific, they had colored his skin brown, added tight black curly hair, thick lips and red eyes. This poster was attached to the door of an African American student's room in Ujamaa, the black theme house (halls of residence) Lawrence continues to explain why this poster, although not directly aimed at him in person, wounded him so deeply. To him the message said

this is you and all of your African American brothers and sisters. You are all Sambos. It's a joke to think that you could ever be a Beethoven. It's ridiculous to believe that you could ever be anything other than a caricature of real genius.¹⁰¹

3(v) Archival Documentary Evidence

(See page 50).

¹⁰¹ Ibid.



**Uncle Ludwig
wants You!**

**to audition for the Stanford Symphony
Orchestra and Chamber Orchestra**

**Monday and Tuesday
September 26 and 27**

**Come by Braun Music Center to sign up.
Call 725-2694 for information.**


102 Stanford University, Office of Judicial Affairs, Ujamaa House Incident Records (SCM0088). Department of Special Collections, Stanford University Libraries, Stanford, USA.

Thus, the stereotypical Negro

- (1) *content* achieved its
- (2) *intent* of injurious
- (3) *effect*, as explained above.

This poster represented an injury to a group, not just an individual and thus the Ujamaa incident was the catalyst that led to the formation of CRT. The impact of the poster was conveyed via its historical and cultural message that black Americans once were and continue to be an inferior demographic group. This message was clearly intended to end the debate (by making the subject appear ridiculous) not to further an intelligent and academic discussion on the matter. To be more specific, in this case the message wounded, not because of a causal link and not as a result of the materialization of intention, but because of the discursive transitivity that is inherent within both history and acts of violence. This is why CRTs and educationists (such as Friere in Chapter 4) who are aiming to help groups in need of sanctuary insist that an understanding of history is *vital* within further education.

THE DISTINGUISHED GENTLEMEN
OF
Kappa Alpha Psi Fraternity, Inc.
 PROUDLY HOSTS
 THEIR
KRIMSON and **KREME**



↑ EXTRAVAGANZA
THE PAULEY BALLROOM
 on the U.C. Berkeley Campus
SATURDAY, OCT., 15TH, 1988
9:00 P.M. - Until?

COST: \$5.00 **ATTIRE: VERY FASHIONABLE**
18 Years of Age or College I.D. Required

Sentury Printing 3145 San Pablo Ave. - Oakland, CA 94608 (415) 655-5203

¹⁰³ Stanford University, Office of Judicial Affairs, Ujamaa House Incident Records (SCM0088). Department of Special Collections, Stanford University Libraries, Stanford, USA.

Whilst the (white) university's Office of General Council did investigate the matter and the subsequent racist defacement of another poster (see above), they found that the two offending students could not be disciplined, because their actions constituted "protected speech." The white students on campus failed to understand the impact of this incident on the minority black student group, unable to comprehend Lawrence's explanation and perceiving it merely as an "unfortunate, boyish prank."¹⁰⁴ It is for this reason that this thesis will argue in its conclusion that tertiary education is essential to address this issue, so that people can begin to comprehend the harm racism inflicts and initiate action.

Two racial incidents strike Ujamaa House

Freshmen have confessed to one act

By Brad Hayward and Ann Marsh
Staff writers

Residents of Ujamaa House were left shocked and traumatized this weekend after two white Lagunita residents admitted to posting a racially offensive flier on the door of a black Ujamaa resident.

The admission followed on the heels of two weeks of increasing concern that began Oct. 1 with the discovery of the offensive flier which depicted a crude caricature of Beethoven as a black man. It intensified Oct. 14 after a large poster was discovered in Ujamaa with the word "Niggers" scrawled in capitals across its face.

Freshmen Ben Dugan and Gus Heldt admitted to posting the Beethoven flier but denied responsibility for the second incident. Currently, there are no suspects in that incident.

An "emergency" meeting was held yesterday in Ujamaa where the two men delivered an apology to residents for their actions.

In a joint statement released early this morning, Dugan and Heldt said, "At the meeting, we apologized for our actions. We both admitted to the Beethoven flier. We denied doing the second poster."

"There was hysteria" at the meeting, said Ujamaa resident assistant Kim Coleman. Rachel Wiesen, also an RA at Ujamaa, said the apology seemed insincere and "perfunctory."


Ujamaa resident Gregg Gottesman said, "People started getting pissed because the apology really sucked."

Eventually, the tension became so high that people "hyperventilated, people were wretching, not just black students by any means (and) men and women both," Wiesen said.

Junior Jim Spencer, a resident of Naranjaa, concurred and said that "everyone fled the room, guys and girls."

"It was really one of the most distressing things I've seen in the time I've been at Stanford," said Norm Robinson, associate dean of Student Affairs. Robinson was called to Ujamaa after the meeting broke

Please see UJAMAA, page 2



Dugan

Heldt

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To demonstrate the continued need for the ongoing empowerment of BAME students, this thesis will now scrutinize contemporary instances of racist issues at Stanford University. In July 2019,

¹⁰⁴ Matsuda, M. et al. 1993. 'Words That Wound: Critical Race Theory, Assaultative Speech and the First Amendment.' Oxford: Westview.

¹⁰⁵ Hayward, B. and Marsh, A. (17 Oct 1988). "Two Racial Incidents Strike Ujamaa House". *Stanford Daily Press*. Page 1.

The Los Angeles Times reported finding “a noose hanging from a tree near a residence hall housing summer students, many of whom were minorities”.¹⁰⁶



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So, hate crime incidents, which The National Centre for Education Statistics (NCES) define as a “criminal offense which is motivated, in whole or in part, by an offender’s bias(es)”¹⁰⁸ more than 30 years on from Ujamaa, continue to be an issue at American universities such as Stanford (which is ranked number 2 in the world by Q.S. Global World Rankings 2020). The symbols of intimidation and hate may change – from an offensive racial caricature, to the explicit threat of a

¹⁰⁶ Shalby, C. (18 July 2019). “Campus management of noose incident unsatisfactory”. *Los Angeles Times*.

Page 1.

¹⁰⁷ Ibid.

¹⁰⁸ NCES Digest of Education Statistics “Indicators of school crime and safety reports 2013-2018.”

noose, but the power of the message remains. Dr Cheron Perkins, a Course Advisor stated that “It’s frightening for an African American and for minority students ...to see something like that.”¹⁰⁹ The response of management is, once again deemed inadequate, with Dr. Perkins asserting that Stanford had not contacted her or other program members who had seen the noose. Stanford’s Senior Director of Media relations stated to the Press that

our community values affirm the dignity of all peoples and call upon us to strive for a just community in which discrimination and hate have no presence.

Nevertheless, in classifying the incident as “a suspicious circumstance” and not a hate crime, this thesis would claim that the value and sincerity of the message was effectively negated.

The 85% black community at the summer school also felt unsupported by the state, when Dr Perkins phoned 911 only to be told by the police “that this isn’t an emergency” and “it took officers over an hour to arrive.”¹¹⁰

Since then, Stanford has not been idle and on 7 November 2019 Susie Brubaker-Cole, Vice Provost for student affairs, announced in their newsletter a drive to improve awareness of racial hatred and to “honor the diversity of the campus community.”¹¹¹ However, somewhat disconcertingly, most of these initiatives were white staff (rather than black and/or student led) in contravention of what CRT has advised. Staff had organized films and exhibitions, designed to heighten student awareness of racism. However, more innovatively, the final event in this scheme, entitled “Hacking Hate”, arranged by Emilia de la Pena, was

a student-designed hackathon for teams to research and propose ways to address racial hatred and violence on and off campus. The offices of the President and Provost will provide winning teams with funding and resources

¹⁰⁹ Shalby, C. (18 July 2019). “Campus management of noose incident unsatisfactory”. *Los Angeles Times*. Page 1.

¹¹⁰ Ibid.

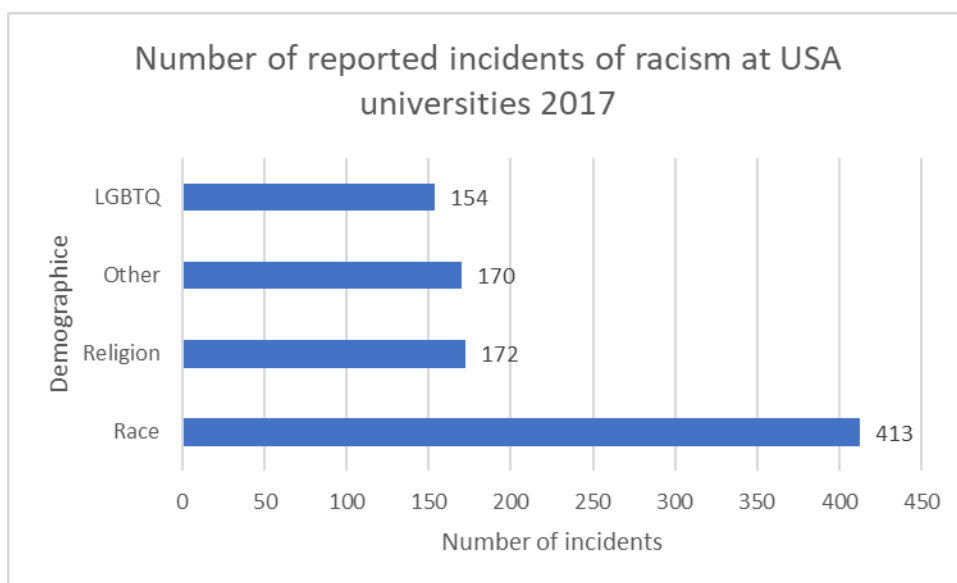
¹¹¹ A. Kekaoha. 7 Nov. 2019. *Stanford News*. Page 1-2.

to implement their proposals.¹¹²

This thesis would advise that it is innovative, ethnic student-led education such as this, combined with institutional funding and resources, that will ultimately lead to those most in need of sanctuary not only finding their voice - but also platforms to express it (as explored in chapter 4 in greater detail).

3 (vi) Racism – Data and Statistics from USA Universities

The statistics and graphs below give details of the continuing rise of reported hate crimes on USA campuses up to and including up to 2017, last adjusted in 2020. These are the most recent statistics currently available. In the introduction to the report we learn that between 2011 (763 cases) and 2016 (1070 cases), instances of hate crimes rose by 40%! During this time “racial bias has been the most common motivation for committing such crimes.”¹¹³

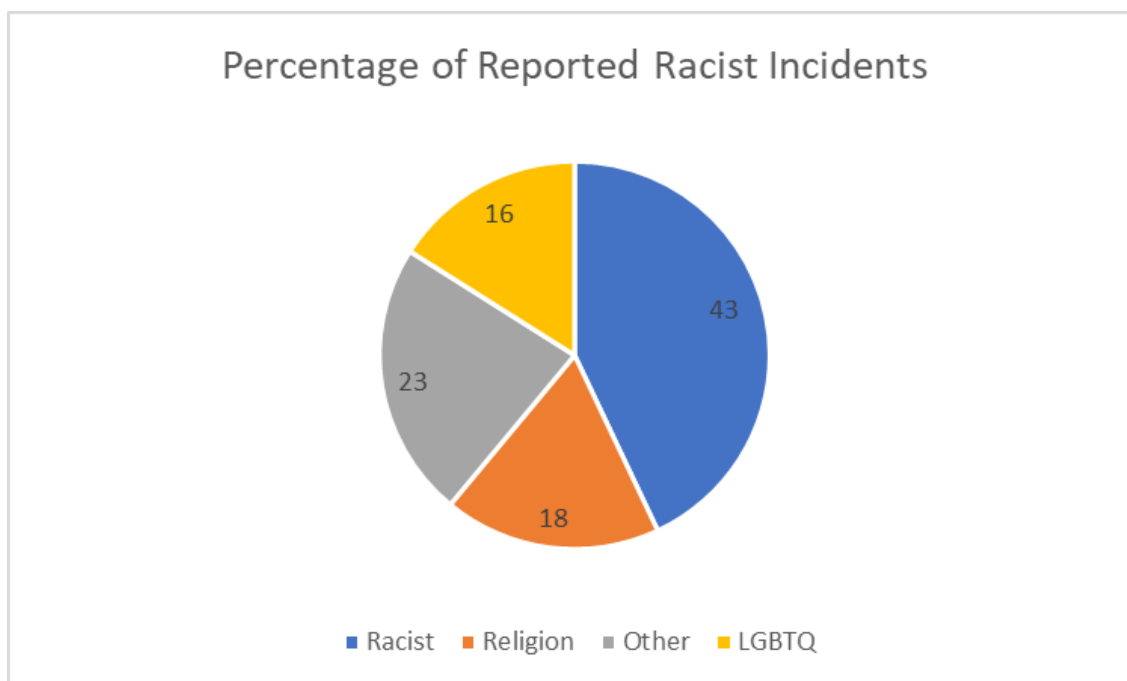


(Graphs above and below by E. Thrower Venn. November 2020)

Raw data for both graphs obtained from National Centre for Statistics USA. 2017 (most recent data available).

¹¹² Kekauoha, A. 7 Nov. 2019. “Stanford community encouraged to attend events increasing awareness of racial hatred”. *Stanford News*. Pp 1-2.

¹¹³ Ibid.



* “Other” – criteria for this category is unspecified

** “LGBTQ” – lesbian, gay, bisexual, transexual, queer

3(vii) Racism – Data and Statistics from UK Universities. “All the evidence is telling us that universities are not places of liberal tolerance”¹¹⁴

In the interests of balance, it is now necessary to examine whether universities in the UK are experiencing a similar growth in racism. If we take note of the above headline from The Guardian (a leading UK broadsheet) what we learn is they indisputably are.

In 1 year complaints rose by 23% (from 105 incidents in 2016 to 129 in 2017)¹¹⁵

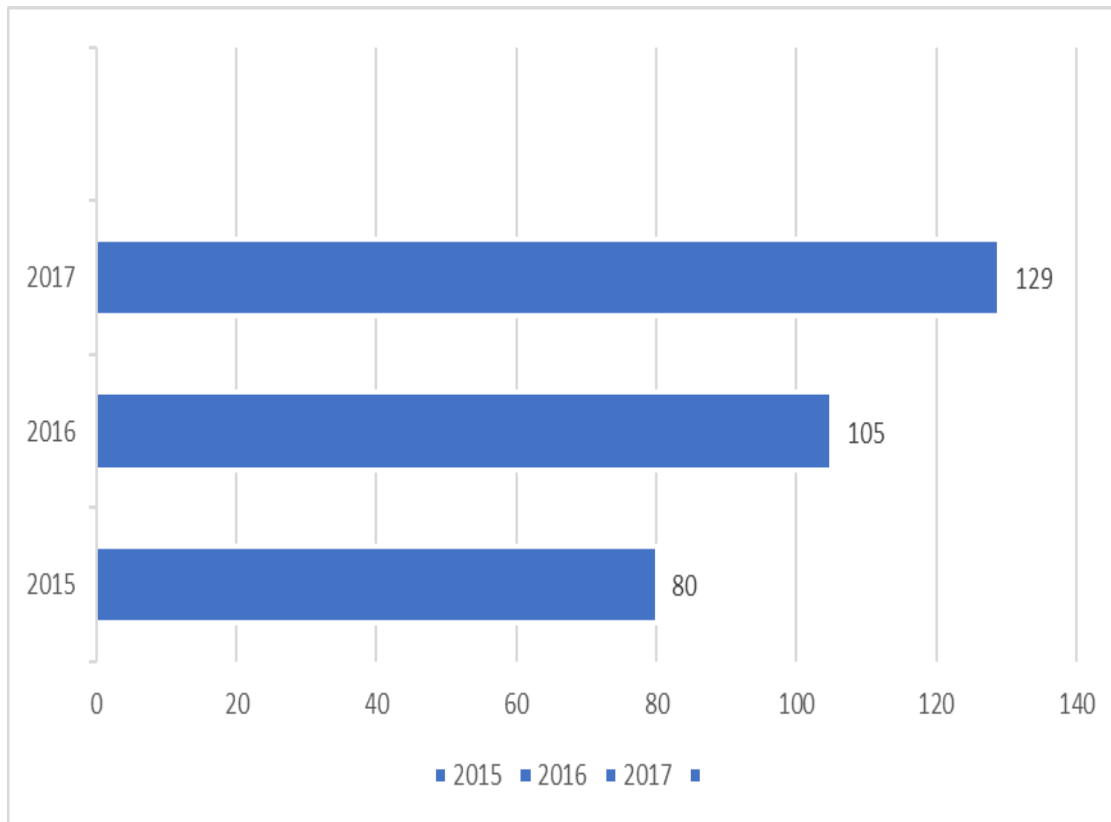
In 2 years, reports of racism rose by 61% (from 80 incidents in 2015 to 129 incidents in 2017)¹¹⁶

¹¹⁴ Busby, E. 11 June 2018. *The Guardian*. Education Section.

¹¹⁵ Equality and Human Rights Commission 2019.

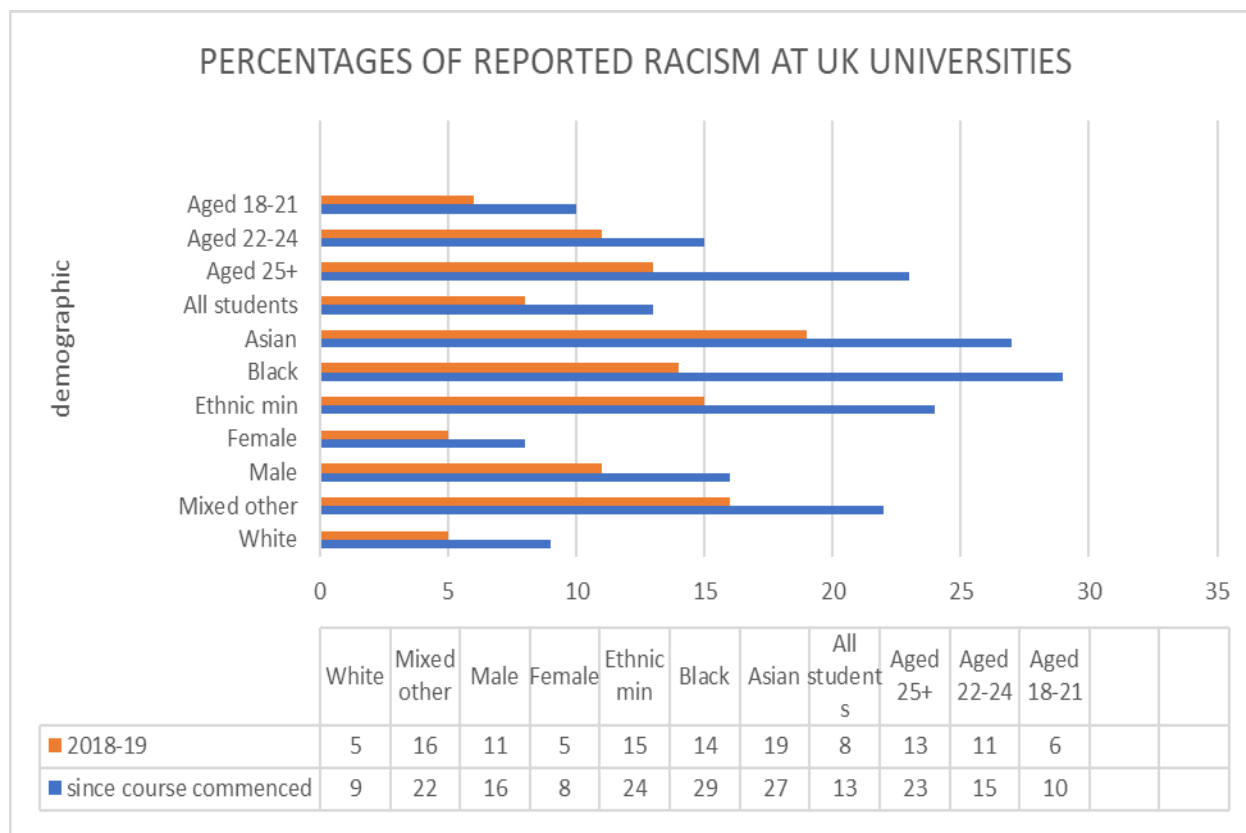
¹¹⁶ *Ibid.*

NUMBERS OF REPORTED RACIST INCIDENTS AT UK UNIVERSITIES



(Graph by E. Thrower Venn. November 2020)

Raw data for above graph and graph below are from Equality and Human Rights Commission. 2019 (most recent data available).



(Graph by E. Thrower Venn. October 2020)

What the above statistics and empirical evidence demonstrate is that reported hate crimes are increasing, even in world class universities, amongst the better educated and hopefully more open-minded young people. These people are aspiring towards achieving important jobs and being leaders in our society. It is therefore both a moral and a categorical imperative that we empower our most vulnerable students to exercise their freedom of speech in significant areas of the university: such as contributing to a multi-disciplinary board to decide which speakers to invite and whether any ought to be denied a platform for their views (see next chapter); and to go into student societies and lectures, to explain the impact of racism and to ultimately leave the university as socially useful, pro-active members of society.

3(vii) Summary of Chapter 3

In this chapter, as with chapters 1 - 2, we discover that Matsuda and Butler do have points of congruence in their philosophies. The arguments examined above demonstrate that Butler and

Matsuda both decide that the victim needs to be heard, so that the full extent of the injury is comprehended, not misconstrued or dismissed. The main difference between them is the venue(s) recommended for this hearing. CRTs urge that the victims' voices to be heard ultimately via the medium of the judiciary; whereas neo liberals recommend "talk back" via a suitable venue - such as a meeting of the students' union. This thesis argues that it is of paramount importance that the victims' voices be given as many platforms as possible, so that that

(1) such talk may not be tolerated by as many people once they are fully cognizant of the extent of the injury it inflicts.

(2) If such speech is being perpetrated by individuals out of ignorance as opposed to malice) then they may cease to do so once they are fully apprised of the facts.

If we educate and empower students to activate change (as explained in greater detail in the conclusion) they will possess the means to develop into positive, confident citizens, then they can be pro-active in attaining this objective. Matsuda concludes her argument on this issue by contending that "the effect of racist propoganda is to devalue the individual and to treat masses of people in a degraded way with no measure of individual merit."¹¹⁷

As Waldron clarifies in his evaluation of hate speech:

human dignity is violated when someone is tortured, their home life thrown open to surveillance, their culture denigrated, their political voice taken away, or their needs treated with indifference. You cannot do that to people and expect them to retain the basis of self-esteem that they must have in order to live a human life. If the price of prosperity, security or social utility is that we deprive some people of this basic respect, then prosperity, security and utility cost too much.¹¹⁸

¹¹⁷ Matsuda, M. et al. 1993. 'Words That Wound: Critical Race Theory, Assaultative Speech and the First Amendment.' Oxford: Westview. Page 49.

¹¹⁸ Waldron, J. 1992. 'The Law.' London: Routledge. Page 97.

If we accept, or even admit the *possibility* of this veracity of Matsuda's and Waldron's arguments regarding the devaluation of human dignity, then we are confronted by a fundamental flaw in the liberal argument explained in Chapter 1, because it is *precisely* this devaluation and lack of respect for individuality, this "tyranny of the majority"¹¹⁹ that the liberals attack if the state intervenes in matters of free speech. Yet they have not modified their own stance to take account this counter-argument, as by arguing for non-interference they may be (albeit unwittingly) facilitating the lack of respect for individuals that Matsuda and Waldron bring to our attention. Therefore, this thesis will argue in its conclusion that education is necessary to empower minorities so that they can decide for themselves how to counter the afore-mentioned "tyranny".

CHAPTER 4

How to best empower those in need of sanctuary, so they can utilize their right to free speech.

4(i) "The best test of truth is the power of the thought to get itself accepted in the competition of the market."¹²⁰

Because of the inevitability of the views of the liberals and the CRTs overlapping and the difficulty experienced in attempting to present them as entirely separate arguments; in order to conclude the issue of hate speech I will "test" or compare, contrast and evaluate both the liberal and CRT arguments and their likelihood of being "accepted" in the competition of the marketplace, as per the avowal of J.S. Mill (above).

It is necessary to commence with an explanation of the genesis of the term "marketplace of ideas" and trace its history through to the 21st century, because an understanding of this metaphor

¹¹⁹ Mill, J. 'On Liberty' in Cahn, S (Ed.) 2005. *Political Philosophy*. Pp 438-472. Oxford University Press.

¹²⁰ *Abrams v. U.S.*, 250 U.S. 616 (1919)

is of paramount importance to the comprehension of liberal thought and thus the CRTs' counter argument regarding the first amendment right to free speech. The term was initially utilized by Milton ('Aeropagitica') and subsequently adopted by Mill ('On Liberty'). However, its introduction into the legal arena occurred in 1919 with Justice Holmes in *Abrams v U.S.*

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 safely carried out. That at any rate is the theory of our Constitution.¹²¹

It is now necessary to examine the liberal and neo liberal logic behind the argument regarding the marketplace of ideas so that we can understand the CRTs' response to it. Liberal theory is grounded upon two distinct premises

- (1) that decisions are only made after rational reflection, and
- (2) that well-informed public involvement in decision making is the principal aim of democratic discourse.

I will now examine each premise in greater depth. The initial assumption is that hate speech and a reasoned response to it can and do compete *equally* within the marketplace of ideas and that the public possess both

- (1) the ability, and
- (2) the inclination

to "buy" rational choices when confronted with them. The second premise is that within a democracy it is actually possible for all members of the public to use informed and logical thought processes to arrive at their own perceptions regarding truth and justice, after paying equal attention to both parties' viewpoints. This thesis would question the likelihood of this being an achievable and realistic objective.

¹²¹ *Abrams v. U.S.* 1919. 250 U.S. 616. (my italics)

Whilst racism is illogical, it can distort the marketplace because it is ubiquitous. Often we fail to notice how it has permeated 21st century life “because racism is so woven into our culture that it seems normal.”¹²² Therefore it might be logical to construe that far from being a proper venue for the resolution of hate speech, the marketplace could actually damage any attempts at resolution and even perpetuate racist ideas. This is because hate speech can silence marginalized groups by muting and devaluing their speech, or by intimidating them: as in the instances of the 1977 RAV and the burning cross incident; or the 1988 Ujamaa incident; or as recently as the 2019 noose incident.

If, at the present, the marketplace is not a fully viable option for the resolution of hate speech, it is necessary to question whether it might have the *potential* to become an effective weapon. Whilst close reading of Lawrence’s argument above claims that racism is endemic within the marketplace, he is *not* personally seeking to invalidate the potential efficacy of it. What he *is* claiming, is that hate speech frightens and then metaphorically gags minority groups. Therefore, such speech must be eliminated from the marketplace using legislation (the key caveat here being *if necessary*): what is being critiqued is not the marketplace per se, but its current fitness for purpose.

This thesis would attest that in common with Lawrence and Mill (who actually concur upon this point) in order for a “struggle between combatants”¹²³ to be of any true viability, it is a necessary and sufficient condition that the fight must be a fair one, where the parties are equally matched and have equal weaponry or resources at their disposal. Therefore it is vital that tertiary education (as detailed at the end of this chapter) is undertaken to empower those who need it most.

The neo liberal counter argument is opposed to state intervention in matters of such speech, as it often fails to protect the people it is meant to help, which may result in them feeling increasingly powerless and victimized (for example, the RAV case). Therefore, it is preferable to empower

¹²² Lawrence, C. 1990. “If He Hollers, Let Him Go: When Racism Dresses in Speeches”. *Duke Law Journal*. Page 10.

Page 341.

¹²³ Mill, J.S. ‘On Liberty’ in Cahn, S. (Ed). 2005. *Political Philosophy* Page 472. Oxford University Press.

people by providing them with the means to defend themselves by lobbying for changes in the law to obtain a vindication of their rights. However, they do not elaborate in any great detail a plan to achieve this. Therefore, interestingly, it is the traditional liberal doctrine that comes closest to congruence with CRT.

4(ii) RAV v City of St. Paul, Minnesota.

In RAV, Justice Scalia adjudicated that the reason certain categories of speech (such as hate speech) were unprotected under the first amendment was that they were

Essentially a “non-speech” element of communication. Fighting words are thus analogous to a *noisy sound truck*...As with the sound truck, however, so also with fighting words. The government may not regulate use based on hostility – or favoritism – towards the underlying message expressed.¹²⁴

Thus, Scalia utilized the abstract principle of analogy to strip (and by doing so decontextualise) the burning cross of its socio-historical links with intimidation, negating its meaning to a petty annoyance. Was this action caused by a genuine failure to comprehend the distress caused to the family (as Butler claims); or by the unconscious and insidious power of racism (as Lawrence claims); or by the deliberate complicity and rationalization of racism (as Matsuda claims)? What remains indisputable is that the intimidation represented by the burning cross was

- (1) depersonalized via the medium of abstract principle, and
- (2) transferred from the black family to the juvenile RAV and his adult skinhead companion.

Judge Scalia depicted the cross burners as helpless victims who were attempting to express a legitimate opinion, whilst being oppressed by the state which was intent upon censoring speech it did not agree with. Although Justice Scalia proclaimed, “let there be no mistake about our belief that burning a cross in somebody’s front yard is reprehensible” (this thesis would also want to add such adjectives as reckless, dangerous and cruel). He continues to qualify it thus, “St. Paul

¹²⁴ RAV v City of St. Paul, Minnesota. 1992. 505 U.S. Page 386 (my italics)

has sufficient means at its disposal to prevent such behavior without adding the first amendment to *the fire*.”¹²⁵ What Scalia is actually doing here is conjoining the cross burning incident with the act of censorship via the metaphorical addition of the first amendment to the fire. This relocation of harm by Scalia resulted in what was construed by the black Jones family as an act of state-sanctioned violence: thus rendering them even less empowered than they were prior to Judge Scalia’s adjudication.

Butler then analyses the deliberations of Judge Stevens (one of Scalia’s co-judges at the RAV trial) because they are actually opposed to Scalia’s. However, despite its lack of agreement, it too sagely opines Butler, merely resituates the injury.

Threatening someone because of her race or religious beliefs may cause particularly severe trauma or touch off a riot and threatening a high public official may cause substantial social disruption; such threats may be punished more severely than threats against someone based on, say, his support of a particular athletic team. These are legitimate, reasonable and neutral justifications for such special rules.¹²⁶

What becomes clear from the above quotation is that Stevens is less concerned about the act of racism than with any public protests that might arise from it. The actual act of cross burning is only apparent by its absence in Stevens’ deliberation. The original statement is ignored, but Butler observes that its components, specifically; “fire, intimidation and the inherent threat of violence are reassigned from the black family to

- (1) the first amendment,
- (2) vacant lots,
- (3) race riots, and
- (4) threats to public officials.”¹²⁷

¹²⁵ Ibid. Page 397 (my italics).

¹²⁶ Butler, J. 2006. ‘Excitable Speech: a Politics of the Performative.’ London: Routledge. Page 56.

¹²⁷ Ibid.

(iii) Points of congruence between liberals and CRTs

Therefore, this thesis concurs with Butler's first point: that since the legal system can (and indeed actually has) redefined an initial act of harm in a manner that relocates the injury from the intended victims (the Jones family); to the perpetrator of the cross burning act (RAV) portraying him as the victim. This arbitrariness of the state compounded the initial mental anguish suffered by the Jones family, by effectively adjudicating racist speech to be protected speech under the first amendment. This is one of the 3 reasons why she is opposed to state intervention, advocating "talk back" as the preferred method of resolution. To summarize her first reason, "the arbitrary nature of state power is utilized to further reactionary political aims"¹²⁸ and by doing so reveals the fact that the state is not neutral. This corresponds with the suspicions of Matsuda et al towards "dominant legal claims of neutrality, objectivity, color blindness and meritocracy."¹²⁹ So we clearly have congruence upon this issue between liberals and CRTs, just not on the best method of resolution.

Butler's second reason is (in common with Mill's concerns regarding "tyranny") that the regulation of hate speech is a means by which the state can extend its power. The reasoning here is complex: whilst pro-legislation lobbyists would state that the law provides a reaction to hate speech, in as much as the law is a response to the iteration, Butler defines hate speech as "a category that cannot exist without the state's ratification", because it is the state that actually "produces hate speech."¹³⁰ Although upon initial reading, this claim may appear to be over-dramatic and perilously close to the largely unsubstantiated conspiracy theory claims made by Matsuda and MacKinnon. Butler clarifies her position (via her third point) thus, by controlling and defining what speech and whose speech is legitimate and what or whose is not, the state produces subjects "according to implicit and explicit norms."¹³¹

¹²⁸ Butler, J. 2006. 'Excitable Speech: a Politics of the Performative.' London: Routledge. Page 62.

¹²⁹ Matsuda, M. et al. 1993. 'Words That Wound: Critical Race Theory, Assaultative Speech and the First Amendment.' Oxford: Westview. Page 6.

¹³⁰ Butler, J. 2006. 'Excitable Speech: a Politics of the Performative.' London: Routledge. Page 77.

¹³¹ Ibid. Page 133.

By controlling speech, the state has the power to decide who counts as a subject in the first place, or who has the right to be heard. This leads us back to the politics of recognition and who counts as an equal citizen. Equality is also a primary concern of CRTs, but they do not agree with either “talk back” or resignification strategies, preferring to lobby for the amendment of what they perceive to be unjust laws. This belief is explained by Matsuda and Lawrence in the final paragraph of ‘Words that Wound’, namely that the liberal goal of “maximising public discourse is not attained in a marketplace of ideas distorted by coercion and privilege.” Ingbar (like Lawrence) avows that, as history demonstrates “markets are skewed in favor of entrenched power structures and ideology.”¹³² By this they mean the marketplace recommended for the resolution of hate speech issues is an inappropriate venue (at present) because it is dominated by the powerful white male media giants mentioned in chapter 1. Therefore, this thesis would contend that any ensuing debate that may be “reached by the struggle of combatants under hostile banners”¹³³ would not form part of a fair fight, between *equally* matched or resourced “combatants” (my italics). However, this thesis avers that there is no reason things cannot change, if lecturers and student societies promote and structure learning experiences in order to facilitate change and student empowerment. Indeed, there is no logical reason why this active learning cannot take place within existing curricula, as it need only be the teaching methodology and not the core subjects which require significant revision (see subsequent chapters); or voluntary workshop(s) for students to be involved in a Free Speech Board to determine with academic staff which speakers should be given a voice; or workshops via student societies for minority groups in need of sanctuary (such as the University of Sanctuary Scheme) which is gaining momentum within the UK.

4(iv) Critical Race Theory in the UK

This thesis will now examine the position of CRT in the UK. In her best-selling and disconcertingly entitled polemic ‘Why I’m No Longer Talking To White People About Race’.¹³⁴

¹³² Ingbar, S. 1984. ‘The Marketplace of Ideas: a Legitimising Myth.’ *Duke Law Journal*. Pp. 1-91.

¹³³ Mill, J. ‘On Liberty’ in Cahn, S (Ed.) 2005. *Political Philosophy*. Oxford University Press. Page 438.

¹³⁴ Eddo-Lodge, R. 2018. ‘Why I’m No Longer Talking To White People About Race’. London: Bloomsbury. Page 65.

Reni Eddo-Lodge explains her decidedly unorthodox reaction to the racism she continually experiences. Perhaps unsurprisingly, it coincided with the year (2014) that the British Social Attitudes Survey revealed a substantial increase in the numbers of people who were actually prepared to admit to racist attitudes.¹³⁵ The most significant rise was amongst “white, professional men between the ages of 35 and 64, highly educated and earning a lot of money”.¹³⁶ This ultimately leads to what Eddo-Lodge refers to as “structural racism” by which she means that racism is not merely a matter of individual bias, but rather of collective bias which negatively impinges upon all aspects of black people’s lives. The reasons for this are self-evident: well educated, high earning white males are those members of society most likely to be (as indicated in the 2014 survey) Politicians, CEOs, Property Tycoons, Judges, or employed in the upper echelons of the media. It is this dominant hegemony who have the power to determine the ethos, ethics and culture of both the workplace and society. It is precisely for these reasons that she has no wish to be “assimilated into the status quo.”¹³⁷ What she desires is to be “liberated from all negative assumptions that my characteristics bring.”¹³⁸ Eddo-Lodge stands resolute in her declaration that “the onus is not on me to change. Instead it is the world around me.”¹³⁹

This thesis would counsel against such a strong position, as whilst white people undoubtedly *ought* to endeavour to learn more about racism both collectively and independently; it is not likely that all *will* invest the necessary effort to do so and this could just lead to an impasse at best; or a more divided society due to lack of dialogue at worst. Education offers empowerment and the means to instigate changes not just in perception, but also in deeds. Building upon the work of theorists such as Friere (see below) this thesis will suggest a means of beginning to deconstruct racist beliefs.

¹³⁵ National Centre Social Research. 2014. ‘30 Years of British Social Attitudes, self-reported racial prejudice data’.

¹³⁶ Taylor M. and Muir, H. The Guardian. 27 May 2014. ‘Racism on the Rise in Britain’.

¹³⁷ Eddo-Lodge, R. 2018. ‘Why I’m No Longer Talking To White People About Race’, London: Bloomsbury.

Page 184.

¹³⁸ Ibid.

¹³⁹ Ibid.

Conclusion

How best to empower those in need of sanctuary, so they can utilize their right to free speech: including Simpson & Srinivasan, Friere and Vygotsky.

(i) Simpson, Srinivasan and Student Empowerment

In their paper entitled ‘No Platforming’, Simpson and Srinivasan explore the freedom of speech issue within universities from the viewpoint of trying to reconcile it with a liberal philosophy. To be absolutely clear, it is their avowed intention to achieve this objective in its own right, not to justify banning what is deemed to be hate speech per se. Their primary source of reference is the work of Robert Post, which they explain thus:

the content-based suppression of viewpoints by disciplinary gatekeepers isn’t merely permissible, but positively desirable – and indeed, it stands in need of special protection.

Their thesis concludes with detailing “a more radical way”¹⁴⁰ to use Post’s defence of restricting campus speech - using graduate students to participate with faculty members in the decision-making process as to who is permitted a voice on campus. It is the conclusion to their paper that this thesis will build upon, by elucidating why such a role should be extended to undergraduate students, particularly those from minority groups in need of sanctuary, to facilitate both inclusion and empowerment.

Post proclaims that

universities do have a great responsibility to educate students for citizenship in a country violently split along lines of ideology and

¹⁴⁰ Simpson, R. and Srinivasan, A. ‘*No Platforming.*’ Page 1. Accessed 20th November 2020.

identity.¹⁴¹

He further directs our attention to the fact that First Amendment rights regarding freedom of speech were developed to protect the political life of the nation. The caveat he then posits is that “life within universities is not a mirror of that life.”¹⁴² However, this thesis would aver that the “violently” split USA might actually become more unified if university students were actively encouraged to look at all sides of a multiplicity of arguments within the relatively safe confines of a university: where they have university staff; student societies and fellow students to turn to for additional guidance and support - should they require it. If they are shielded from contentious ideas during these years, it will only make it harder to deal with such speech when they enter the world of employment and such extensive support systems and viable role models are less readily available.

Post further expounds his claim that there are many arenas, other than universities, in which not all ideas are not and ought not to be considered equal – citing doctors and their patients as an example. He states that

we do not apply to doctors sued for malpractice the core US First Amendment doctrine that there is no such thing as a false idea.

However, this thesis would question the transferability of this premise, as there is incontrovertible documented empirical and statistical proof that certain medical procedures and operations work and as such these procedures should be adhered to. Whereas no deaths or life changing disabilities are likely to result from a poorly presented and/or implemented theory, other than the fact that it is likely to be disproved.

If graduate students ... choose to not platform a speaker on the grounds that by their lights, the speaker flouts disciplinary norms, then this could be viewed as an exercise of a kind of incipient disciplinary expertise, meriting some kind

¹⁴¹ Post, R. *‘There is no 1st Amendment Right to Speak on a College Campus’*. Accessed 20 November 2020.

¹⁴² Ibid.

of consideration under principles of academic freedom.¹⁴³

This thesis finds that the key word in the above quotation is “consideration” and ought to invoke its true meaning of open-minded deliberation within Simpson & Srinivasan’s suggested review forum of university staff and graduate students.

Simpson & Srinivasan (building upon Post’s theory) further aver that graduate students are less likely than the academic staff to “be dogged by inherited prejudices and biases, both unconscious and conscious, and are sometimes driven by disciplinary inertia and methodological conservatism.”¹⁴⁴ If we accept the premises of this claim, then this thesis would like to build upon and extend the theory by extending it to under graduates, who ought to be even less “dogged by inherited prejudices and biases” - especially BAME students who are likely to have actually experienced prejudice on a regular basis (as previously explained in the CRT debate in chapter 4).

(ii) Friere and Student Empowerment

Friere’s work, particularly in his later years, centred upon the negative effect of neo liberal practices on marginalized groups within Western societies. In common with CRT, but utilizing different terminology, he argues for a pedagogy specifically for the oppressed. This thesis concurs and aims to build upon and develop Friere’s work, demonstrating the necessity for a pedagogy which must be developed and implemented *with*, yet most emphatically not *for* disempowered groups. This thesis avers that is the only type of pedagogy that can ultimately lead to the actual empowerment of minority groups.

Western society has progressed from post J.S. Mill’s nation states - readily identifiable by shared cultural norms, where the economy was firmly located in the workplace and people identified (primarily) as producers of material goods. What has steadily emerged to replace it is this

¹⁴³ Simpson, R. and Srinivasan, A. ‘*No Platforming.*’ Page 22. Accessed 20th November 2020.

¹⁴⁴ Ibid.

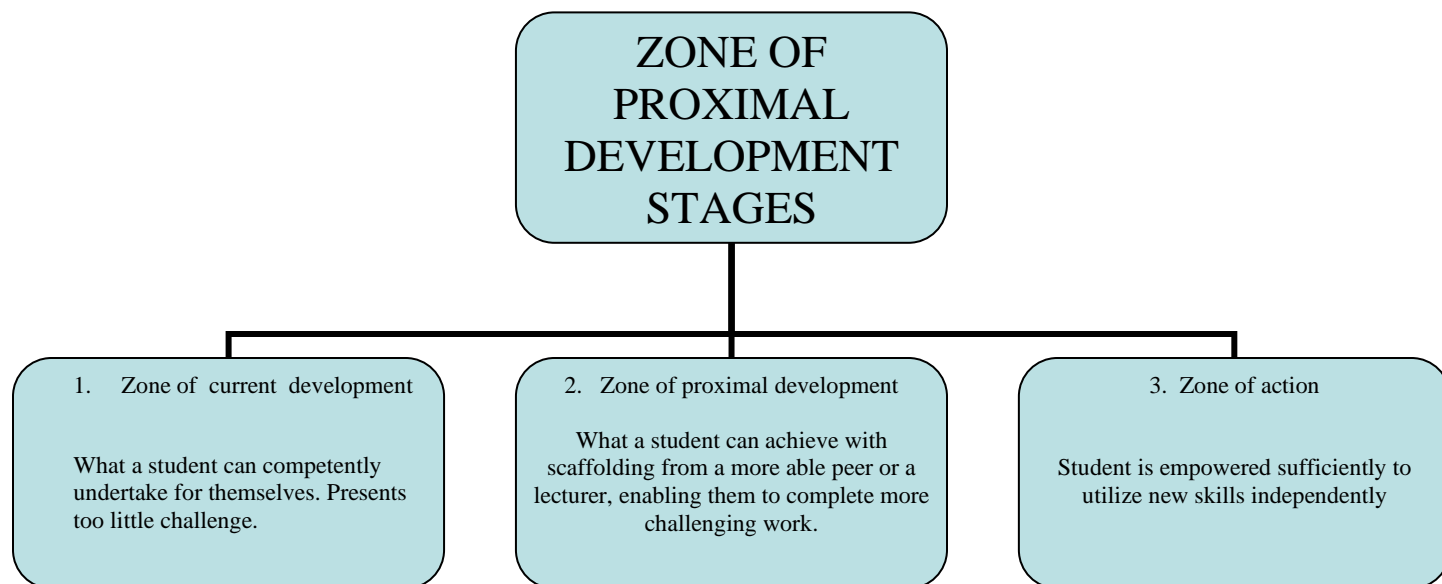
accelerated post liberal era: where progressive political agendas are resulting in ahistorical moral relativism; triggered by the impact of globalisation at the expense of cultural rootedness; which anchors people with a sense of belonging to their culture. Thus, societies are drawn towards commodification to give individuals a sense of identity, a culture they can quite literally buy into as their own dissipates. Hence, we are now part of a “market state”¹⁴⁵, driven by cost effectiveness and a multiplicity of choices. Men and women have evolved into consumers, increasingly not of tangible, material goods - but primarily of services (including university education).

Freire’s work demonstrates his concern at the commodification of knowledge as something that must always be quantifiable to hold any value in the current marketplace of capitalist societies. This leads inexorably towards a corporate, as opposed to an academic culture within Western universities. As these former seats of academia are compelled by management practices towards viewing students as customers or clients to be enticed into investing their capital (often resulting in a significant debt) whilst securing a degree within their institutions; it is inevitable that targets and performance indicators are prioritized over learning per se into a quantifiable “package” or “product”.

Any solution to the post liberal reification of the cult of the autonomous individual whose primary societal function is that of consumer, requires a distinctly different ontological *modus operandi*, almost a vocation of humanization to be facilitated via the medium of education in the field of critical thinking – not cynically by teaching students what to think in order to obtain a degree so they can compete for lucrative employment in a capitalist society that values money above the qualities of common humanity and self-fulfilment. This brings us back to the aspiration of returning to the “liberal roots” that Professor Haldane advocates and this thesis avers that education is the best route to empowering minorities, building upon the work of Freire and Vygotsky, as elucidated further below:

¹⁴⁵ Bobbit, P. *The Shield of Achilles*. 2020. London.

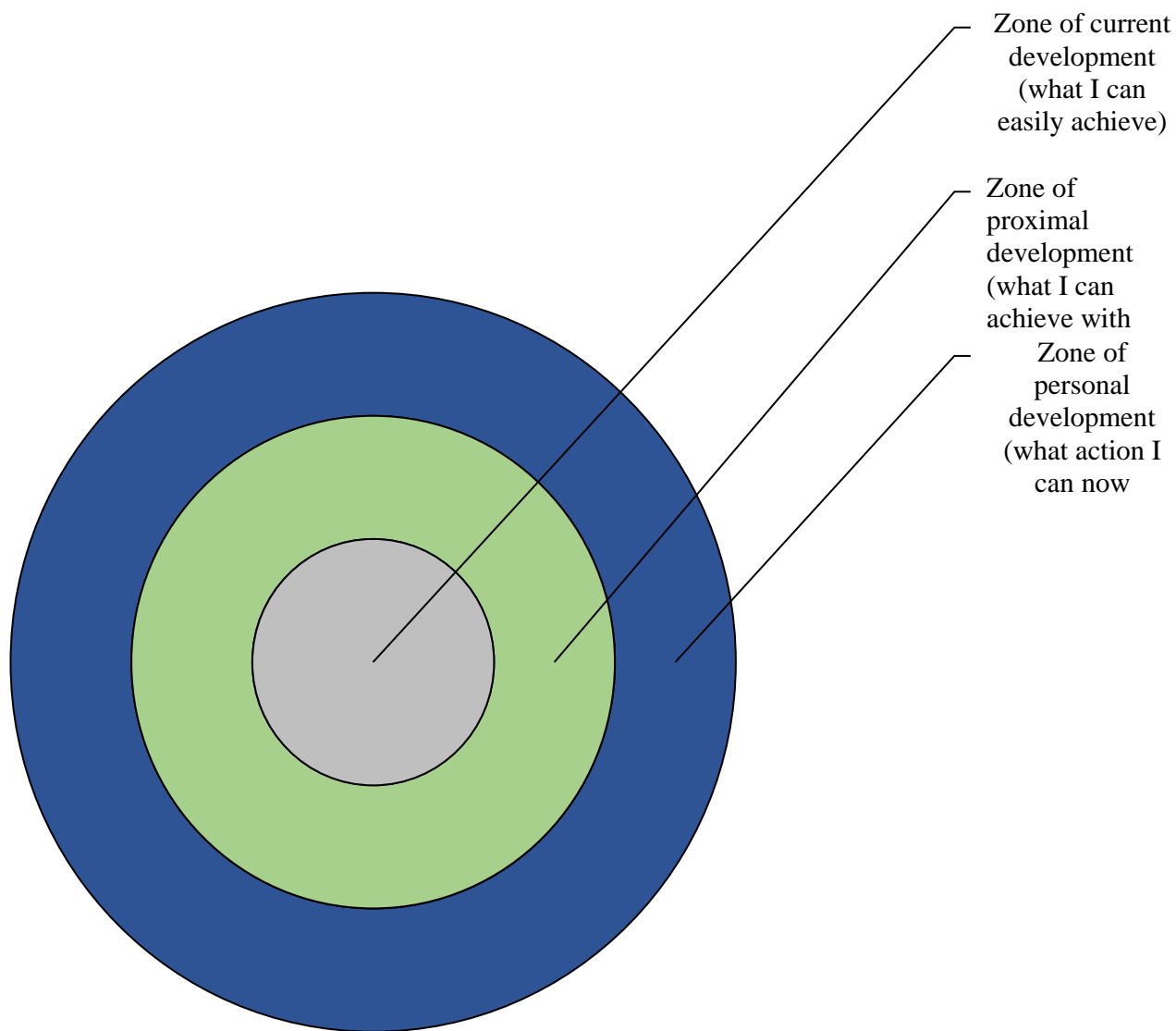
(iii) Building Upon Vygotsky



(Diagram by Elaine Thrower Venn, October 2020)

What the above diagram demonstrates is how to facilitate student empowerment by building upon Vygotsky's theory of childhood learning and adapting it to the requirements of minority under graduate groups. This thesis aims to achieve its objective via praxis: by encouraging tutors to challenge their students critically, dialogically, reflectively, and most crucially by empowering them to instigate action. This will not be abstract theory of knowledge, but a means of structuring learning precisely to initiate change. This thesis asserts that knowledge is to be conceived of as an organic property, inherently vital to both our comprehension of and interaction with society. However, for this epistemic process to be a success then it needs to continue in perpetuity. Once a new skill is achieved (stage 3 in the above diagram) and can be easily undertaken independently; then it *must* become part of the zone of current development (stage 1) and then the stages can be replicated. This procedure thereby ensures that knowledge becomes both a challenging and continuing process. Inevitably this will build confidence within the group and can offer the considerable benefit of being readily quantifiable (see suggested evaluation sheet below) as the students and the lecturer will have records of their own experiences. This problem-solving ability will encourage a "can do" ethos as students evolve into active learners,

not merely passive receptacles of knowledge. learning should never be a finite process, rather we should all aspire to become lifelong learners; students and lecturers (as role models) alike.



(Diagram by Elaine Thrower Venn October 2020)

The self-assessment sheet above could be used (and subsequently developed) to facilitate these aims and to demonstrate progress to both university management, the tutor and the student - maybe by organizing an activity and evaluating its subsequent success.

1. Decide/mindmap definition(s) of a of a key term for themselves, ie. woman, man, microaggression, racism, unconscious racism. ZCD.
2. Look up and add a definition from reliable online source. ZCD.
3. Mind map using critical self-reflection own personal biases. ZPD.
4. Discuss with a peer, then more able peer. ZCD.
5. Present to another group. ZPD.
6. Present to an entire seminar group. ZPD.
7. Present to an outside group (What this thesis will refer to as the Zone of Aspirational Development - ZAD)

(iv) 'Pedagogy of the Oppressed'¹⁴⁶

Whilst a cursory reading of the above work by Friere might lead to the interpretation that teaching could be (to use the colloquial) “an unstructured free for all”; closer perusal demonstrates that such is not the case. Indeed, a paradigm example of a Frierian role model would be an educator who rigorously tests his own and his students views, then actively facilitates self-examination (both his and theirs’). Whilst holding a negative view of authoritarianism, with the tutor in the role of an omniscient pedagogue, this does not mean that he negates the value of authority per se. A good teacher must be an authority, or an expert in their field, able to facilitate discussion in a multiplicity of viewpoints whilst being open to new ideologies. Furthermore, utilizing of authority in the classroom, by empowering even the more reticent students (often those from minority groups) to gradually interact with others confidently and articulately is precisely what an excellent teacher should continually and energetically aspire towards.

It is widely held in our accelerated post liberal society that significant remuneration for one’s work is of paramount importance for the individual and that the state can best facilitate this (and enjoy the economic ramifications of increased taxable income) by rendering university education both desirable and attainable, despite the fact that the concomitant effect for many students is a

¹⁴⁶ Friere, P. 2017. ‘Pedagogy of the Oppressed.’ London: Penguin Random House.

significant debt when they do finally commence employment. This prioritizing of economic imperatives has become so pervasive that contemporary policy documents (to paraphrase Roberts) seem unable to offer anything of significance or substance when discussing the social benefits of tertiary education.¹⁴⁷

This thesis cautions that what is lacking in the current ethos is the traditional liberal categorical imperative of undertaking action for the greater social good by prioritizing ethical principles of conduct, such as duty and obligation (the liberal roots recommended by Professor Haldane) in the introduction. This thesis advises that one way to achieve this objective is to prioritize the development of socially responsible citizens, by inculcating and actively promoting these principles within university education. The only manner in which free speech can have any true value morally, educationally, or motivationally is if there is the opportunity to take responsibility for one's own actions and this can only be conceived of as a virtue if students actually have viable choices. As Delgado¹⁴⁸ judiciously pontificates, "you cannot legislate morality". By this he means that it is not *solely* the purpose of the state or the judiciary to make us kind to one another. Legislation can help with outward manifestations of hate, but the only way to instigate true change, is to take steps to modify what people actually believe.

(v) Concluding recommendations on How to Commence The Empowerment of Those in Need of Sanctuary.

A sound comprehension of history, whilst not essential to all degrees, in our race for instant gratification and turning over the optimum number of students with the rudiments of requisite knowledge for a degree in the minimum amount of time, could nevertheless be of potential benefit to students and ultimately society. Deferred gratification - whilst learning from the past, applying it to the present and exploring future goals and alternatives to our current societal structure could conceivably be of great advantage to citizens of the future.

¹⁴⁷ Roberts, P. (2014). Tertiary education and critical citizenship. In J.E. Petrovic & A.M. Kuntz (Eds.) *Citizenship education around the world: Local contexts and global possibilities* New York: Routledge. Pp. 220-236.

¹⁴⁸ Delgado, R. 1982. 'Words That Wound: a Tort Action for Racial Insults, Epithets and Name Calling.' *Harvard Civil Rights – Civil Liberties Law Review* 17: Pp 133 – 181.

Students could explore possible changes to the practice of learning and perhaps find that greater societal cohesion and less competition might be of benefit and explore with their peers and tutors ideas about how to work towards conflict resolution regarding the veritable maelstrom that free speech has come to represent. This will clearly be a significant challenge, but this thesis claims that education, to be of any value, ought to be a constant process of examination and re-examination. It is precisely this requirement of not teaching in an ahistorical manner that the CRTs too espouse as one of their primary aims. This thesis has explored above how best to enable students to work towards achieving this task; first with support, then as independent learners, capable of helping their peers and the wider community.

Furthermore, this thesis would assert that for a “struggle between combatants” to be of any real worth, it is a necessary and sufficient condition that the fight must be a fair one, where the parties are equally matched and have equal weaponry or resources at their disposal. If this is not so, then it is vital that education is undertaken in universities to empower those who need it most. That is why, although ostensibly post neo liberalism might be conceived of as a just and impartial resolution to educational issues; a natural and neutral progression from its Victorian liberal roots - that is its inherent peril. In its attempt to suppress and brand as beyond the pale all opposition, we are left with what is essentially the “TINA” principle (“There Is No Alternative”) yet logically there are always alternatives - so long as people/students are encouraged to be critical thinkers. This thesis maintains that the way to initiate change is by rejecting ahistorical theories of knowledge and that by listening and exploring the views of the past, alongside contemporaneous beliefs, it is possible to gain a broader sense of perspective. If students are taught to invest time in pondering and ongoing reflection (not just in taking lecture notes) then potential new futures may emerge to them, empowering them as critical thinkers who can become active, rather than passive “TINA” learners. If they can perceive the benefits of constructive criticism: of collaboration as opposed to competition for the best individual grades in assignments (by undertaking group work as well as individual study); then this could conceivably be of benefit not just to themselves - but also ultimately to society. Such a strategy would inevitably lead to some amelioration in the sense of alienation that the least powerful members of society endure and aid them in recommending and subsequently implementing

strategies to rectify this for themselves; rather than perceiving themselves as victims in need of aid or redress from the dominant hegemony.

This thesis advocates a focus upon diagnostic teaching: which it defines as the process of discovering and building upon the individual student's abilities, needs and objectives to produce empowering learning assessments and outcomes. This involves a process that enables and empowers students to detect, understand and correct misconceptions in others work, but also in their own, and that of their peers by building upon the theories of Vygotsky (as detailed above).

The teacher will facilitate this by

(1) Developing diagnostic teaching strategies (via the zone of current development).

A diagnostic activity for the purposes of this thesis is an activity that a lecturer carries out with learners in order to help both him and themselves to identify their strengths and weaknesses. This data is subsequently employed to plan further activities. For example, the teacher may observe by reading an excerpt from a newspaper that students can identify passages of work where racism is implicit, but have difficulty in rendering the implicit sufficiently explicit to confidently articulate a challenge to it.

(i) Students are to construct their own responses, rather than to select from ones presented by a lecturer.

(ii) The task replicates challenges that are, or may plausibly be encountered in the real world (in the zone of proximal development) ie., precis, reports, presentations, independent research.

(iii) Re-evaluating the roles of teacher and learner, by introducing the concept of

group work and/or more able peers (such as students who are near to completing their degrees, or student teachers) to facilitate augment the learning process.

(iv) Gradually removing the amount of scaffolding, hence empowering vulnerable student groups to explore their own, independent research.

i - ii students to bring an excerpt from a challenging book featuring implicit instances racism with a precis of the argument / highlighted points they may disagree with and why to discuss with another student.

ii - iii students discuss and present their findings to a more senior student (ie. 3rd year of degree or post grad and enhance their work accordingly. It is also advisable in any such academic critique to endeavour to identify and possible unconscious bias on their own part, as this will test and strengthen their findings.

iv - Students present their work to another student group. Gradually, this could be extended to other student groups or societies and even outside agencies.

(2) Students will thus advance to the final zone, undertaking tasks they would previously have been incapable of.

(3) This cyclical process can duly recommence; with clear evidence for students, staff and inspectors that their learning and their confidence in expressing themselves has progressed.

If we turn to the exhaustive research of the polemical Professor Heinze on the subjects of hate speech and freedom of speech, he directs our attention towards the instance of a British Asian student at an Oxford University debate who demanded of a group of no platformers

the reasons why she should be deprived of the opportunity to face and interrogate intolerant speakers in person, as part of the university's commitment to critical thought.¹⁴⁹

What was manifestly evident was that her concern was not for the outside speakers' freedom of expression; it was for an opportunity for herself to develop her own socio-political freedom to take control over her own status as a BAME woman. It was about not seeing herself as, or being perceived of by others as a potential victim. Her primary focus was not to seek paternalistic protection, but to seize the opportunity for self-empowerment. This thesis finds that this is precisely what university education should be about, empowering and supporting minority groups such as BAME students, so that ultimately, they are sufficiently confident to defend themselves competently and capably - as role models to future BAME students and equal members of society. However, the key caveat of this aim is that they should be aware of where to turn for support both within the university and in the public sphere should circumstances render it necessary (as per the case studies in chapter 3).

It is through such initial exploratory strategies as outlined above that progress could be not merely initiated, but also demonstrated and quantified via student completed objective sheets (similar to those above) to be followed by evaluation. Students would eventually be competent to tutor other students with little or no staff input. Likewise, this method could be employed by student societies and support groups – such as The University of East Anglia's (UEA's)

¹⁴⁹ Heinze, E. Thirteen Languages. Ten Principles. One Conversation. <http://free speechdebate.com/en>. Accessed 20 November 2020.

University of Sanctuary Scheme for Refugees, with little or no financial expenditure required on the part of the university, using volunteers from both the university and from its local City of Sanctuary (Norwich).

This thesis has examined the history of liberal thought: from its roots, through to neo liberalism and into what Lewkowicz has described as a post liberal era. What has emerged is a multiplicity of viewpoints on how to help BAME groups in need of sanctuary by utilizing (or limiting) via jurisprudence and speech codes the extent of freedom of speech in public and private institutions, such as universities. Whilst not denying the importance of appropriate laws and legislation, this thesis advocates the empowerment of socio-demographic groups in need of sanctuary through education, as well as opportunities for legal redress. In the West, viewpoint punitive bans on speech have metamorphosized from being an exception, to being both a normal and expected part of campus life which tend to follow general societal norms. However, this inevitably leads to an impasse where the ethos of tolerance has to be offset by the need to produce students who are skilled at dealing with the multiplicity of viewpoints they will encounter upon leaving university to find work in our increasingly pluralist societies. Quashing hateful expression, solely via the law and instructing students how to recite politically correct dogma is both pointless and untenable without challenging and changing attitudes too. Silencing hateful speech by such a restrictive legislative strategy is not manifesting tolerance for the greater good of democracy, on the contrary it is doing so to the *detriment* of democracy. To conclude, as this thesis commenced (with Mill) the primary aim of universities ought to be the furtherment of debate and democracy and such skills can “never emerge from truth enforced by law.”¹⁵⁰

¹⁵⁰ Mill, J.S. 2016. *On Liberty*. Los Angeles. Page 122.

