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HATE SPEECH IN CYBERSPACE

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Introduction: "The Internet Just Wants to Be Free"

Hate speech on the Internet has become a source of concern among many in the civil rights community. [1] African Americans, Latinos, women, Jews, gays, and Muslims report a rise in vituperative messages in this medium--some aimed at them, others about them. [2] At the same time, organizations like the Southern Poverty Law Center and the FBI that compile figures on hate crime, which is more easily quantified, find that it too is on the rise. [3] The subjective experiences of those on the receiving end of both forms of hate are, thus, probably valid and worthy of attention.

*320 Although we have written a good deal on hate speech, [4] we have until now confined our attention mainly to its written or printed form. [5] The rise in the Internet version, however, calls for an examination focused on it alone. [6]

Hate in cyberspace is part of a broader pattern of antisocial behavior that finds a home in that realm. [7] Most observers believe that the advent of the Internet has witnessed an increase in certain types of criminal behavior, including identity theft, [8] threats, [9] financial and consumer fraud and scams, [10] hoaxes and pranks, [11] and hacking [12] -- and others that are merely despicable. By this we mean behavior that decreases trust, weakens social bonds, or erodes quality of life. [13] Under this heading, we would place not only hate ***321** speech [14] but student cheating, [15] plagiarism, [16] "cyberbullying," [17] "cyberstalking," [18] snooping, [19] and circulation of damaging rumors or ***322** innuendo. [20] We would also place in this category "swarming"--posting negative reviews of a product or book with the aim of decreasing its sales [21] --and "revenge porn," in which rejected lovers post degrading photos of their former boyfriends or girlfriends online. [22] Many such deeds, the criminal and the noncriminal alike, proceed in secrecy or stealth. Because the Internet makes it easy to act and speak without self-identification, these acts are easy to carry out without fear of discovery. [23] This ease of commission probably contributes to their increased incidence and virulence, as well. [24]

*323 None of these behaviors, of course, is entirely new; indeed, some of them were common even before the Internet came into wide use in the mid-1990s. [25] But these behaviors have become easier, more cost free, and more ubiquitous since the medium became popular. [26] More people now misbehave online, and others, seeing how easy it is, follow suit. Unlike an oral remark, which disappears as soon as it is spoken, or a graffito, which will be erased or painted over sooner or later, much material posted on the Internet will remain there indefinitely, becoming "a permanent or semi-permanent part of the visible

environment in which our lives, and the lives of vulnerable minorities, have to be lived." [27] If the hate message "goes viral," it may attract millions of viewers and remain in cyberspace, perhaps forever. [28]

The two of us are not Luddites who resist technological innovation. We use e-mail daily to correspond with colleagues and friends and have employed computerized research tools since their very beginning. One of us, in a former life, was a law librarian who used electronic search tools every day. [29] We recognize that the Internet has done a great deal of good, perhaps enough to counterbalance the drawbacks just mentioned. [30] In addition to making communication and research easier, the Internet enables millions of people to shop, bank, market products, keep records, find information, and amuse themselves cheaply and efficiently. [31] The Internet enables the police to notify citizens of neighborhood crime [32] ***324** and people seeking answers to difficult questions to secure them through crowdsourcing--combining the knowledge of a host of readers. [33] Social media allow people to follow developments in their friends' lives and find companions with whom they share common interests. [34] The Internet, in short, has brought both good and bad. Although we focus on one problematic use of that medium, we do not suggest that it lacks impressive redeeming features. [35]

With those provisos in mind, let us consider the rise of hate speech on the Internet.

I. Hate Speech, Before and After 1994

A. Naming and Countering a Form of Socially Pernicious Behavior

As mentioned, agencies that monitor hate speech and crime report an upsurge in hate messages and sites on the Internet and warn that this development may erode public discourse while exposing minorities, gays, women, and other disempowered groups to ridicule and contempt. [36] These observers are not crying wolf. The Internet is rife with hate speech, including e-mails, chat groups, blogs, and websites touting white supremacy and asserting the ***325** inferiority of gays, blacks, Jews, Latinos, Muslims, foreigners, and women. [37]

1. An Early, Hard-Fought Victory

The development of hate messages and sites on the Internet compels attention, for the battle against hate speech--which sprang up in the 1980s (i.e., during the pre-Internet era) with the publication of a number of key books and articles [38] followed by the enactment of many university conduct codes and state and federal laws penalizing it--had seemed largely won. [39] Although the American Civil Liberties Union ("ACLU") and a few other First Amendment absolutists defended hate speakers in the early years, their advocacy in recent times has been muted, perhaps because the need for it has abated. [40] Hardly anyone today maintains that hate speech is permissible or a minor inconvenience that minorities should be prepared to tolerate as one of life's ordinary burdens. [41]

The norm against hate speech, in other words, is now firmly established. This of course does not mean that the occasional incident of gay bashing or derogation of minorities never appears. [42] Rather, when it does, it receives little public support. In short, the battle against hate speech had seemingly been won.

 *326 2. Two Exceptions to This Development: Courts and Cyberspace [43]

a. The First Exception: The Lower Judiciary

The first is the judiciary, especially the lower tier. Although the U.S. Supreme Court upheld a cross-burning statute (forbidding one spectacular and historically rooted form of hate speech), [44] lower courts still regularly strike down campus speech codes, especially ones that strike them as vague and overbroad. [45] On the level of social (not legal) norms--what one can say without incurring disapproval--the battle is over. Hate speech is decisively out of favor; any instance of it, whether in a classroom, speech, television show, or newspaper column, brings immediate condemnation. [46] (Indeed, the speaker or writer often apologizes and promises not to do it again. [47]) As recently as thirty years ago, this was not the case. [48] Now, it is. In short, this is an area, like several others, [49] where the legal system lags behind the popular consensus.

b. The Second Exception: The Internet

The second area, the Internet, is our subject in this Article. Here we find an even more striking exception to the dominant social norm. One encounters a host of websites with users inveighing against racial and sexual minorities, women, liberals, foreigners, Jews, Muslims, and recent immigrants as well as anonymous ***327** tweets, e-mails, and chat groups circulating harshly critical messages about their favorite targets, and much venom. [50]

This anomaly--hate speech proliferating in one area (the Internet) while practically abolished everywhere else (ordinary life)-- invites attention, particularly since Internet use is advancing rapidly, indeed threatening to overtake printed material. [51] Earlier, one of us identified a dismal "Law of Racial Thermodynamics"--racism cannot either be created or destroyed. [52] Eliminating it from one area (say, education and pupil school assignments) merely causes it to rise up in another (say, residential housing preferences and white flight). [53] We may be witnessing an instance of this with the Internet. Just as members of society have learned to speak and treat each other respectfully in person and in writing, the Internet has opened up new avenues for derogation and spite. [54]

After reviewing this development in Part II, we offer in Part III structural reasons why we believe it may be taking place. We also explain why it is unlikely to give way in the face of the kind of firm and consistent shaming that over the past twenty-five years or so created a new norm against hate speech of the spoken or written kind. In particular, we posit in Part IV that new scholarship and public resistance will be necessary to counter the Internet variety, in part because legislation does not seem a promising avenue, at least any time soon. [55] By the same token, organizations that run the ***328** Internet, including Google, Microsoft, Facebook, and Twitter, are unlikely to take forceful and continuing action against hate speech, at least without firm public pressure. [56]

II. Hate Speech on the Internet: Recent Developments

Those who wish to make life difficult for minorities, gays and lesbians, or any other favorite target on the Internet have a number of means of doing so. These include e-mail messages, Facebook posts, websites devoted to the supposed deficiencies of these groups, and blogs and tweets, usually responding to a current racially charged event or headline and serving as a platform to vent the author's spleen against a favorite target.

A. E-mail

E-mail and text messages are among the most frequently used Internet vehicles. They also find ready use as vehicles for hate and contempt. Often, perpetrators of violent or terrorist acts will be found to have used e-mail exchanges or message boards to nerve

themselves up for their actions and secure the approval of others for what they plan to do. [57] Listservs, for example, permit hate groups ***329** to "send E-mail to each other with a click of the mouse" [58] and with relative confidence that opponents will not be listening in. Individualized e-mail often arrives without the sender's name on it. Thus, the "victim of a hateful E-mail may be unable to respond, because the sender mailed the message from a public terminal or has turned off his computer." [59]

B. Websites and Pages

Websites [60] may cover such mundane topics as how to groom one's dog or ace the SAT. They may also put forward reasons to hate a despised group, such as blacks, immigrants, or Jews. [61] According to one estimate, about 11,000 websites, social network pages (which resemble websites), chat forums, and microblogs fall into the latter category. [62] The author of this estimate explains the recent growth of these vehicles by reason of their simplicity, stating as follows:
[T]he formula for ethnic hate is quite simple: repeat the idea enough and people will believe it. Soon the idea becomes socially saturated and reaches a . . . point where everyone knows the fabrication to be "true." Discriminatory laws may follow, and calls for genocide can be in the offing. . . . [T]hat none of it is true does not seem to matter. The Internet's dark side globally propels Dark Age beliefs to millions at the click of a mouse. [63]
Other commentators, however, point out a redeeming feature of websites, that "even if they promote hate, [websites] are incapable of harassing or terrorizing because visitors must seek the information" by choosing to visit them. [64]

*330 C. Facebook

Pioneered by young Internet star Mark Zuckerberg, Facebook arrived in 2004 and rapidly attained a preeminent role as a means of Internet-based social communication. [65] With Facebook, users establish accounts, after which they create personal profiles and designate a list of friends with whom they can exchange messages and receive updates. Users may also join or create interest groups organized by subject or a common preoccupation. [66]

Although much Facebook material is unremarkable, Facebook groups can bully unpopular targets, defame teachers, administrators, or anyone else who arouses their ire, or engage in concerted hate speech and criticism that can "ruin[[] someone's life." [67] Since material may remain in place forever, Facebook also poses a problem of privacy, especially for the young who may not realize how a candid disclosure or photograph could harm them later in life. [68]

D. Twitter

Twitter is a relatively recent (circa 2006) innovation that allows subscribers to send and receive short comments, or messages, called "tweets." [69] Many such messages are innocuous and consist of mundane details of an individual's day, meals, or activities. But, tweets may also contain hurtful remarks about the writer's enemies, particularly ones who are in the news. Many of the same complaints mentioned above in connection with websites, e-mails, and Facebook posts have surfaced in connection with Twitter. [70] Thoughtful ***331** observers believe that the ubiquity of the medium, coupled with its inherent space limitations, encourages a kind of flippancy, as well as "snark, hostility, dismissiveness, and counterproductive incivility." [71]

E. YouTube

An Internet-based means of international file sharing, YouTube is a platform for a wide variety of material--principally videos, many of them homemade. [72] Among the videos available on this platform are ones attacking favorite targets or even advocating violence, such as jihad, against the video maker's political foes. [73] Much of the material available on this medium is amateurish and bland, though sometimes hilarious, such as a pet doing tricks. But a camera, like a speaker, can lie, so that "[o]ne of the risks in the era of bloggers and You Tube [sic] is that statements and actions are so closely monitored that any particular one, taken out of context, might seem representative of the whole, or a clue to something dark and bad." [74]

F. Blogs

Blogs are sites containing information or commentary consisting of entries called "posts," written by individuals or teams, usually covering a single subject or area, such as sports or politics. [75] Blogs received a boost from the development of web tools that enabled nontechnically trained users to operate a blog or to post entries on one. Many blogs serve as a forum for discussion of favorite topics, including ones of which the posters disapprove; others are little more than diaries or records of the hosts' activities or thoughts on a given day. Blogs can expose political corruption [76] or stories that slip through the mainstream media, like the inaccuracies that led to Dan Rather's resignation. [77] Most notable, ***332** however, is that anonymous posters can malign a favorite target with little fear of retaliation. [78]

III. Conditions that Facilitate Hate Speech in Cyperspace

Why does the Internet contain a seemingly limitless supply of material singling out minorities, women, gays, and immigrants for disrespectful treatment? This question will require an examination of the structural conditions that promote or discourage intolerance and racism, including two that are well known to social scientists--social contact and confrontation. "Distancing" and "depersonalizing" also enter in. [79] An understanding of how these mechanisms operate requires a quick review of national values.

A. The American Creed

Social scientists who have studied race and racism in America believe that because of America's checkered racial history, most citizens are ambivalent in matters of race. [80] They realize, on one level, that our official, public values are race blind, egalitarian, and highly aspirational. [81] All men are equal. We are all brothers and sisters, equal agents in the eyes of God. Every person is a precious moral agent. Discrimination of any kind is wrong. [82]

In short, Americans hold to a formal set of higher values according to which racism and discrimination are anathema. We ***333** feel badly when we fall short of these ideals and resolve to do better in the future.

B. Two Sets of Values

Despite these formal values, many of us act according to a lower code of behavior during moments of intimacy when we believe no one is watching. [83] Thus, a typical American may insist that he or she is color blind and act in that fashion on official

occasions, such as the Fourth of July when the bands are playing and local groups are marching proudly by. [84] If this person is white and finds himself or herself standing next to a black or Latino person, he or she is apt to smile and make a comment about the wonderful day or fine band. He or she may even put an arm around the other's shoulder, offering the other a drink or an invitation to a family function. [85]

This same American, however, on another occasion might behave differently. With friends, at a bar or private gathering, he or she might feel freer to tell a joke at the expense of blacks, gays, or members of a minority religion. [86] At work, this person might feel free to refuse an interview or promotion to an otherwise qualified African American if he or she believes this will not come to the attention of others. [87]

In short, many of us act as though we subscribe to two sets of values, one for official occasions and another for private ones. We select the one or the other unconsciously, depending on the situation and the company in which we find ourselves. To cite a familiar example, many women know by a kind of instinct that male coworkers may behave in a supportive and antisexist fashion on the job, particularly when representing the company. [88] The same men at a party after work may feel much freer to tell an antifemale joke, rib a female colleague, make an aggressive pass, or otherwise behave in a fashion that makes a woman uncomfortable. [89] Women who remain at a gathering after "the cigars come out" often are aware that the conversation is apt to take on a sharper edge and that they may find it necessary to defend themselves.

Because we acquire racial attitudes at a very early age, [90] often from parents or playground companions, countering the dark ***334** impulses that we all harbor must take into account their deep-seated nature. Social scientists have devised two principal strategies--a social contact theory and a confrontation theory. Often these work together.

C. The First Strategy: Social Contact

The social contact theory, as its name suggests, aims to reduce racial prejudice by providing opportunities for members of different races to interact, often in group settings, such as school or sports. [91] The theory holds that much of racial prejudice and friction is a function of incorrect cognition: the individual internalizes the belief, often from parents or playmates, that members of other races are not to be trusted. [92] To counter these beliefs, society may arrange many opportunities for youngsters to interact with members of different races. [93] Through frequent contact, they will realize that those with skin colors different from their own are much like them and their friends: some smart, others less so; some nice, some not; some trustworthy, others conniving; and so on.

The ideal form of social contact for reducing discriminatory beliefs is that which occurs among equals in pursuit of a common objective. [94] Sports and the military are prime examples. [95] Much evidence suggests that the theory is highly efficacious; individuals who grow up with many opportunities to interact with members of different races and ethnicities are much more comfortable in mixed-race settings than ones who do not. [96] The social contact theory formed the basis of institutional desegregation during the sixties [97] and is a mainstay of antidiscrimination scholarship and practice. People who grow up with others of different types are more comfortable with diversity, [98] choose friends of different hues, and feel more comfortable working with or living next to members of racial groups other than their own. [99]

*335 D. The Second Strategy: Confrontation

Because social contact is not always feasible, social planners and architects can often turn to a second strategy. The confrontation theory builds on the insight, mentioned earlier, that many Americans are ambivalent in matters of race, harboring highly aspirational convictions ("all men are equal") but acting on a lower set in moments of intimacy, when their guard is down and no one is watching. [100]

The confrontation theory suggests that in order to trigger the higher set of values, it is wise to provide reminders that society expects and hopes for this form of behavior. [101] These reminders put people on notice that society expects them to behave in a fair-minded, nonracist fashion and that falling short of this will bring social disapproval or sanction.

1. Examples of the Confrontation Strategy: The "Fairness and Formality" Thesis in Operation

a. The Military

The military is a prime example of the confrontation theory. [102] With a highly diverse workforce, the military requires that noncommissioned and commissioned officers demonstrate the ability to work effectively with subordinates whose skin colors are different from theirs. [103] A formal set of rules and expectations for nonracist conduct enter into a person's evaluation for promotions. These expectations are well known; persons who cannot bring their conduct into conformity with them are not promoted and may be mustered out. [104]

 *336 b. Alternative Versus Formal, In-Court Adjudication

Dispute resolution is a second example. Studies show that formal, in-court disputes offer a fairer forum for a relatively disempowered individual--such as a woman of color confronting (for example, in a divorce action) a person of higher prestige, say, a white male executive--than the informal kind of forum, such as mediation or arbitration. [105] Many features of the courtroom setting, such as the judge sitting on high, the robes, the seal of the state or federal authority, the prescribed time and manner of speaking, and the explicit instructions the judge issues to the jurors on deciding the case in accord with the law, reduce inequalities of initial position. [106] Alternative dispute resolution, which takes place in an informal, relaxed setting with fewer rules, includes fewer such features, so that racial and other power differentials are apt to influence the outcome even more than when a dispute occurs in a formal courtroom. [107]

E. The Two Theories Applied to the Internet

With cyberspace, neither form of control is readily available. As a result, the Internet offers a fertile breeding ground for racial vituperation and contempt.

1. Social Contact

As mentioned, social contact among equals in pursuit of common objectives moderates racial animosity. [108] The Internet, however, separates people from one another. [109] When it does enable people to join together in some form of virtual community, it is often a community of the like-minded. [110] It does not constitute the kind of ***337** setting that, like sports, the Boy Scouts, public schools, or the military, places people of different backgrounds together and allows them to conquer their fears and work together in a cooperative fashion. On the contrary, the Internet heightens one's sense of separation from the momentary target of one's venom and, by immersing the user in a community of the like-minded, increases the feeling that the world comes divided

into two groups--us and them. [111] Individuals who begin a session in cyberspace are apt to find little there that challenges their preconceptions about people of different races, religions, nationalities, or sexual orientations. [112] If they began disliking a group, say, Jews, they are likely to end the session disliking them even more.

2. Confrontation Theory

By the same token, individuals who harbor dislikes of members of other racial groups are apt to find little on the Internet that challenges their pet beliefs. [113] Unlike litigation, the military, or a seminar on diversity, little reminds the person navigating the Internet that this area is one where society expects everyone to treat others with respect and dignity. [114] Unlike a courtroom, where ***338** physical features and rituals remind the participants that this is a place where they are expected to exhibit behavior consistent with the American Creed, [115] persons who enter cyberspace encounter few, if any, such reminders. [116] Little conjures up public values of fairness and equality. Users believe they can get away with speaking their minds, and if those minds contain, at the moment, harsh thoughts or judgments of others of different complexions from their own, they feel free to speak them. [117]

F. Summary: A Trend Toward Coarsening

The advent of the Internet, beginning around 1994, has not led to an improvement in civility or the quality of interpersonal relations. [118] If subjective experiences are a guide, heavy users feel freer to take positions or espouse views that depart from our public values. [119] We posit that the Internet, for the reasons mentioned above, may be playing a role in this change. Implicit association tests are showing that a majority of Americans harbor feelings and attitudes that surprise even them. [120] Might the large amount of time many of us spend on our computers be playing a part in this increase?

Since hate speech on the Internet is pervasive, rising, and unlikely to subside unaided, what should society do to counter it?

IV. Possible Responses to Internet Hate Speech

Possible responses to Internet hate speech include those that one commonly hears with this type of utterance, including talking back to the aggressor. As we shall see, most of these avenues are even less efficacious than they are with ordinary speech. Because courts and legislatures are unlikely to tackle the Internet any time soon, [121] while Internet providers and companies are even less likely to rein themselves in, [122] new approaches are in order.

*339 A. Conventional Responses Associated with the Free Speech Position

Some of the usual means that First Amendment devotees urge to counter ordinary--spoken or written--hate speech are even less promising with the Internet variety. Talking back to the aggressor (the favorite approach of First Amendment absolutists [123]) is impossible for speech that is anonymous or that occurs in a forum of the like-minded. [124]

The same is true for the suggestion that victims of hate speech should tolerate it because it serves as a pressure valve that enables hate speakers to harmlessly air feelings that, if bottled up, could explode in even more harmful forms later. [125] The idea that racist feelings will cease once a speaker expresses them is unfounded even with ordinary speech; [126] with the Internet variety, it holds even less. Most Internet speech, as mentioned, takes place anonymously or among the like-minded. [127] The first tirade

eggs an audience on. Far from producing a pacified speaker and audience, the speech incites another and another. A chorus of "right ons" or "likes" encourages the speaker to believe that his or her attitude is widely shared, when it in fact is not. [128]

A further riposte from the free speech side is that minorities ought to toughen up and not run to the authorities every time they ***340** hear something that offends their feelings. [129] But it is hard to put this approach into effect with hate speech in cyberspace, since one is often unaware that it is taking place or that one's identity or good name has been impugned. And with the kind that shows up suddenly, unbidden on one's computer screen, one has little opportunity to harden oneself in advance. Moreover, this approach places the burden of countering hate speech on those who bear the brunt of it in the first place. [130]

A final rejoinder is what is known as the "bellwether" argument, which holds that the racist who is known is better--that is, safer--than one who is not known. [131] This argument, even with ordinary speech, is flawed, since it ignores a third alternative--that the racist who is deterred by firm application of rules and norms is even safer than one who spews it constantly. [132] With cyberspeech the bellwether argument holds with even less force than it does with ordinary speech, since much of Internet speech proceeds in privacy, arriving suddenly and without identifying the source. [133]

B. Legal Responses to Internet Hate Speech

Hate speech has received a tepid response from the lower courts. [134] Unless the speech is dramatic enough to support a sui generis prohibition (like cross burning [135]) or resembles an existing exception to First Amendment coverage, such as words of threat, [136] ***341** defamation, [137] intentional infliction of emotional distress, [138] or a statutory remedy such as speech that creates a hostile workplace, [139] courts are apt to find hate speech constitutionally protected. Since courts believe that Internet speech qualifies for constitutional protection, [140] courts are likely to look unfavorably at legislative efforts to limit speech in cyberspace.

Since vituperative speech is self-reinforcing [141] and apt to spread among like-minded groups [142] or loners operating in secrecy, [143] new approaches must be sought. Three approaches that commend themselves are unmasking, group condemnation, and economic sanctions.

1. Unmasking

One approach would focus on depriving groups and individuals who take advantage of the cloak of secrecy that the Internet provides. Diligent detective work will often unearth the source of a hurtful message, blog posting, or website. [144] Denouncing the group or individual publicly can demonstrate to users of the Internet that disseminating hate through this medium brings consequences and can give pause to others who might be tempted to follow suit. This approach would apply the confrontation theory by holding the possibility of social sanctions over the heads of individuals tempted to engage in anonymous name-calling and disparagement over the Internet. [145] In a few celebrated cases, courts have ordered such an unmasking, usually in connection with civil discovery. [146]

2. Group Condemnation

Norms of nondiscrimination run highest in two large groups: those who lived through the civil rights era of the sixties and those ***342** who arrived at adulthood in the early years of the current century. Sometimes named the millennial generation, this

latter cohort considers itself fair-minded and color blind, even antiracist. [147] Steeped in technology, this generation considers the Internet practically an extension of their bodies and minds. Both groups are apt to find Internet hate speech distasteful and worth fighting against. With a small amount of encouragement, imaginative members of these groups could join in applying pressure to racist websites, broadcasters, and other purveyors of vitriol. Many do already. They should find sympathetic allies among their peers.

3. Economic Sanctions

Even if a disseminator of cyberhate is beyond the reach of the first two remedies, he or she will often operate a business, agency, or other group that requires funds, donations, a tax deduction, an advertising account, or another monetary benefit to keep operating. With these individuals, economic sanctions may gain their attention. These sanctions can take the form of a consumer boycott, withdrawal of a business license, libel accusation, or letter to a tax authority calling the group's status into question. Since most individuals and groups zealously guard their own financial fortunes, approaches of this type may nudge them to moderate their antisocial activity and behave in a less socially pernicious fashion.

Conclusion

If structural features of Internet speech--including secrecy, self-selection, group reinforcement, and a sense of righteous potency--lie behind an unsettling rise of derogation and hate in that medium, society ought to consider measures to combat it or at least reduce the damage it inflicts. The usual responses to hate speech, including the talking-back approach, the pressure-valve argument, and the notion that hate speech serves as a useful bellwether alerting minorities to their foes, are even less promising in this realm than they are in society at large. Since legislatures and the lower courts are, for now, unpromising sources of remediation, concerted, popular action is the most likely avenue for redress. Two cohorts, young users from the millennial generation and those who lived through the civil rights era of the 1960s seem most likely to ***343** mobilize against this form of conduct. The most likely actions include unmasking, shaming, and economic sanctions against abusers.

Both the Internet and those who use it to disseminate odious remarks are relatively young. With luck, the onset of maturity will moderate some of the excesses of both. In the meantime, forceful, concerted action by those who prefer a more civil society can, perhaps, provide a nudge in that direction.

Footnotes

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1   See, e.g., Jeremy Waldron, The Harm in Hate Speech 37, 89, 149, 176 (2012); Shannon Gilreath, The Internet and Inequality: A Comment on the NSA Spying Scandal, 49 Wake Forest L. Rev. (forthcoming 2014); Alexander Tsesis, Hate in Cyberspace: Regulating Hate Speech on the Internet, 38 San Diego L. Rev. 817, 818-20 (2001) [hereinafter Tsesis, Hate in Cyberspace]; Alexander Tsesis, Inflammatory Speech: Offense Versus Incitement, 97 Minn. L. Rev. 1145, 1167-73 (2013) [hereinafter Tsesis, Inflammatory Speech].

2   See About Us, Teaching Tolerance, www.tolerance.org/about (last visited Jan. 25, 2014) (describing a task force to counter Internet-based hate and intolerance); Intelligence Project, S. Poverty L. Center, http:// legacysplc.wwwsplcenter.org/intel/history.jsp (last visited Jan. 25, 2014); see also Grace Gedye, Op-Ed., The Rise of Sexism and Misogyny in a Facebook Era, Seattle Times (Apr. 17, 2013), http://seattletimes.com/html/opinion/2020793295_ gracegedyeopedxml.html (noting that "one person can start a misogynist Facebook group, type an insulting comment or make a sexist status update and amass support from the Facebook community in the

form of 'likes''' and noting a subtle change in the portrayal of women in the media); 163 and Counting...Hate Groups Find a Home on the Net, S. Poverty L. Center (1998), http:// legacysplc.wwwsplcenter.org/intel/intelreport/article.jsp?aid=455.

3   See sources cited supra note 2; Mark Potok, DOJ Study: More than 250,000 Hate Crimes a Year, Most Unreported, S. Poverty L. Center (Mar. 26, 2013), http://www.splcenter.org/blog/2013/03/26/doj-study-more-than-250000-hate-crimes-a-year-a-third-never-reported/ (analyzing the rise in hate crime and why FBI statistics are lower than they should be due to unreported hate crimes); see also Hate Crime Statistics, FBI (2011), http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2011/tables/table-1 (providing statistics for a recent year).

4   See, e.g., Richard Delgado & Jean Stefancic, Understanding Words That Wound 1-2 (2004); Richard Delgado & Jean Stefancic, Four Observations About Hate Speech, 44 Wake Forest L. Rev. 353, 354-55 (2009); Richard Delgado, Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling, 17 Harv. C.R.-C.L. L. Rev. 133, 134-36 (1982).

5   The Offensive Internet: Speech, Privacy, and Reputation (Saul Levmore & Martha C. Nussbaum eds., 2010) is a notable exception. See Delgado & Stefancic, supra note 4, at 123-38 (devoting a chapter to "Hate in Cyberspace").

6   See Gilreath, supra note 1; Tsesis, Hate in Cyberspace, supra note 1, at 818-19; Tsesis, Inflammatory Speech, supra note 1, at 1166-68 (noting that Internet communications can rise to the level of imminent harm).

7   See Delgado & Stefancic, supra note 4, at 123 (describing cyberspace as "a worldwide connection of computers over telephone, cable, and fiber optics lines...[that] allow[s] anyone with access and a computer to send and receive data" and enumerating some of the most common modes of communication, including e-mail, chat rooms or newsgroups, and the World Wide Web); Danielle Keats Citron, Cyber Civil Rights, 89 B.U. L. Rev. 61, 62-63 (2009). The present Article considers a few additional cyberavenues, including social media, such as Twitter and YouTube, and instant messaging. See infra Part II.

8   For information on identity theft by means of cyberhacking and scams, see infra note 12 and accompanying text, and Nathaniel Popper & Somini Sengupta, U.S. Says Ring Stole 160 Million Credit Card Numbers, N.Y. Times, July 26, 2013, at B7.

9   See, e.g., Robbie Brown, 140 Characters Spell Charges and Jail, N.Y. Times, July 3, 2013, at A15 (noting that "Twitter makes it easier for people to say things they don't mean seriously.... If I say online that I want to kill Obama, it's far harder to assess how serious I am than if I'm standing across the street from the White House and I have a gun").

10   See infra note 12 and accompanying text (discussing a common form of computer-assisted fraud).

11   See Amy Chozick & Nicole Perlroth, Twitter Speaks, Markets Listen, and Fears Rise, N.Y. Times, Apr. 29, 2013, at A1 (noting that Twitter is rife with flippant or mean-spirited messages, including hoax material that can cause serious harm).

12   On hacking, see Danielle Keats Citron, Civil Rights in Our Information Age, in The Offensive Internet: Speech, Privacy, and Reputation, supra note 5, at 31, 31-33, and Nathaniel Popper, Wall Street's Exposure to Hacking Laid Bare, N.Y. Times, July 26, 2013, at B1.

13   That is, behavior that is not clearly illegal, like sending someone an anonymous message saying that the person's boyfriend is flirting with another person, or posting a negative comment in order to bias other readers. See, e.g., Dominique Brossard & Dietram A. Scheufele, This Story Stinks, N.Y. Times, Mar. 3, 2013, at SR5 (describing an experiment that found a "nasty effect," in which a single prearranged negative comment "was enough to make study participants think the downside" of a passage they had been reading).

14   See, e.g., Brian Leiter, Penn Law Student, Anthony Ciolli, Admits to Running Prelaw Discussion Board Awash in Racist, Anti-Semitic, Sexist Abuse, Leiter Rep.: Phil. Blog (Mar. 11, 2005, 6:12 PM), http:// leiterreports.typepad.com/blog/2005/03/penn_law_studen.html (noting hundreds of entries on a law student's blog containing grossly offensive language about African Americans and women).

15   For an example of cheating carried out via internet connections, see Richard Pérez-Peña, Studies Find More Students Cheating, with High Achievers No Exception, N.Y. Times, Sept. 8, 2012, at A14 (noting that "Internet access has made cheating easier, enabling

students to connect instantly with answers, friends to consult and works to plagiarize. And generations of research has shown that a major factor in unethical behavior is simply how easy or hard it is").

[16]   See Kim Parker et al., The Digital Revolution and Higher Education: College Presidents, Public Differ on Value of Online Learning 6 (2011), available at http://pewinternet.org/~/media//Files/Reports/2011/PIP-Online-Learning.pdf (discussing the rise of plagiarism coinciding with the advent of technology).

[17]   See, e.g., Editorial Board, Hate Speech on Facebook, N.Y. Times, May 31, 2013, at A20 (noting the proliferation of material glorifying violence against women and observing that "[t]he company's slow response may be indicative of a deeper problem in technology and Internet-based companies--most of them are primarily run by men"); Tanzina Vega, Facebook Promises to Address Hate Speech, N.Y. Times, May 29, 2013, at B1; Tamara Lush, Suicide Victim Had Been Bullied for Nearly a Year, Tuscaloosa News (Sept. 13, 2013), http:// www.tuscaloosanews.com/article/20130913/NEWS/130919843 (noting how prolonged bullying can prompt a sensitive child to commit suicide); see also Citron, supra note 12, at 31, 33 (discussing "cybermobs" and bullying on the Internet); Martha C. Nussbaum, Objectification and Internet Misogyny, in The Offensive Internet: Speech, Privacy, and Reputation, supra note 5, at 68, 73-77 (noting that that medium is rife with messages and images objectifying women, even historical figures); Daniel J. Solove, Speech, Privacy, and Reputation on the Internet, in The Offensive Internet: Speech, Privacy, and Reputation, supra note 5, at 15, 15, 17 ("Now, people are judged out of context based on information fragments found online. The amount of these fragments is vastly increasing and...becoming more personal and potentially discreditable."); Jessica S. Henry, Bias-Based Cyberbullying: The Next Hate Crime Frontier?, 49 Crim. L. Bull. 481, 481 (2013).

[18]   For more information on cyberstalking, see, for example, James Lasdun, "I Will Ruin Him": How It Feels to Be Stalked, Chron. Higher Educ. (Jan. 21, 2013), http://chronicle.com/article/I-Will-Ruin-Him/136693/ (describing how the writer "found [him]self, to [his] surprise, the victim of a campaign of malicious e-mail stalking and online defamation by a former... student" who was disappointed when the instructor did not back publication of her novel and resisted her amorous overtures and how "a deluge of emails" accusing him of fabricated acts nearly destroyed his life and career).

[19]   See Somini Sengupta, Digital Tools to Curb Snooping, N.Y. Times, July 18, 2013, at B1.

[20]   See Saul Levmore & Martha C. Nussbaum, Introduction, in The Offensive Internet: Speech, Privacy, and Reputation, supra note 5, at 1, 2-3 (discussing slurs, negative reviews, and slander on the Internet); Brossard & Scheufele, supra note 13 (noting that our "emerging online media landscape has created a new public forum without the traditional social norms and self-regulation that typically govern our in-person exchanges--and that medium, increasingly, shapes both what we know and what we think we know"); see also Cass R. Sunstein, Believing False Rumors, in The Offensive Internet: Speech, Privacy, and Reputation, supra note 5, at 91, 91.

[21]   See David Streitfeld, Swarming a Book Online: Amazon Becomes a Battlefield as Reviewers Go on the Attack, N.Y. Times, Jan. 21, 2013, at B1; David Streitfeld, Why Web Reviewers Make Up Bad Things, Bits (July 15, 2013, 8:30 AM), http:// bits.blogs.nytimes.com/2013/07/15/why-web-reviewers-make-up-bad-things/?_r=0 (noting that "the problem is much bigger than a few malicious operators").

[22]   See Jill Filipovic, "Revenge Porn" Is About Degrading Women Sexually and Professionally, What Does It Say About Society that Websites Where Angry Men Shame Their Ex-lovers Are Thriving?, theguardian (Jan. 28, 2013, 5:23 PM), http://www.theguardian.com/commentisfree/2013/jan/28/revenge-porn-degrades-women; see also Anupam Chander, Youthful Indiscretion in an Internet Age, in The Offensive Internet: Speech, Privacy, and Reputation, supra note 5, at 124, 124-26; Lorelei Laird, Striking Back at Revenge Porn: Victims Are Taking On Websites for Posting Photos They Didn't Consent to, 99 A.B.A. J. 45, 46 (2013); Mary Elizabeth Williams, The War on 12-Year-Old Girls: An Epidemic of High-Profile Trolling Is a Testament to How Pathological Misogyny Is--and How Early It Begins, Salon (Oct. 19, 2012, 3:05 PM), http://www.salon.com/2012/10/19/the_ war_on_12_year_old_girls/ (describing aggressive males who importune young girls to supply a picture of themselves, partially disrobed, and then place it on the Internet).

[23]   See Helen Norton, Setting the Tipping Point for Disclosing the Identity of Anonymous On-Line Speakers, 49 Wake Forest. L. Rev. (forthcoming 2014) (discussing the problem of anonymous Internet speech). The Internet's secrecy, coupled with a herd instinct, sets the stage for conspiracies and conspiratorial thinking. See Marc Fisher, The Term They Can't Come to Terms with: Reelection Hasn't

Dimmed the Counterfactual Theories of Obama's Most Fervent Foes, N.Y. Times, Jan. 15, 2013, at C1 (noting that the "Internet and cable TV have made it far easier to connect with like-minded souls").

24   See Citron, supra note 12, at 36-37; Micah S. Thompson et al., The Consequences of Communicating Social Stereotypes, 36 J. Experimental Soc. Pyschol. 567, 593-96 (2000) (noting that repeating stereotypes, as well as hearing them often, reinforces them, especially if they appear without contradiction).

25   See Solove, supra note 17, at 16-17.

26   See supra notes 1-3 and accompanying text (noting that exact quantification is difficult).

27   Waldron, supra note 1, at 37.

28   Not only will the remark remain potentially forever, injuring the feelings of the target, stereotypes engrain themselves in the minds of listeners and readers who hear them often, so that they begin to seem true. Tsesis, Hate in Cyberspace, supra note 1, at 847-53.

29   In a former life, Jean Stefancic served as a librarian for the Sierra Club and the University of San Francisco School of Law.

30   See Levmore & Nussbaum, supra note 20, at 1-3 (positing that the overall balance may well be positive); see also Alexander Tsesis, Challenges to Privacy in Cyber Transactions, 49 Wake Forest L. Rev. (forthcoming 2014) (noting the many positive features of the Internet).

31   See Tsesis, Hate in Cyberspace, supra note 1 (noting that the Internet "has made available...educational opportunities, increased citizens' role in government, given greater access to health related resources, made available library catalogues, and allowed people to find employment far from their homes. In those ways, it has been an invaluable tool for thriving democracies," but noting that it has also served as a tool for division and hate); Natasha Singer, Under Code, Apps Would Disclose Collection of Data, N.Y. Times, July 26, 2013, at B7 (describing a proposal to alert consumers "to decide at a glance whether [certain] apps are good for them").

32   See, e.g., Winnie Hu & J. David Goodman, Wake-Up Call for New Yorkers as Police Seek Abducted Boy, N.Y. Times, July 18, 2013, at A1 (describing computerized robocalls that arrived too early for many sleeping New Yorkers).

33   For some background on crowdsourcing as a means of solving problems, see, for example, Jeff Howe, Crowdsourcing: Why the Power of the Cloud Is Driving the Future of Business (2009). Crowdsourcing may also be a force for evil. See Jay Caspian Kang, Crowd-Sourcing a Smear: When an Insidious Rumor Went Viral in the Aftermath of the Boston Marathon Bombing, It Laid Bare the Dysfunctional Codependence Between New and Old Media, N.Y. Times Mag., July 28, 2013, at 36.

34   See, e.g., Online Dating, Life & Style, theguardian, http:// www.guardian.co.uk/lifeandstyle/online-dating (last visited Jan. 26, 2014) (featuring a blog in the Guardian's "Life & Style" section devoted to the subject of online dating).

35   See generally The Offensive Internet: Speech, Privacy, and Reputation, supra note 5 (noting, in practically every essay, that the Internet has brought both good and bad).

36   See, for example, any issue of the Southern Poverty Law Center's journal Intelligence Report for coverage of the center's efforts in this area. See also Abraham H. Foxman & Christopher Wolf, Letter to the Editor, Internet Hate Speech, N.Y. Times (June 3, 2013), http:// www.nytimes.com/2013/06/04/opinion/internet-hate-speech.html?_r=0 (noting that the "writers, national director and civil rights chairman, respectively, of the Anti-Defamation League" are writing a book on this issue). For information on a recent meeting of the group, see Jeffrey Rosen, The Delete Squad: Google, Twitter, Facebook, and the New Global Battle over the Future of Free Speech, New Republic (Apr. 29, 2013), http://www.newrepublic.com/node/113045/ (noting that "the Internet giants are grappling with the challenge of enforcing their community guidelines for free speech" in the face of demands, especially from Europe, for what the author considers "political censorship" endangering free speech). But see Citron, supra note 12, at 31 (noting that the Internet is rife with sexist and racist material and urging an application of civil rights law to this area).

37   See infra Part II.

38   See, e.g., Delgado, supra note 4; Mari Matsuda, Public Response to Racist Speech: Considering the Victim's Story, 87 Mich. L. Rev. 2320, 2320 (1989); see also Waldron, supra note 1 (drawing on these earlier works).

39   See Jon B. Gould, Speak No Evil: The Triumph of Hate Speech Regulation 5-7 (2005) (describing the effort by many universities and colleges to forbid hate speech).

40   Compare Nadine Strossen, Regulating Racist Speech on Campus: A Modest Proposal?, 1990 Duke L.J. 484, 523-61 (defending the free speech position), with Nadine Strossen, Professor, N.Y. Law Sch., & Immediate Past President, Am. Civil Liberties Union, Address at the Seattle University Law Review Symposium: Obscenity & Indecency Law: Why Howl Is Still Silenced (Apr. 5, 2013) (reminding her audience that eternal vigilance is the price of liberty). For examples of free speech originalism, see Levmore & Nussbaum, supra note 20, at 7 (discussing authors who urge broad protection for Internet speech) and Alexander Meiklejohn, The First Amendment Is an Absolute, 1961 Sup. Ct. Rev. 245, 245-66.

41   See Waldron, supra note 1, at 2-10, 33 (arguing that this would be an unfair burden).

42   See id. (noting that the former, at least, is all too common).

43   Namely, that the war against hate speech has been largely won and that a new norm has entered the public arena.

44   See Virginia v. Black, 538 U.S. 343, 347-48 (2003).

45   See UWM Post, Inc. v. Bd. of Regents of Univ. of Wis. Sys., 774 F. Supp. 1163, 1165-67, 1181 (E.D. Wis. 1991) (invalidating a student conduct code that prohibited hate speech at the University of Wisconsin); Doe v. Univ. of Mich., 721 F. Supp. 852, 856-57, 867-69 (E.D. Mich. 1989) (striking down a similar code at the University of Michigan); Gould, supra note 39, at 123-48 (describing a number of lower court actions).

46   See, e.g., Judy Faber, CBS Fires Don Imus over Racial Slur, CBS News (Apr. 12, 2007, 7:53 AM), http://www.cbsnews.com/news/cbs-fires-don-imus-over-racial-slur/.

47   See Erica Ritz, "To All You Black Mother****ers": Newspaper Apologizes After Racist Rant Gets Printed in Anonymous Comments Section, Blaze (July 23, 2013, 2:32 PM), http://www.theblaze.com/stories/2013/07/23/to-all-you-black-motherers-newspaper-apologizes-after-racist-rant-gets-printed-in-anonymous-comments-section/ (recounting a newspaper's apology for printing an anonymous letter to the editor containing offensive material); see also David Carr, Networks Condemn Remarks by Imus, N.Y. Times (Apr. 7, 2007), http:// www.nytimes.com/2007/04/07/arts/television/07imus.html?_r=0.

48   See supra notes 38-39 and accompanying text.

49   Until recently, gay rights, including the right to marry, was another.

50   See infra Part II; see also Citron, supra note 12, at 33 (noting that concerted "Google bombing" by sadists can elevate the location of derogatory material accusing a victim of character deficiencies); Brian Leiter, Cleaning Cyber-Cesspools: Google and Free Speech, in The Offensive Internet: Speech, Privacy, and Reputation, supra note 5, at 155, 155 (noting that several search engines compound this problem when they arrange sites in response to search requests or number of links). Much Internet speech is anonymous (i.e., devoid of self-identification). See Saul Levmore, The Internet's Anonymity Problem, in The Offensive Internet: Speech, Privacy, and Reputation, supra note 5, at 50, 50 (noting that defamation that is anonymous is much more damaging than the kind that emanates from a soapbox or newspaper article).

51   Many believe that books will soon be supplanted by e-books, blogs, self-published writings, and other online materials. See, e.g., Do Books Have a Future: An Interview with Robert Darnton, Piece Monologue (Apr. 1, 2012), http:// www.apieceofmonologue.com/2012/01/robert-darnton-interview-google-books.html.

52   See Richard Delgado, When a Story Is Just a Story: Does Voice Really Matter?, 76 Va. L. Rev. 95, 106 (1990).

53   Id.

54   See infra Part II. Online identities are often fluid, even creative and whimsical. See Michiko Kakutani, Unraveling Brothers' Online Lives, Link by Link, N.Y. Times, Apr. 24, 2013, at A1 (noting "the complexities of online identity--of the ways in which people strike poses and don masks on the Web (which can sometimes turn into self-fulfilling prophecies), and the ways in which the Web can magnify or accelerate users' interests and preoccupations").

55   Previously we thought that this avenue held promise. See Delgado & Stefancic, supra note 4, at 126-28. Now we are less sanguine because courts have rejected regulations protecting children, see id. at 93-109, a highly protected group, and thus seem even less likely to approve regulations protecting minority adults from Internet-based harms. See Frederick Schauer, Harm(s) and the First Amendment, 2011 Sup. Ct. Rev. 81, 83 (doubting that Congress and the judiciary will welcome new efforts to regulate expressive harms, including those inflicted through electronic means, such as violent video games); Tsesis, Hate in Cyberspace, supra note 1, at 820-31, 863-72 (noting that courts often decline to review Internet speech on the ground that jurisdiction is lacking because cyberspace does not occupy space in a physical sense, but nevertheless proposing legal and commercial solutions). But see Frank Pasquale, Reputation Regulation: Disclosure and the Challenge of Clandestinely Commensurating Computing, in The Offensive Internet: Speech, Privacy, and Reputation, supra note 5, at 107, 107 (suggesting a "Fair Reputation Reporting Act" to control slanderous material on the Internet); Solove, supra note 17, at 21-23 (suggesting common-law tort remedies). Note that section 230 of the Communications Decency Act, 47 U.S.C. § 230 (2012), immunizes Internet providers and managers from lawsuits by deeming them not publishers of material that appears on their site.

56   See Somini Sengupta, Free Speech in the Age of YouTube, N.Y. Times, Sept. 23, 2012, at SR4 (noting that "Google, Facebook, and Twitter receive hundreds of thousands of complaints about content every week" and resist most efforts to delete material); Rosen, supra note 36 (doubting that "the big Internet companies" will draw a line or institute "tougher rules on hate speech," but noting that "the quest for the perfect screening system continues"); supra notes 47, 50; see also Ruben Rodrigues, Privacy on Social Networks, in The Offensive Internet: Speech, Privacy, and Reputation, supra note 5, at 237, 255 (describing the vision of Facebook as a participatory democracy that is sensitive to consumers' wishes, feelings, and privacy as "illusory").

57   See Citron, supra note 12, at 33-34; Tsesis, Inflammatory Speech, supra note 1, at 1167.

58   See Delgado & Stefancic, supra note 4, at 125.

59   Id. at 126. The victim might decline to respond for fear that doing so might spur the hate speaker to new heights of vituperation.

60   A website is a collection of electronic documents or pages served by a single address or domain. See Web Site, Merriam-Webster, http://www.merriam-webster.com/dictionary/web+site?show=0&t=1396366393 (last visited Apr. 1, 2014).

61   Tsesis, Inflammatory Speech, supra note 1, at 1168 (noting that "Web pages can stay up indefinitely and affect an impressionable visitor's behavior...years afterwards").

62   Steven K. Baum, Essay, Fiction Outsells Non-Fiction, 43 Loy. U. Chi. L.J. 413, 423 (2012); see Delgado & Stefancic, supra note 4, at 125 (listing a similar figure reported by the Southern Poverty Law Center).

63   Baum, supra note 62, at 423-24 (emphasis omitted) (noting that Rwandan courts understand that words can kill and observing that "[f]ree speech principles do not appear to apply to the Internet"); see also Citron, supra note 12, at 37 (noting that Web 2.0 platforms can create a subjective feeling of closeness among "like-minded" individuals who affirm each other's negative views and thus become increasingly extreme).

64   Delgado & Stefancic, supra note 4, at 126.

65   Lindsay S. Feuer, Note, Who Is Poking Around Your Facebook Profile?: The Need to Reform the Stored Communications Act to Reflect a Lack of Privacy on Social Networking Websites, 40 Hofstra L. Rev. 473, 480-82 (2011).

66   Doug Gross, Facebook to Let Users Create Personal Groups, CNN (Oct. 6, 2010), http://www.cnn.com/2010/TECH/social.media/10/06/facebook.event/.

67   Karen M. Bradshaw & Souvik Saha, Academic Administrators and the Challenge of Social-Networking Websites, in The Offensive Internet: Speech, Privacy, and Reputation, supra note 5, at 140, 144.

68   See Solove, supra note 17, at 16-22; Tsesis, supra note 30 (noting the permanence of much Internet material). For a discussion on the way merchants and governmental snoops comb, filter, and sort the content of Internet messages, see, for example, Sue Halpern, Are We Puppets in a Wired World?, N.Y. Rev. Books (Nov. 7, 2013), http:// www.nybooks.com/articles/archives/2013/nov/07/are-we-puppets-wired-world/.

69   See United States v. Fumo, 655 F.3d 288, 331 (3d Cir. 2011) (Nygaard, J., concurring in part and dissenting in part) (describing Twitter, a social networking site that allows users to send and receive short messages of up to 140 characters); Rodrigues, supra note 56, at 240.

70   See Henry Alford, Twitter Shows Its Rude Side, N.Y. Times, Apr. 28, 2013, at ST2 (noting that "[i]f Twitter is an excellent shopping mall full of boutiques offering specialized news and wit and opinion, it is also a crowded barroom that bristles with a certain kind of white male rage...marked by a hostility toward anything poetic or naïve" as well as vicious pranks, jokes, and comments).

71   See Kathleen Fitzpatrick, #shameonyou, Chron. Higher Educ. (Apr. 22, 2013), http://chronicle.com/article/shameonyou/138579/.

72   See Viacom Int'l, Inc. v. YouTube, Inc., 676 F.3d 19, 28 (2d Cir. 2012).

73   See Tsesis, Inflammatory Speech, supra note 1, at 1169. Its availability to the public at large, not merely those with passwords, makes it especially suitable for disseminating destructive messages. Id. at 1170.

74   See Sunstein, supra note 20, at 104-05.

75   The term is a contraction formed from the words "Web" and "log." See Blog, Merriam-Webster, http://www.merriam-webster.com/dictionary/blog (last visited Apr. 1, 2014).

76   See Jia Lynn Yang, Jilted Mistresses Exposing Chinese Officials' Corruption, Seattle Times (July 28, 2013, 11:48 AM), http://seattletimes.com/html/nationworld/2021488235_jiltedmistressesxml.html.

77   Howard Kurtz, Dan Rather to Step Down at CBS, Wash. Post, Nov. 24, 2004, at A1; see also Jennifer Schuessler, A Star Philosopher Falls, and a Debate over Sexism Is Set Off, N.Y. Times, Aug. 3, 2013, at A1 (describing how indignant bloggers called attention to a famous professor who exploited female students).

78   See Martha C. Nussbaum, Objectification and Internet Misogyny, in The Offensive Internet: Speech, Privacy, and Reputation, supra note 5, at 68, 85; Solove, supra note 17, at 23-25; Sunstein, supra note 20, at 104. The online comments sections of many blogs "are...full of vitriol." Michael Erard, Riff: "Wild Back Alleys Where People Sound Their Acid Yawps," N.Y. Times Mag., Sept. 22, 2013, at 50; see also Katrin Bennhold, Bid to Honor Austen Is Not Universally Acknowledged, N.Y. Times, Aug. 5, 2013, at A5 (noting that the proposal that Britain honor Jane Austen by placing her likeness on bank notes evoked a flood of misogynistic responses on Twitter). The aforementioned vehicles are by no means the only ones for online communications. "[T]he online world is moving so fast [that the average reader may] never catch up." David Pogue, A Scrapbook on the Web Catches Fire, N.Y. Times, Feb. 15, 2012, at B1. New online vehicles include Foursquare, Tumblr, LinkedIn, Instagram, Reddit, Path, and Pinterest, "a pinboard for online photos" that enables a user to display "a tidy array of all the images that appear on [a] current web page.... It's like virtual scrapbooking." Id. at B1.

79   See infra note 99 and accompanying text.

80   See, e.g., Gordon W. Allport, The Nature of Prejudice 326-32 (25th anniv. ed. 1979) (noting the attitude's ubiquity and situation-specific nature).

81   Id. at 330.

82   Id.; see also Richard Delgado et al., Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution, 1985 Wis. L. Rev. 1359, 1383-84 (discussing the American Creed and its role in countering discrimination).

83   Delgado et al., supra note 82.

84   Id. at 1383-84, 1387-88.

85   Cf. id.

86   See id. at 1385.

87   See id.

88   The reader may recall how President Bill Clinton exhibited a proper, even gallant, attitude toward women in public.

89   The same reader will no doubt recall how Clinton behaved quite differently on at least a few private occasions.

90   See, e.g., Mary Goodman, Race Awareness in Young Children 42 (rev. ed. 1970).

91   See Allport, supra note 80, at 281; Delgado et al., supra note 82, at 1385-86. Simple two-way discussion causes many individuals to moderate negative views that they may harbor of other groups. See Eugene Burnstein & Amiram Vinokur, Testing Two Classes of Theories About Group Induced Shifts in Individual Choice, 9 J. Experimental Soc. Psychol. 123, 132-33 (1973); David G. Myers & George D. Bishop, Discussion Effects on Racial Attitudes, 169 Sci. 778, 778 (1970).

92   See Delgado et al., supra note 82, at 1380-81.

93   See id. at 1385-86.

94   Id. at 1386.

95   Charles C. Moskos & John Sibley Butler, All that We Can Be: Black Leadership and Racial Integration the Army Way, at xii (1996).

96   See Delgado et al., supra note 82, at 1385-86.

97   Id. at 1385.

98   Id. at 1385-86.

99   Id.; see also Grutter v. Bollinger, 539 U.S. 306, 343 (2003) (approving university affirmative action programs that aim to produce a critical mass of diverse students). Distancing, by contrast, decreases fellow feeling and makes it more likely that an individual will feel little remorse at injuring or endangering another. Cf. Benjamin Ginsberg, The Value of Violence 54 (2013) (noting that the operators of military drones feel less remorse over ordering attacks that may take innocent civilian lives than those who drop the bombs directly from the air). For information on how social media may depersonalize and distract, see Leonard Pitts, Jr., Leonard Pitts: Social Media Can Be Deadly, Miami Herald (Oct. 12, 2013), http:// www.miamiherald.com/2013/10/12/3684283/leonard-pitts-social-media-can.html. See also Katrin Bennhold, Behind Flurry of Killing, Potency of Hate, N.Y. Times, Oct. 13, 2013, at A6 (noting that publicity about the defects of one's enemies can make "murder not just permissive but obligatory. We should kill vermin or predators").

100   See Delgado et al., supra note 82, at 1385-87.

101   Id. at 1387-88.

102   See Moskos & Butler, supra note 95.

103   Grutter, 539 U.S. at 308, 331.

104   See Moskos & Butler, supra note 95.

105   See Delgado et al., supra note 82, at 1391-96; Trina Grillo, The Mediation Alternative: Process Dangers for Women, 100 Yale L.J. 1545, 1549-50 (1991).

106   Delgado et al., supra note 82, at 1387-88.

107   Id.

108   See supra notes 91-104 and accompanying text.

109   See Sunstein, supra note 20, at 96-104 (discussing how the Internet can polarize and divide society into small groups of like-minded individuals who reinforce each other's beliefs and values); see also Frank Bruni, Op-Ed., Our Hard Drives, Ourselves, N.Y. Times, Nov. 17, 2012, at SR3 (noting that cyberspace gives some the illusion of protection, "freeing them to engage in a kind of explicit and assertive dialogue that two people sitting across from each other, or even talking on the phone, would in most cases be too shy to broach.... After all, how could a communion so faceless prompt a brutal unmasking?").

110   See Citron, supra note 12, at 43-47; Sunstein, supra note 20, at 96-104; Tom Hays, Cannibal Case Involving New York City Police Officer Blurs Lines of Fantasy, Reality, Daily Breeze (Oct. 26, 2012), http:// www.dailybreeze.com/general-news/20121027/ cannibal-case-involving-new-york-city-police-officer-blurs-lines-of-fantasy-reality (noting that Internet chats enabled members of a website "devoted to a fetish called 'vore'" to reinforce their common interest in sexualizing cannibalism, "the idea of being eaten whole and alive, eating another alive, or watching this process," and discussing a chat room that "spells out strict rules for participation").

111   See Sunstein, supra note 20, at 96-104 (describing group polarization).

112   See, e.g., id.; Jenna Wortham, Facebook Made Me Do It, N.Y. Times, June 16, 2013, at SR5. Confirmation bias, a well-known mechanism in social science, may be operating as well. See Confirmation Bias, Sci. Daily, http://www.sciencedaily.com/articles/c/ confirmation_bias.htm (last visited Apr. 1, 2014). In confirmation bias, a person pays particular attention to evidence that confirms his or her preexisting beliefs and devotes less attention to countervailing evidence. See id. With Internet searching and browsing, one is apt to come across opinions and messages that correspond to one's search description. For example, a searcher looking for evidence that vaccinations are dangerous and likely to cause the very disease that they ostensibly guard against is apt to find it. Even bizarre or deranged material is apt to find camp followers. See Steven Schlozman, The Harvard Doctor Who Accidentally Unleashed a Zombie Invasion, N.Y. Times Mag., Oct. 27, 2013, at MM46.

113   See Delgado et al., supra note 82, at 1386-89, 1391-98 (explaining how informal settings, which lack explicit rules governing action, are apt to invite lawless and antisocial behavior, particularly racism).

114   See Leonard Pitts, Jr., Technology Enhances Beer Muscles, Milwaukee J. Sentinel (May 29, 2012), http:// www.jsonline.com/news/ opinion/155480285.html (noting that the Internet's privacy encourages "flaming...with gleeful abandon you know they'd never dare display in the flesh and mortar world.... You can now frighten and alarm someone without leaving the comfort of your bed...[, creating a form of] Internet courage" and concluding that "[t]echnology will not make us better. There is no app for that"); see also Bruni, supra note 109 (noting that there is "a thrilling sense of isolation and permission.... Cyberspace gives people more than an illusion of protection. It gives them nerve, freeing them to engage in a kind of explicit and assertive dialogue that two people sitting across from each other, or even talking on the phone" would avoid).

115   See supra notes 80-82 and accompanying text.

116   Cyberspace has few rules; those that it has (no trolling, no lurking) are mostly voluntary.

117   See, e.g., Citron, supra note 12; Levmore & Nussbaum, supra note 20, at 2; Sunstein, supra note 20; Tsesis, Inflammatory Speech, supra note 1, at 1168-70, 1173.

118   See Editorial Board, supra note 17; Gedye, supra note 2 (noting a generalized "change in the portrayal of women in the media").

119   See supra notes 1-3, 50-54 and accompanying text (noting this trend).

120   See Jerry Kang, Trojan Horses of Race, 118 Harv. L. Rev. 1491, 1491-93 (2005).

121   See supra note 55 and accompanying text.

122   See supra note 56 and accompanying text.

123   For more information on the talking-back approach, see, for example, Delgado & Stefancic, supra note 4, at 35, 207.

124   See id. at 207 (discussing a more-speech approach); see also Baum, supra note 62, at 424 ("One may try to replace 'bad' web pages with 'good' web pages, but research suggests that people will choose to seek the bad websites out and that few are interested in obtaining a balanced view. Hateful social beliefs will endure because as a species, we remain hopelessly more fascinated by the salacious than by the salubrious.").

125   See Richard Delgado & David H. Yun, Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate-Speech Regulation, 82 Calif. L. Rev. 871, 878-80 (1994).

126   Id.

127   See supra notes 23, 50 and accompanying text (discussing this feature of Internet speech); see also Levmore & Nussbaum, supra note 20, at 3; Pasquale, supra note 55, at 113 (suggesting a "Fair Reputation Reporting Act" to control anonymous slander on the Internet).

128   See supra notes 46-47 and accompanying text (describing the new norm against hate speech); see also Wortham, supra note 112 (noting how internet use generates its own positive reinforcement through a chorus of "likes" and "right ons" that increases the likelihood that viewers will act on these feelings later). At times, the positive reinforcement loop works via a multiplier effect. An individual defaces a wall or park bench with a hate-filled graffito disparaging Jews, say, or blacks. Someone takes a photograph of the graffito and puts it on the Internet, thus multiplying its exposure tens of thousands of times compared to the relatively small number of passersby who might otherwise see the graffito while on a walk in the park. See Felicity Barringer, As Vandals Deface U.S. Parks, Some Point to Online Show-Offs, N.Y. Times, June 5, 2013, at A1 (explaining that social media provide instant gratification, which "could stimulate the impulse to deface").

129   See Richard Delgado & David Yun, The Neoconservative Case Against Hate-Speech Regulation--Lively, D'Souza, Gates, Carter, and the Toughlove Crowd, 47 Vand. L. Rev. 1807, 1816 (1994) (describing the "toughlove" position favored by some defenders of hate speech); see also Waldron, supra note 1, at 154-55 (noting that hate can induce minorities to avoid participation in public life so that the system of free speech ends up less vibrant than before).

130   That is, the victim first endures an affront then receives the unwelcome news that he or she is expected to toughen up in preparation for more of the same.

131   See Delgado & Stefancic, supra note 4, at 210-11 (discussing this argument).

132   Id.

133   See supra notes 23, 50, 114 and accompanying text (discussing this feature); see also Waldron, supra note 1, at 95 (urging that even if counterpressure drives hate speech underground, that is a good thing).

134   The Supreme Court is an exception, supporting regulation on the few occasions when it has considered such speech. See Virginia v. Black, 538 U.S. 343, 363 (2003) (upholding a Virginia law that "outlaw[s] cross burnings done with the intent to intimidate"); Beauharnais v. Illinois, 343 U.S. 250, 251, 266-67 (1952) (upholding an Illinois law that made it a crime to "exhibit in any public place" any publication that "portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion," which "exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy").

135   Black, 538 U.S. at 343.

136   See Delgado & Yun, supra note 125, at 883.

137   See Delgado & Stefancic, supra note 4, at 61.

138   Id. at 62.

139   Id. at 63-66.

140   See id. at 127 (explaining that "most hate speech on the Internet will not be considered threats, harassment, fighting words, or libel, since it is generally directed broadly and not at a particular person").

141   See supra notes 23, 109 and accompanying text.

142   See supra notes 50, 110-12 and accompanying text.

143   See supra notes 22-23, 117 and accompanying text.

144   See Eric Pfanner & Somini Sengupta, A Battle to Unmask Twitter Users, N.Y. Times, Jan. 25, 2013, at B4 (describing one such effort "prompted by a spate of anti-Semitic writing on Twitter last year, including hashtags, or topical themes, like 'a good Jew is a dead Jew'" and "jokes about the Holocaust").

145   See Levmore, supra note 50, at 56-59 (noting that the anonymous quality of much Internet communication places the speaker beyond accountability or sanction).

146   See Scott Talkov, 9th Circuit Unmasks Anonymous Online Speakers, Cal. Litig. Att'y Blog (Jan. 16, 2011), http://www.rhlaw.com/blog/9th-circuit-unmasks-anonymous-online-speakers/.

147   Young people, however, are as susceptible to the herd instinct as anyone else and may reflexively adopt group values and loyalties. See, e.g., Vivian Yee, Statutory Rape, Twitter and a Generational Divide, N.Y. Times, Apr. 5, 2013, at A16 (noting that teens in a Connecticut high school employed Twitter to back football players who allegedly raped two thirteen-year-old girls and to depict the girls as whores bent on destroying the football players' lives). For a discussion on the manner in which homogeneous groups tend to become more extreme through deliberation and exchange of views, see Citron, supra note 12, at 36-37.

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