# Hazelwood Neg

### Notes

Please read the aff notes section first.

When negating the Hazelwood case you need to answer some important arguments from the case

1. Slippery Slope- the affirmative has to win that the ruling affects more than just a few schools. The evidence to answer this argument says that the ruling is not being used to restrict major amounts of student speech.

2. Journalists Key-the affirmative argues it is uniquely important to protect the speech of journalists. The negative evidence says journalists aren’t being hurt by the current precedent

3. Speech checks the Government- this is a primary aff impact claim. This is a common first amendment argument- the evidence in this section argues that any speech that actually threatened the government would never be allowed.

## Censorship Advantage Answers

### 1NC — Censorship Advantage Answers

#### No censorship now — state legislatures are already passing anti-censorship laws.

Wheeler 15

(DAVID R. WHEELER. SEP 30, 2015. “The Plot Against Student Newspapers?” <http://www.theatlantic.com/education/archive/2015/09/the-plot-against-student-newspapers/408106/> )

In response to the Governors State University case, Illinois legislators passed the Illinois College Campus Press Act, which explicitly could have no editorial control or censorship abilities. The Illinois law makes exceptions for threats, harassment, and intimidation, among other types of unlawful speech. Eight other states have passed laws protecting high-school newspapers, college newspapers, or both. Indiana has no such law. And even if it did, it wouldn’t apply to Butler University, which is private. Only California has a law extending protection to student expression at private schools. Named for Republican State Senator Bill Leonard, California’s “Leonard Law” was passed in 1992, but was amended in 2006 to include colleges and universities. The fact that colleges and universities were added later reflects an interesting historical trend: In earlier decades, it was assumed that college students were adults under the law and therefore had the same First Amendment protections as any other reporters. When censorship of college newspapers began increasing in the 2000s, other state legislatures, **including Oregon (2007), Illinois (2008), and North Dakota (2015),** began passing laws explicitly protecting college newspapers from censorship.

#### No spillover to other areas — courts won’t allow speech restrictions.

Madigan, AG IL, 05

(Lisa, 2005 WL 3607214 (U.S.) (Appellate Petition, Motion and Filing) Supreme Court of the United States. Margaret L. HOSTY, Jeni S. Porche, and Steven P. Barba, Petitioners, v. Patricia CARTER, Respondent. No. 05-377. December 28, 2005. On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit Brief in Opposition Lisa Madigan, Attorney General of Illinois, Gary Feinerman, Solicitor General, Mary E. Welsh\*, Assistant Attorney General, 100 West Randolph Street, Chicago, Illinois 60601, (312) 814-2106, Counsel for Respondent. \*i QUESTION PRESENTED)

II. This Case Is a Poor Vehicle For Determining If and How Hazelwaad Applies to Post-Secondary Schools. However interesting and important may be the question of if and how Hazelwood applies to post-secondary schools, this case is not the right vehicle for resolving that question, on at least two grounds. One is that what petitioners want is this Court’s advice about the Seventh Circuit’s reasons for holding in their favor on the merits (i.e., the first Saucier prong). Even if this Court were to “reverse” that reasoning, reversal would be without any effect on the court’s ultimate qualified immunity holding (i.e., the second Saucier prong). The other reason this case is a poor vehicle for addressing Hazelwood’s applicability to non-public forums at colleges is that petitioners’ speculation about the dire consequences of the Seventh Circuit’s reasoning are premature at best. Nothing in the opinion indicates that courts will be more likely to hold that a college forum is nonpublic in nature (and thus subject to Hazelwood’s deferential standard) or that colleges will be more likely to impose more and greater restrictions on speech.

#### Student journalists not key — newspaper staffs reproduce elite views.

Elliott 7 — (Justin Elliott. September 6, 2007. “The Racial Politics of College Newspapers.” <https://www.thenation.com/article/racial-politics-college-newspapers/>)

It is a persisting state of affairs: College papers are the province of mostly well-off white and Asian students. African Americans and Latinos are underrepresented compared to the student body or absent altogether. Incidents like the one at K-State–every paper has its own stories of editorial blunders and community protest–occur with a regularity that should no longer be surprising. Why do these editorial mistakes follow from the lack of diversity on staff? Because in campus journalism, where there are few press releases, word of mouth is everything. Thus when the campus paper is run by students from a certain demographic, coverage tends to mirror the concerns and perspectives of that demographic. Right now, top editors at college newspapers everywhere are gearing up for the annual fall recruiting push. Before the grind of putting out a daily paper consumes their schedules and wreaks havoc on their social lives, this is the moment when they may pause, consider the monolithic racial makeup of the staff and wonder, what is to be done? There are lessons to be learned from several papers around the country that have begun to deal with racial and socio-economic disparities. But it’s far from clear whether these new efforts will work. History seems to be against them.

#### No slippery slope — empirics prove.

Muravchik, PhD, 10

(Joshua Muravchik has been recognized by the Wall Street Journal as “maybe the most cogent and careful of the neoconservative writers on foreign policy.” He is a fellow at the Foreign Policy Institute of the Johns Hopkins University School for Advanced International Studies and formerly a resident scholar at the American Enterprise Institute. He has published more than three hundred articles on politics and international affairs, Free Speech and the Myth of the Slippery Slope, World Affairs Journal, October 15, 2010 http://www.worldaffairsjournal.org/blog/joshua-muravchik/free-speech-and-myth-slippery-slope)

Moreover, a wealth of political history suggests that the slippery slope is a phantom. Almost all European countries ban “hate speech” and many ban Holocaust-denial. This goes against the American grain, but those countries have not sacrificed any other freedoms as a result. Or consider West Germany. The Americans and Germans who framed the Basic Law of the Bonn Republic worked in the terrible shadow of Hitler’s destruction of the Weimar Republic, Germany’s only prior democratic experiment. They were also in uncomfortable proximity to Soviet-run East Germany. So they banned both the Nazi and Communist Parties on the grounds that they were totalitarian movements, aiming to destroy democracy itself. Far from turning into a slippery slope, under this system freedom took hold in Germany at long last and apparently forever. What about America’s experience? The ambit of tolerated speech has grown relentlessly wider. In the realm of obscenity standards, we have gone from Lady Chatterly, to bare breasts, to full frontal, to pictorial gynecology. If there is any slippery slope, it seems to be tilted in the opposite direction from the one invoked by conventional wisdom. Were the court to uphold some constraints on speech, that would merely put us back to some earlier point in the unfolding of American free speech standards. When we were at that point, whatever and whenever it was, we did not slide downward to dictatorship but forward to where we stand today. Where is the danger? I can think of no example in which rights disappeared down a slippery slope. Yes, the Communists used “salami tactics” in subjugating Eastern Europe, but the progressive loss of freedom was scarcely unforeseen. The Kremlin was bent on imposing its model of totalitarianism one way or another on the countries its troops occupied; the salami slices merely made the going smoother. The slippery slope peril is a myth, much like the libertarian bogeyman that the welfare state will lead to dictatorship. In practice, European and other countries have infringed economic freedom without any loss of political freedoms. And they have also constrained speech in ways that most Americans (including me) wouldn’t do but with no further loss of freedom. A sovereign, self-governing people is capable of drawing lines. To argue by imagery and analogy, as does the conventional wisdom apotheosized by the Times, rather than by logic and history, is, you might say, to step onto a slippery slope at the bottom of which lies lots of freedom of thought but very little thinking.

#### Marketplace of ideas fails — the truth doesn’t win out.

Redish, Law@NU, 82

(Martin H, University of Pennsylvania Law Review, Vol. 130, No. 3 (Jan., 1982), pp. 591-645)

The "marketplace-of-ideas" concept, in its use as a defense of free speech, has often been subjected to savage attack,9' and to a certain extent the attacks have been entirely valid. In one sense, the theory appears to suffer from an internal contradiction: the theory's goal is the attainment of truth, yet it posits that we can never really know the truth,92 so we must keep looking. But, if we can never attain the truth, why bother to continue the fruitless search? More importantly, any theory positing that the value of free speech is the search for truth creates a great danger that someone will decide that he finally has attained knowledge of the truth. At that point, that individual (or society) may feel fully justified, as a matter of both morality and logic, in shutting off expression of any views that are contrary to this "truth." To be sure, Mill would not have accepted such reasoning. He believed that even views that we know to be false deserve protection, because their expression makes the truth appear even stronger by contrast.93 But acceptance of Mill's initial premise that the goal of free speech is the ultimate attainment of truth does not necessitate acceptance of this second premise. For, as Dean Wellington has argued, "[i]t is naive to think that truth will always prevail over falsehood in a free and open encounter, for too many false ideas have captured the imagination of man." 94 Therefore, if the only value of free speech were the attainment of truth, we might persuasively argue that the view that the Earth is the center of the Universe does not deserve constitutional protection, because we know the truth to be different. Perhaps we could further conclude that constitutional protection should not be given to the assertion that cigarette smoking does not cause cancer, because the Surgeon General has already discovered the truth about this subject; the same could be said about the view that certain races are genetically inferior, since we know that all men are created equal. The danger-one that Mill would undoubtedly neither expect nor condone-should by now be clear. (616-17)

### Extend: “No Censorship Now”

#### Their claims are popular in the media because they sound dramatic – college learning environments operate openly and smoothly, even the most sensitive subjects are fine.

Moreno, PhD, 16

(Jonathan D. Moreno, Warning: My Class Is One Big Trigger, Sep 07, 2016, Huffington Post http://www.huffingtonpost.com/jonathan-d-moreno/warning-my-class-is-one-b\_b\_8099466.html)

We’ve been hearing a lot these days about trigger warnings as a phenomenon in American higher education, that teachers are being expected to warn their students if assigned material might upset them. Respected social scientists have argued that trigger warnings pose a serious problem with modern academic culture by impeding students’ growth and exaggerating their sensitivities. There have been several high-profile incidents involving the withdrawal of speaking invitations and some professors have complained that they feel constrained in what they can teach. I must have missed that memo. Anyway, it doesn’t describe the university I know. I’ve seen no evidence that education has been stifled. And if instructors are giving more such warnings, so what? If this practice had the dire consequences that critics of American higher education sometimes claim the typical course catalog would be a lot smaller than it is. Here, for example, are some of the topics and cases I will cover in my bioethics class this fall: Male impotence; physicians who have sex with their patients; a severely burned young man’s request to die; a female college student who was killed by a mentally ill suitor; a young woman with cancer whose doctor helps her end her life; post-traumatic stress disorder; genetically transmitted disease; exploitive human experiments and gender identity. And that’s only a partial list. I’ve taught this course at the University of Pennsylvania since 2008. Every time I offer it student demand exceeds the formal registration limit, as it has this fall. (I can’t take all the credit for the course’s popularity. The issues are compelling and I do show a lot of illustrative film clips, though some of them are disturbing, too.) Long before all the trigger talk started I’ve been giving two warnings the first day of class: first, that in our discussions someone might feel compelled to mention their own medical problem or that of a member their family but that I can’t guarantee confidentiality; second, that they might find a film depicting a disfigured patient disturbing. I regard these warnings as a courtesy, not correctness. But otherwise the beat goes on. Jewish students learn about the vicious concentration camp experiments that inspired modern research codes; African-American students sit through lectures about the syphilis study; feminists hear me talk about fertility clinics that cater to parents who want a male child; gay men read about being excluded from giving blood because of HIV fears; students on medication for hyperactivity disorder have to think about the way some of their peers use the same drugs to enhance their performance. If campuses truly are permeated by political correctness put me down as an equal opportunity offender. In spite of the intensity of the subject matter, I’ve found that when my undergrads get annoyed at me it’s usually because I’m late getting my slides up on the course website, not because I’ve broached emotionally difficult material. They seem to understand that there’s no other way for me to teach this course. Nor are people in their late teens and early twenties necessarily taken aback by what us oldsters might expect. Once while teaching a late afternoon class on ethical issues in gravely ill newborns a young man complained to me that he almost lost his lunch during a film of a baby being delivered. There was no complaint of emotional scarring but it did make me doubt the wisdom of his plan to study medicine.

### Extend: “No Spillover to Other Areas”

#### Most recent ruling actually promotes free press — petitioners won on the merits

Madigan, AG IL, 05

(Lisa, 2005 WL 3607214 (U.S.) (Appellate Petition, Motion and Filing) Supreme Court of the United States. Margaret L. HOSTY, Jeni S. Porche, and Steven P. Barba, Petitioners, v. Patricia CARTER, Respondent. No. 05-377. December 28, 2005. On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit Brief in Opposition Lisa Madigan, Attorney General of Illinois, Gary Feinerman, Solicitor General, Mary E. Welsh\*, Assistant Attorney General, 100 West Randolph Street, Chicago, Illinois 60601, (312) 814-2106, Counsel for Respondent. \*i QUESTION PRESENTED)

The other ground petitioners (and their amici) raise for granting their petition is a parade of horribles, which is based on their speculation that the Seventh Circuit’s dicta will have broad effects on other courts’ rulings on expressive activity. Pet. 28-29. Not one of the rulings they cite, however, concerns a college newspaper. Instead, the opinions concern completely different types of restrictions (speech codes and speech zones) and completely different types of speech (extracurricular, obviously private speech). Id. Petitioners likewise speculate that the decision “will surely accelerate the promulgation of such regulations across the nation.” Pet. 27-29 & nn. 12-13. In fact, petitioners won on the merits, and that ruling on the merits has “clearly established” the law for certain designated public forums in the Seventh Circuit. Thus, the effect of the Seventh Circuit’s opinion is more likely to be that college papers will be found not to be non-public forums and thus not subject to Hazelwood’s deferential standard. Petitioners’ rank speculation to the contrary is premature at best and illogical at worst. It is no reason for granting their petition.

### Extend: “Student Journalists Not Key”

#### Lack of diversity guts marketplace of ideas in student papers

Jeffries 15

(Tara Jeffries. November 11, 2015. “A lack of diversity in student media sparks frustration, debates across the country.” <http://www.splc.org/article/2015/11/lack-of-diversity-in-student-media-sparks-debates> )

“That lack of representation in the newsroom leads to a lack of representation in the newspaper, unfortunately,” she said. “The content is very flat, it’s very one-sided, and our diverse students aren’t reading us because they don’t see themselves or their lives reflected in the newspaper. And if students attempt diverse stories, because there’s no one else in the room to say, ‘Hey, that looks off,’ it runs the risk of stereotypical or downright offensive content.” For example, in the midst of a “See Your Stripes” campus-wide campaign encouraging students to embrace diversity at Clemson — whose mascot is an orange tiger — the Tiger News ran an infographic breaking down racial demographics on campus. The “white” category was depicted as orange, which Alexander said indicated to some students a bias toward whites as the “true orange” representatives on campus. And, sometimes, it’s not the stories that are published that cause problems, Alexander said. It’s what student reporters don’t cover. Covering issues central to diverse communities can entice students of color to read and join the newspaper, she said. “You have to be invested in the community,” Alexander said. “You have to show up, and you have to support [students of color]. You have to go to minority events, you’ve got to listen to their stories. As they see themselves represented, more students of color and students of diverse backgrounds will want to participate.”

### Extend: “No Slippery Slope”

#### There are institutional checks to their claims.

O’Loughlin 15

(Bridget O’Loughlin, Campaign Coordinator of the No Hate Speech Movement for the Council of Europe, Where should the limits to freedom of speech be set?, 04/06/2015, http://www.debatingeurope.eu/2015/06/04/where-should-the-limits-to-freedom-of-speech-be-set/)

I think this is an extremely pertinent question, and it’s certainly one that many people have been grappling with for some time now… Clearly, you have to be very, very careful because repressive governments have been known to use issues like hate speech to shut down social media and websites without just cause… This is something we need to guard against, and is why we need to look to instruments like the European Convention on Human Rights, and the way it’s been interpreted by the European Court of Human Rights, which has a lot of jurisprudence, a lot of case law, on the limits to freedom of speech in terms of hate speech, or incitement to criminal action or racism, etc. As soon as you’re speaking or writing in the public domain – be that speaking on a soap box in the street corner, or writing an article in a newspaper, or writing a blog which is sent out to millions of people on the internet – you’re in a public area and there have to be some limits on what you are or are not allowed to say… But, clearly, we also have to protect freedom of speech and not let this fight against hate speech be used as an excuse, which I think it is sometimes, to limit freedom of expression.

#### Regulations are crucial to the functioning of free speech

Farber, PhD Sociology, 2-27-17

(Samuel, Professor Emeritus of Political Science @Brooklyn College, <https://www.jacobinmag.com/2017/02/garton-ash-free-speech-milo-yiannopoulos/>)

Like many European liberals, Garton Ash often conflates freedom with the free market, seeing any state intervention as an attack on individual rights. This extends to his notable opposition to regulation, which he seems to associate with censorship. However, regulation is not only compatible with the protection of civil and political rights, it is essential to it. For one, regulation may actually promote free speech by allowing greater access to the media. Garton Ash recognizes the unequal access to the mass media, even citing A. J. Liebling’s famous dictum that “freedom of the press is guaranteed only to those who own one.” At the same time, Garton Ash rejects even modest measures to improve media access. For example, he is aware of but does not promote the Fairness Doctrine, obligating radio stations to provide airtime for opposing views on controversial issues, which was repealed in 1987. When the Federal Communications Commission adopted this principle in 1949, they did so based on the now-radical notion that the airwaves belong to the listeners, not the stations. Beyond the restoration of such modest measures, we have to look forward to the socialization (not statification) of the big media, putting it into the hands of popular, non-state organizations, in proportion to their size and importance in society. While that is not a demand that is actionable in the near future, it should be an important part of a radical critique of existing society and of a vision for a socialist and democratic future. Garton also explicitly criticizes the laws in many German states that establish the right of any individual, association, company, or public body to demand that a publication print a correction, free of charge, in a later issue. The correction must appear in the same section and in the same type size as the original statement. If need be, a judicial order in a civil court can enforce this rule. Garton Ash objects to these laws because he finds them ineffective in the era of social media. In this, the author once again fails to see rights as good in themselves, falling back into Mills’s consequentialism, and also underestimates the great power still exercised by newspapers like the New York Post and its global equivalents. Consistent with his anti-regulatory stance, Garton Ash argues that European laws granting the right to be forgotten are “indefensible in a society that believes in freedom of expression.” These laws, which allow individuals to have, after a number of years, items removed from the Internet that damage their reputation, do not violate free speech in any significant way. Indeed, in an era when asking job applicants about their criminal records is increasingly challenged, these right-to-be-forgotten laws express an egalitarian sensibility with important racial and class implications.

## Solvency Answers

### 1NC — Solvency Answers

#### Free speech doesn’t solve — first amendment rights don’t protect other rights.

Van Mill 17 — (David, PhD, Polisci@UWA, Free Speech and the State: An Unprincipled Approach)

Another important consequentialist claim on behalf of free speech can be found in Alexander Meiklejohn’s work on the American Constitution. He suggests that political speech is necessary for a proper engagement in politics by an informed and rational citizenry. Only when citizens have been exposed to a wide array of arguments and information will they be in a position to make good political judgements. He claims to find this commitment to self-government throughout the Constitution, but par- ticularly in the First and Fifth Amendments. Meiklejohn tells us that the First Amendment protects political speech, and the Fifth Amendment, which states that no one can be deprived of liberty without due process, protects speech more generally. He argues that, “[t]he principle of free- dom of speech springs from the necessities of the program of self-gov- ernment...it is a deduction from the basic American agreement that public issues shall be decided by universal suffrage” (1948, pp. 26–27).¶ It is unclear how he can know that “Congress shall make no law... abridging the freedom of speech” means that it refers primarily to political liberty and I find the claim that the Constitution embodies the idea of self- government even more opaque, unless this is understood in the limited sense of America being free from the control of a foreign government. The Constitution sets up institutions that are designed to limit participation and check majority rule; they are deliberately anti-democratic in nature. Great swathes of the population were barred from political participation by the document, so it is a mystery how universal suffrage can be deduced from it and it is a strange reading of the Constitution to suggest it promotes universal suffrage at the same time as it prevents the participation of women, the indigenous and the poor. It is positively perverse given that the Constitution also permitted slavery.¶ But let us give Meiklejohn the benefit of the doubt and assume he is right; the argument still does not ground anything like PIFOS. At most it protects speech that is deemed necessary for citizens to exercise self- government. Over the course of his life, Meiklejohn expanded his ideas about what type of speech is necessary for citizens to govern themselves. Originally he thought that only issues directly related to voting would be protected. Later he expanded his views and suggested that self-govern- ment required a citizen body that was intelligent, had integrity, and was devoted to the general welfare of society, all of which led him to argue for wider protections of speech. This still leaves a lot of communication unprotected and the argument that speech is necessary for democracy falls a long way short of a blanket justification of expression. Another problem is who decides, and how do they decide, the appropriate bound- aries around any notion of political speech. Alexander provides many examples where it makes no sense to try and parse off some speech as political and other speech as not, and he suggests that Meiklejohn’s position incorrectly “assumes as a metaphysical matter that we can separate expression into discrete units” (2005, p. 138).

#### Free speech must be justified consequentially — there’s no inherent value to speech.

Van Mill 17 — (David, PhD, Polisci@UWA, Free Speech and the State: An Unprincipled Approach)

Because speech takes place under conditions of sociability, its limits must be determined by the state rather than an abstract notion of rights. Consequentialism rather than rights theory has to be the foundational moral principle that guides the state; it has no choice other than to make decisions based on an assessment of how things are likely to turn out. It might decide to impose lots of limitations on what governments can do, and reify these as civil rights in a constitution, but any such decision has to be grounded in reasons based on an assessment of the costs and benefits of such choices. This applies to speech as much as anything else. No one cares very much about the freedom to make noise; certainly not enough to suggest that there is a right to raise a clamour. What we care about is making and hearing statements that have an impact on the world. But it is precisely because speech has consequences that it has to be regulated. There is no good reason why it would be better to let a liberal polity disintegrate rather than regulate speech. Rights talk tends to obscure this, and jeopardises good policy by paying insufficient consideration to prag- matic concerns.¶ The first question that has to be asked when determining the bound- aries of speech is “why is free speech important?” Whenever this question is answered we will also be given reasons why some speech can be pro- hibited. We will find that a lot of speech simply does not fit with the proffered justification and therefore does not warrant special protection. For example, one will have a hard time defending Holocaust denial if one justifies speech because it leads to truth. Nor could one defend infantile speech acts if the model for engaging in speech is based on the academic seminar. This does not mean speech that sits poorly with the justification should be banned, but it does mean there is no good reason for providing it with special consideration.¶ The heated debate about political correctness (PC) demonstrates this nicely. The usual claim of those opposed to PC is that it stifles free speech. This accusation is difficult to quantify. PC might, for example, limit the speech of white men but enhance that of minorities; I would need more data before reaching a conclusion. But the complaint itself tells us some- thing about the complex nature of speech. Why complain at all? The usual answer is that communication is muted by PC, which suggests we should oppose PC in the name of free speech itself. To accept this claim we need to know why speech is important (enter justification here). Once a justi- fication is proffered we again have an argument for why speech can be limited. Anyone disapproving of PC cannot do so on the grounds that they are opposed to regulating speech. They want to regulate speech but they want to do so in a different way than those who approve of PC. The demand to know why speech is important will always throw up reasons for why speech needs to be protected and why it can be limited. Speech is not equal and it is appropriate to have different levels of protec- tion. Judging the relative merits of speech is a difficult undertaking but the fact we set ourselves this task shows that we cannot privilege speech simpliciter. The most we can say is that some forms of speech are more deserving of protection than others. A more confronting conclusion now comes to the fore. As soon as we give reasons for why speech is important we also reveal underlying values that seem to be more fundamentally important than speech itself. Speech is exposed as an instrumental tool, valuable as a means to some good (autonomy, democracy and so forth) rather than being a good in itself. Speech gets its value by piggybacking on other, more important goods: it is always the subservient and never the dominant value. This leads to the conclusion that everything about the importance of speech becomes contextual. The “problem” of free speech is really about deciding what our goals are and how speech can help or hinder attaining them. In fact, to think of free speech as a problem to be resolved is the wrong approach; it is an inherent part of the social condi- tion and is something that needs to be managed rather than solved. The conclusion that speech is instrumental puts to rest any lingering notion that there is a human right to speech. There is no cordoned-off area of speech that is necessarily protected from state intervention. We can hold our opinions unmolested, but only sometimes can we express them. The idea that speech deserves special status unravels once we stop saying “three cheers for speech”, and start providing arguments for why it is important; this seems fatal for even mild forms of PIFOS. This is why I think it is better to talk of a liberty, rather than a right to speak. This freedom exists in the spaces where it has not been disallowed by the state. Speech will have to wedge itself into the nooks and crannies left over by the more important values it works to serve. This argument applies to any civil rights claim. The right to life, for example, is described as the most basic of all rights because if it is violated, all the others are extinguished along with it. Nevertheless, this right is limited and determined by the state. It can decide to allow or disallow the death penalty: it can decide to make abortion legal or illegal: it can decide to permit or prohibit euthanasia: and it can decide when and where to send young soldiers to war and to conscript them for this purpose if necessary. Because civil rights are “left- overs” it is not surprising that liberal states recognise different rights and protect them in different ways. And sometimes, they prefer to think in terms of liberties residing where the law is silent, rather than rights. This is the approach I prefer because we do not know whether it is appropriate to allow or prohibit speech in the abstract. This is why the boundaries of speech are better decided by parliamentarians than judges, and should be expressed in the form of regular legislation rather than entrenched rights.

#### Free speech doesn’t check the government.

Redish 82 — (Martin H, Law@NU, University of Pennsylvania Law Review, Vol. 130, No. 3 (Jan., 1982), pp. 591-645)

So described, Blasi's first amendment theory degenerates into little more than a means of fostering one individual's-presumably Professor Blasi's-political philosophy and foreign policy.74 What about the individual who believed that not bombing civilians in the Vietnam War would have been "misconduct"-someone who would assert that "if we are going to fight a war, let's win it; it's immoral to have our boys die in a limited war"-or who believes that assassinating certain foreign political figures-perhaps Castro or Hitler or Idi Amin-is morally dictated? Are only those who share the views on these issues described by Professor Blasi to receive the special protection given speech concerning the checking function? Such a result-oriented, content-based approach to free speech must of course be rejected, yet it seems to be the implication of Professor Blasi's description of, "official misconduct," for Professor Blasi's theory by its terms refers to conduct, rather than issues. Moreover, what about discussion of official conduct that, although perhaps not offensive to Professor Blasi, is considered by many to be so? Is it "misconduct" for the government to allow abortions? To pay welfare? Again, to deny the inclusion of speech concerning such official actions would constitute a wholly unacceptable interpretation of the first amendment on the basis of political or social viewpoint, for if the first amendment means anything it is that the level of constitutional protection cannot vary on the basis of differing viewpoints.75 (612-3)

### Extend: “Free Speech Doesn’t Solve”

#### Free speech doesn’t solve — first amendment rights lack formal justifications.

Van Mill 17 — (David, PhD, Polisci@UWA, Free Speech and the State: An Unprincipled Approach)

It should be obvious by now that I think the First Amendment should be thrown out or, if that is too radical, drastically changed, and worded in a way that removes judges from the process as much as possible. It would not be worth doing this, however, if the Amendment is simply replaced by another terse statement about free speech. All statements of this kind are inadequate because we do not know the appropriate limits to speech until we know the details of the situation. However, if this is the best that can be done, Bork’s suggestion might be apt; protect a narrowly defined area of political speech and leave the rest of speech regulation to the legislative branch. The First Amendment is certainly not a model that anyone else should copy. I think it is fair to say that if Americans were asked today to come up with a policy for how best to regulate speech, they would not begin with a statement that says the legislative branch of government cannot be involved in the process.¶ Because there is no formal justification of speech in the Constitution, the Amendment has taken on a mystical quality. If a justification had been provided for why speech is important, it would help to interpret what the Founders intended. Without a clear argument in favour of speech it is difficult to arrive at reasonable limitations on communication that can be supported by the text. This offers a very important lesson: provide a thorough theory of speech to go along with any constitutional statements, or even better, leave decisions about speech to legislatures. The First Amendment is useful, however, because it highlights a problem any civil rights claim faces. If a brief statement about a right to speech is to be of help, it will have to be very ephemeral in order to deal with the complex- ities of the topic; this will necessitate making the rights claim subservient to social interests. As I will soon demonstrate, this is the fate of human rights documents. I prefer, however, that elected politicians rather than unelected judges decide this sort of issue. I also think the discussion would be better served with a focus on whether there is a liberty rather than a right to speech, and it is to this topic in now turn.

### Extend: “Doesn’t Check Government”

#### Leaving moral determinations to the individual collapses coherence of speech

Redish, Law@NU, 82

(Martin H, University of Pennsylvania Law Review, Vol. 130, No. 3 (Jan., 1982), pp. 591-645)

Perhaps Professor Blasi did not intend to establish such a solipsistic view of the first amendment. At one point, he states that "[u]nder the checking value, that determination [of what actions can be considered misconduct] must be made by each citizen in deciding when the actions of government so transcend the bounds of decency that active opposition becomes a civic duty." 76 But Blasi's distinction of speech concerning official "misconduct" from speech about general governmental action collapses if the determination of what is official misconduct is to be left to the individual citizen. For how effective a limit would it be if any individual could render governmental action or inaction "misconduct" for first amendment purposes merely by characterizing it as such? (613)