TABOO LANGUAGE AND THE POLITICS OF AMERICAN CULTURAL GOVERNANCE

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Abstract

This dissertation project maps how interventions into bad language (writing with bad spelling and bad grammar) and taboo language (cursing, swearing, profanity, obscenity, and racial slurs) are used to create a national American culture which the United States claims to represent as a nation-state. As case studies, the project examines four domains of discourse and interventions: the creation of a standard American English with lexicographical and Victorian interventions into the discourse networks of U.S. print-capitalism, the juridical regulation of broadcast obscenity and hate speech, the medical treatment of people who curse uncontrollably (Tourette syndrome), and the technical regulation or algorithmic sorting of computer-mediated discourse. The project concludes that as discourse has become increasingly mediated by electronics, methods of cultural governance are being augmented with digital tools like predictive keyboards and coercive ergonomics designed to steer users away from taboo subjects and towards state sanctioned political discourse. By studying interventions into taboo language, this project addresses the historical exercise of power which determines whose expressions count as politically eligible and who counts as a member of the American nation.
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Introduction

Young persons must not only be furnished with knowledge, but they must be accustomed to subordination and subjected to the authority and influence of good principles. It will avail little that youths are made to understand truth and correct principles, unless they are accustomed to submit to be governed by them.

— Noah Webster, 1836

In February 2015, I suddenly began having trouble connecting my new laptop to the campus wireless network. Assuming it was the fault of unfamiliar software or a faulty configuration, I tried every trick I knew to get my laptop to connect without success. Finally, in what is always a humiliating experience for tech savvy people like me, I decided to call the campus technical support office to see if there was trouble with the network. The undergraduate assistant who answered took me through the basic diagnostics I had already run, tested the connection from their end, and finally took down my identification information and put me through to the support supervisor. The supervisor, similarly confounded by my inability to connect, asked me to bring my new laptop to their new building and see if they could fix it there. In the lobby of the IT building, I was greeted by an older woman who was pleasant, but noticeably avoided making eye contact and said she needed to meet with me privately to discuss my connectivity issue. I had a feeling I knew what was coming, though I was surprised it had not happened earlier. After we sat down in a small conference room and the supervisor produced an angry looking stack of documents, she told me the University had flagged my account for violation of the University’s Executive Policy E2.210: “Use and Management of Information Technology Resources” and E7.208: “University of Hawaii Systemwide Student Conduct Code.” Specifically, the use of the

1 David McClure, A System of Education for the Girard College for Orphans: Respectfully Submitted to the Board of Trustees (Isaac Ashmead, 1838), 43.
“BitTorrent protocol,” a popular protocol for file-sharing (legal and illegal), and the search or distribution of “obscenity” had been traced to my UH Username.

The supervisor told me that in response to a letter of complaint from the “Copyright Enforcement Group TEK International,” a copyright monetization firm (or “copyright troll” depending on who you ask) based in Los Angeles, the University had begun monitoring my Internet activity. After seeing “frequent” queries for keywords like “fuck,” “teen,” “bitch,” and “ass” coming from my computer, the campus network monitor had decided to block my access. The only way I could be reconnected, I was told, was to let her search my computer for illegally obtained files, remove any BitTorrent software, sign an acknowledgment that I had violated the Executive policies, and promise never to violate the policies again. Since I had not yet installed software or copied any files on my new laptop, I agreed to let her search the computer for offending software and files. I challenged her interpretation of the BitTorrent protocol as illicit, pointing out several legal uses of the protocol, and she begrudgingly agreed to amend the statement I had to sign so that I was agreeing not to use it for “illegal file-sharing.”

My searches were another matter. I explained that I was conducting a dissertation research project on “taboo language” to which she responded “that doesn’t sound like political science.” Rather than point out that I, and my committee, were better equipped to decide what counted as political science, I decided to give an example of a recent project—mapping the Google SafeSearch algorithm’s treatment of terms like fuck, bitch, and ass over time by entering them every morning on my laptop and recording how Google responded. This time the supervisor asked, in loud voice, “Why would anyone study that?!?”

**Why Study Cultural Governance Using Taboo Language?**

The supervisor’s question had an obvious answer. My use of certain words had made my language and me the object of scrutiny, attracting institutional interest and exciting several responses. Through textual, legal, psychological, and technical techniques my language and I had also become the subject of questioning and intervention. I had become the object and subject of institutional exercises of power. She would not have asked a historian who had discovered the unpublished journals of Napoleon Bonaparte why study and write about them, so why ask a political scientist why they would study the exercises of power bad and taboo language excites?

The IT supervisor’s question was not a question; it was a command and it was a judgment. She was commanding me to accept the authority of the University in separating legitimate from illegitimate
communications, allowing some modification of the confession I would be made to sign, but she was not allowing me to challenge the University’s authority in determining which communications it would count as legitimate and which were illegitimate (or the copyright trolls that require such surveillance of student search habits). Her question was also a moral judgment, evident from her pronunciation of the question as a statement. As Walter Kendrick describes in his study of pornography, “The very fact that a writer had chosen obscenity as a subject, instead of something innocuous, would impugn him.” The supervisor’s question assumed there must be something wrong with me for deciding to study taboo language. In my project, I discovered a set of common assumptions which tend to be made about people who use, let alone show interest in, taboo language. First, the assumption is often that people who use taboo language are of poor intelligence. Bad and taboo language is often used to identify speakers as members of the lower, vulgar, elements of society. Second, the supervisor assumed (and later stated in objection to my verbalization of the prohibited terms) that speaking without taboo or bad language was necessary for me to have my voice heard. My bad language was a barrier to our sharing a common language and a common viewpoint since it disrupted polite discourse with shocking, offensive, and nonstandard expressions. A third common assumption is that taboo language is a reflection of a weak, even immoral or dangerous, character. I chose these words when I could have used better or less offensive ones. Indeed, even after I convinced the supervisor that I had been authorized to conduct this research by my dissertation committee, she suggested I was only “doing research” as a cover and found it necessary to read aloud to me the preamble to the Executive Policy I had violated in order to underscore what I should be doing instead: “Academic institutions exist for the transmission of knowledge, the pursuit of truth, the development of students, and the general well-being of society. Free inquiry and free expression are indispensable to the attainment of these goals…The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the academic community.”

The preamble describes many of the key issues which drive contemporary popular and scholarly debates about language regulation. Its several references to “free expression” and other freedoms reflects the liberal approach to language regulation as a question of freedom which is necessary, guaranteed, but always also a “responsibility” for those who have it. Legal regulations of taboo language, for example, similarly make a distinction between content (obscenity) and the force or violence of an expression

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5 The linguist Edwin L. Battistella found similar general assumptions about bad language, but his focus is on the descriptive versus relative (or “realist”) debate within linguistics and not how these assumptions are a product of power relations. See Edwin L Battistella, *Bad Language : Are Some Words Better Than Others?* (Oxford; New York: Oxford University Press, 2005), 150.
6 *Executive Policy EP 2.210, Use and Management of Information Technology Resources.*
regardless of its content (hate speech), the intended purpose of communications (knowledge/truth), and potential recipients (students/vulnerable populations) who must be protected (children/students). The preamble also imagines communities, “society” and the “academic community,” and suggests that “the general well-being” and the “respect [of] general conditions” should be the aim of “institutions” and “all members.” In addition to providing justification for the University’s decision to block my use of the campus communications network, the preamble makes an argument about the role of language, and the proper use of “free expression,” in relation to the community. Thus, the document starts with a statement of commitment to the free expression it hopes to prohibit, control, place within limits.

Politics and Language Policing

Aristotle, often called the first political scientist, based his theory of politics on the distinction between animals capable of speech and animals capable of only making noise. In *The Politics* he argues that Nature “has endowed man alone among the animals with the power of speech. Speech is something different from voice, which is used by them to express pain our pleasure…Speech, on the other hand, serves to indicate what is useful and what is harmful…humans alone have perception of good and evil.”7 What made the human a political animal for Aristotle was the human’s ability to use judgment and deliberation, the basis of political activity, but Rancière challenges the Aristotelian formulation of politics by asking “how we can distinguish between an animal with mere voice and a human being with *logos*”8 What makes politics, says Rancière, is the disagreement over what should be counted as speech and disagreement over who gets to do the counting. Rancière describes “disagreement” as “a determined kind of speech situation: one in which one of the interlocutors at once understands and does not understand what the other is saying. Disagreement is not the conflict between one who says white and another who also says white but does not understand the same thing by it or does not understand that the other is saying the same thing in the name of whiteness.”9 In other words, disagreement is not the result of imprecise language, something which Samuel Johnson and Noah Webster would try to resolve with an “authoritative” dictionary, or misunderstanding which could be corrected with an explanation the way Freud imagined curing mental illness. Disagreement is, above all else, “a dispute over the object of the discussion and over the capacity of those who are making an object of it.”10

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10 Chambers, *The Lessons of Ranciere*, xii.
In Rancière’s reformulation, what Aristotle describes is not politics, but policing—a distribution of speaking bodies and the assignment of capacities for intelligibility which makes possible a distinction between noisy animals and speaking animals. Sometimes policing involves uniformed officers and the state apparatus, but for Rancière policing refers to “an order of bodies that defines the allocation of ways of doing, ways of being, and ways of saying…it is an order of the visible and the sayable…that this speech is understood as discourse and another as noise.”\(^{11}\) Politics, by contrast, is a rare event which breaks with order or “whatever shifts a body from the place assigned to it or changes a place’s destination. It makes visible what had no business being seen, and makes heard a discourse where once there was only noise.”\(^{12}\)

This dissertation makes use of the Rancierian approach to disagreement as the founding scene of politics and politics as an event “primarily [of] conflict over the existence of a common state and over the existence and status of those present on it,”\(^{13}\) but it also takes seriously Samuel Chambers’ recent argument that since politics is rare, and policing is everywhere, we should study “the nature, extent, structure (and structural weaknesses)”\(^{14}\) of policing rather than simply focus on the potentially more sexy political events as others using Rancière’s approach have tended to do.\(^{15}\) Rancière’s approach to policing is useful because it presents a distinctly non-liberal position from which to analyze language regulation, thereby escaping the liberal approach to politics which frames language regulation primarily as an issue of individual rights to “free expression” or “free speech” in relation to government and the state, and allows for an analysis of “what gives ‘power’ its power”\(^{16}\)—or what Foucault described as “governmentality.”

American Cultural Governance

For Foucault, governmentality expands the concept of politics from a legal concept of power which restricts action to one in which power is exercised through relationships.\(^{17}\) Foucault challenges

\(^{11}\) Rancière, *Disagreement*, 29.
\(^{12}\) Ibid., 30.
\(^{13}\) Ibid., 26.
\(^{15}\) Chambers refers to Todd May’s use of Ranciere in service of ancharistic confrontations with the police, and Davide Panagia and Michael Dillon’s “concept of police as little more than a foil for the more important argument about politics.” Ibid., 67–68.
state-centric theories of power, which “enables one to conceive power solely as law and taboo,” such as the description of states made by Machiavelli in The Prince where “there are several forms of government among which the prince’s relation to his state is only one particular mode; while on the other hand, all these other kinds of government are internal to the state or society.” Similarly, the dominant form of the European state system established by the Treaty of Westphalia describes a state-centric theory of power, for example agreeing that each prince would have the right to determine the religion of his own state and recognition of exclusive sovereignty of each state over its people, lands, and agents abroad.

However, instead of conceiving of power as a property of governments, and governments a property of the state or society, governmentality instead thinks of power as a product of a “plurality of forms of government and their immanence to the state.” Foucault saw a shift away “from the transcendent singularity of Machiavelli’s prince” and towards governmentality as an outgrowth of the Catholic Church in early modern France where it was “no longer a question of leading people to their salvation in the next world, but rather ensuring it in this world. In this context, the word salvation takes on different meanings: health, well-being (that is, sufficient wealth, standard of living),” the purpose of academic institutions according to the Preamble, “security, protection against accidents.” Thus, the rise of governmentality in early modern France coincided not so much with the secular nation-state as with a function of power which “has spread far beyond the church to inform the state’s modes of managing society.” Juridical conceptions of what gives language its power, as we will see, still try to draw a clear line between the power of the sovereign prince or state and other exercises of power, but in Methods and Nations, Michael Shapiro demonstrates that in response to challenges of sovereign power over economic, political, and territorial matters described in the Treaty of Westphalia, “states have been required, now more than ever, to perform their identities, to maintain their ontological as well as their practical statues as ‘nation-states’.”

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21 Foucault, “Governmentality,” 209.
22 Ibid.
25 Michael J. Shapiro, Methods and Nations: Cultural Governance and the Indigenous Subject, New edition (Routledge, 2003), 34.
Benedict Anderson has persuasively argued that the production of national consciousness in Western Europe was conditioned, in part, by invention of the printing press and the economics of literary consumption. According to Anderson, the initial market for early print commodities was the small community of Latin literate Europeans, which was quickly exhausted as the number of Latin texts was relatively small. The need to expand into new markets drove printers to publish in oral vernacular languages, decreasing linguistic diversity as printers assembled dialects into an arbitrary system of signs which “within the limits imposed by grammars and syntaxes, created mechanically reproduced print-languages capable of dissemination through the market.”

This homogenization of diverse oral dialects into fixed graphical representations broke the international Latinate public of Christendom into increasingly local “imagined communities.” For Anderson, the combination of the printing press and capitalism allowed “Speakers of the huge variety of Frenches, Englishes, or Spanishes, who might find it difficult or even impossible to understand one another in conversation, became capable of comprehending one another via print.”

This congealing of dialects into distinct national languages was, according to Anderson, a “largely unconscious process” which by the 17th century had coalesced European languages into their modern form. The slow consolidation of languages created the possibility for modern nations, with the French being tied together by their common use of a more or less stable French language and the English tied together with their common use of English, though Anderson acknowledges the formation of nation-states was not isomorphically determined by a national print-language. Anderson is primarily focused on the processes of national assembling enabled by print-capitalism, and so his study only briefly considers the “conscious manipulation” of languages by states like Thailand, Turkey and the USSR during the 20th century.

Shapiro, while drawing on Anderson, also resists Anderson’s separation of conscious and unconscious processes of national language formation. Both Anderson and Shapiro treat the “nation” as constructed narrative, but Shapiro also draws attention to the costs of nation-building, especially the nation-killing of indigenous peoples and ethnic communities contemporary cultural governance continues to involve. He also highlights the incompleteness of nation-building, demonstrating that this incompleteness allows for counter-narratives and resistance to nationalism, finding that “The nation-state is scripted—in official documents histories, and journalistic commentaries, among other texts—in ways that impose coherence on what is instead a series of fragmentary and arbitrary conditions of historical

27 Ibid.
28 Ibid., 45.
According to Shapiro, the “military and fiscal initiatives” of the Treaty of Westphalia and the “coercive and economic aspects of control have been supplemented by a progressively intense cultural governance, a management of the dispositions and meanings of citizen bodies, aimed at making territorial and national/cultural boundaries coextensive.” In contrast to Anderson’s more techno-centric view of nationalism arising from the technology of the printing press and capitalist economics, Shapiro treats governance “not as the management of a people who belong by dint of character or other distinguishing attributes within a discrete territory, but rather as a historical process in which boundaries are imposed, and peoples are accorded varying degrees of cultural coherence and political intelligibility—not on the basis of natural divisions, but as a result of the exercise of power.”

Contributions to the Study of Cultural Governance

This dissertation is indebted to Anderson and Shapiro’s analysis, but by looking at the regulation of bad and taboo language, it also contributes to their studies of nation-states and cultural governance in several ways. First, by looking at bad and taboo language, we can see that Anderson’s assertion that “Language had never been an issue in the American nationalist movements” is not accurate. Anderson acknowledges the effort of Noah Webster to establish an American language, but treats Webster as an exception rather than the rule. While it is true that the United States never formed an official language academy, that does not mean there were not sweeping and successful conscious efforts to manipulate the American language. In fact, Webster made many of the same observations as Anderson regarding print-capitalism as a force for national identity, which is why most of his efforts to regulate “bad” language, like Samuel Johnson in Britain before him, were interventions into print-capitalism through instruments like copyright and educational texts.

Second, the imagining of communities is a prominent feature of taboo language regulation in the United States, but much of this imagining is done by institutions and initiatives aimed at governing American culture. Judges regulating obscenity, for example, imagined both a national “community standard” and communities of vulnerable populations, especially children. Similarly, judges regulating racial slurs imagined different racial communities within, or beside, the dominant community and then manage the differences between communities. Digital language regulation and digital language control also involves imagining communities of homogeneous “users.” This also contributes to Shapiro’s

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29 Shapiro, Methods and Nations, 49.
30 Ibid., 34.
31 Ibid., xvii.
32 Anderson, Imagined Communities, 196.
understanding of cultural governance by demonstrating how the regulation of racial slurs shifts the initiative away from constructing a homogenous American nation and towards the production of several nations held together by the legitimate nation(s)-state, or what I describe as “American multi-cultural governance.”

Third, by examining cultural governance through the regulation of taboo language with Rancière’s approach to politics and policing, this project discovers various interventions being made into the conditions of possibility for expressions, contributing to Shapiro’s understanding of how cultural governance can be used to determine the “political intelligibility” of speakers and Anderson’s analysis of the role print technology has played in community formation. Using Rancière’s theory of politics and policing, this project approaches American cultural governance as a historical exercise of power which assigns speaking roles, determines whose expressions “count” as politically eligible and, drawing on Richard Helgerson, polices “who counts as a member of the nation.”33 Rancière’s approach to politics and policing is useful because it presents a distinctly non-liberal position from which to analyze language regulation and thereby escapes the liberal approach to politics which frames language regulation as an issue of “free expression” or “free speech.” Instead, by approaching cultural governance through Rancière and taboo language, this project is able to study the conditions under which language becomes subject to claims of free expression and a variety of interventions made before an expression is uttered. In other words, applying Rancière’s theory to taboo language allows a study of the “pre-speech” and “pre-diction” conditions which influence what can be said. For example, this framing allows me to reformulate the juridical question: “Is the word fuck obscene and therefore subject to regulation by the Federal Communications Commission?” to “Under what conditions do words become obscene and why do obscene words excite institutional regulation in the U.S.?” Similarly, Rancière’s theory of politics and policing allows me to reformulate the question framed by hate speech initiatives: “Is a racial slur a legitimate expression of dissent protected by the First Amendment or an assault on vulnerable communities protected by the Fourteenth Amendment?” to “How does a racial slur become subject to the juridical debate of free expression versus equal protection and how are communities injured by racism encouraged to describe that injury as a linguistic assault between citizens?” Interventions into pre-speech are most apparent in the chapter on digital language regulation, but against the grain of the prevailing notion that censorship is a prohibition or prevention of expressions I found that taboo language regulation almost always produces a discourse. Sometimes the discourses taboo language produces are in service of cultural governance, depoliticizing or removing governance from contestability like Webster’s interventions into American print-capitalism, and sometimes they are resistant to governance, but “the

nation” continues to be a central theoretical problem for regulators. This dissertation also contributes to the small, but growing, literature on taboo language presently dominated by psychologists and psychiatrists, linguists, and legalists.

Fourth, this project finds that techniques of cultural governance can become dislodged from the state and governmental institutions which developed them and appropriated by other institutions engaged in cultural governance, just as techniques developed outside the state or formal government are often incorporated into state-sponsored nation-building projects. One clear example is the U.S. government’s decision to take the Internet “public” by privatizing its network backbone and allowing private companies to develop their own backbones.34 Deregulating the Internet in this way allowed private companies to create censorship technologies and centralize services across a decentralized communications network, developing the technical capacities authoritarian governments use to block access to online content and gathering Internet activity into channels the NSA could tap for its mass surveillance program. Similarly, the reluctance of the newly constituted U.S. Congress to create an official language academy conditioned the possibility for Noah Webster’s “An American” dictionary, which in turned made possible Congress’ 1871 decision to make that dictionary a required text for the Indian schools the U.S. government funded as part of its project to assimilate Native Americans into the American nation by forcing students to use American English.35 At times, the United States directly sponsors nation-building initiatives and at other times nation-building is a byproduct of activities participants or institutions themselves may not be aware they are promoting. Anderson’s study of print-capitalism describes the development of modern nationalism as largely unconscious, but this project resists Anderson’s distinction between conscious and unconscious nation-building. Webster, for example, was usually very clear that he hoped his interventions would produce a homogenous American nation whereas mental health experts treating uncontrollable cursing rarely described the work they were engaged with as cultural governance. The more important political issue, I contend, is how the search for signs of conscious efforts is tied to intentionality and agency. This project’s study of hate speech, for example, demonstrates the how juridical discourse often tries to construct a return of “transcendent singularity of Machiavelli’s prince” where the authority of state-speech, intentional and endowed with absolute agency, is the final authority on all social matters. That chapter, however, also shows how neoliberal governmentality simultaneously asserts the sovereign power of the state to injure with language, through the juris-diction of the judiciary, and the sovereign power of individuals capable of injuring each other with language. The judges and legal scholars whose

writings I studied never identify their argument as contradictory or “neoliberal,” but the argument is there and it matters little whether they consciously considered the regulation of speech situations they proposed as a tool of American cultural governance. In other cases, cultural governance initiatives exceed or run counter to state-sponsored nation building projects. Shapiro points out that “the nation” is never complete and always in the process of being constructed, but where Shapiro focuses on state scripts and the “plurality of resistances” governance inspires which he calls “counter-scripts,” this project contributes to the literature on cultural governance by examining the ways in which techniques and capacities developed by one initiative can be extricated, modified, and re-deployed by another initiative as a functional tool of American cultural governance.

Why Study Cultural Governance Through Taboo Language?

Language we might now consider “bad” or “taboo” has probably always been a feature of speaking and writing. Ashley Montagu, in his seminal work The Anatomy of Swearing, goes so far as to speculate that the first spoken words (what Montagu calls the “primitive cry”) were probably curses. Whether or not anyone speaking or hearing these expressions in their first usage considered them to be curses, or if they are now simply the vestigial remnants of less evolved humans as Montague argues, is highly speculative and lacks any clear evidence. We know, for example, that Socrates’ use of “By the dog!” was considered a curse by the Ancient Greeks, the Ancient Ionian’s also considered “By the cabbage!” to be a curse, and that “By Hercules” was prohibited by Roman law but ultimately this evidence tells us very little if our goal is to define bad and taboo language. None of these expressions would be considered bad or taboo today, just as terms like fuck were not always understood to be taboo and are not always understood as taboo. Mikhail Bakhtin demonstrates in his study of the novel that even when using the same language there is a wide variety of distinct types of speech used by characters,

37 My reading of institutional capacity development is inspired by Sassen’s attempt to historicize globalization by examining how capacities developed within the nation-state become features of, for example, complex global economic systems in Saskia Sassen, Territory, Authority, Rights: From Medieval to Global Assemblages, Updated edition (Princeton, N.J.: Princeton University Press, 2008), 7–9.
39 Ibid., 26.
40 Ibid., 29.
narrators, and the author. He calls this phenomenon “heteroglossia,” which is more than simply the context in which an expression is used. In the novel, according to Bakhtin, that the act of writing or speaking requires the author or speaker to take a position; even if that position is only in choosing the dialect they will write or speak. Even mundane statements require some kind of dialectic position and Bakhtin gives the example of an illiterate peasant alternating between different dialects as he speaks to God, speaks to his family, sings a song, or tries to emulate high-class modes of speaking when petitioning his local government. This peasant speaks the same language, but does not always speak that language in the same way. These complexities complicate the literature’s prevalent reliance upon definitions, categories, and etymologies.

Writing Definitions, Categories, and Etymologies

Timothy Jay, in two important works of the literature Cursing in America and Why We Curse, begins his psychological studies by asking, “What is ‘Cursing’?” and, “What are ‘Dirty Words’?” The first chapter of Cursing in America is a categorized organization of different kinds of “dirty words” under the headings “Cursing,” “Profanity,” “Blasphemy,” “Taboo,” “Obscenity,” “Vulgarity,” “Slang,” Epithets,” “Insults and slurs,” and “Scatology” before explaining that the “Classification of dirty words into categories of usage or semantic taxonomies allows people interested in language to define the different types of reference or meaning that dirty words employ.” While Jay acknowledges that some words fall into different categories depending upon their use, his categorization is notably lexicographical. For example, Jay describes cursing as “Curse (vt): to call upon divine or supernatural power to send injury upon. Curse (n): a prayer or invocation for harm or injury to come” and finds that “The intent of cursing is to invoke harm on another person through the use of certain words or phrases.” He categorizes profanity as “Profane (vt): to treat (something sacred) with abuse, irreverence, or contempt. Profane (adj): not concerned with religion or religious purposes” and finds that “Profanity is based on a religious distinction.” Many of the most significant studies of bad and taboo language similarly attempt to define and categorize language the way Jay has done, though there is often very little agreement over what distinguishes swearing and swearwords from profanity or curses. Jay’s topology

44 Jay, Cursing in America.
46 Ibid., 9.
47 Ibid., 2.
48 Ibid., 3.
does not include *swearing* as a distinct category, but much of Hughes’ book *Swearing: A Social History* and Melissa Mohr’s recent book *Holy Sh*t: A Brief History of Swearing* for example, would fit under Jay’s definitions for profanity and cursing. Even the title of Mohr’s book resists easy categorization and is somewhere between Jay’s organization of blasphemy and scatology. By Contrast, Montagu’s *The Anatomy of Swearing* treats almost all forms of bad or taboo language simply as “swearing,” though he also distinguishes swearing or “oaths” from cursing and “four-letter words” by giving each their own chapter.49

One major issue with definitions and categorizations like Jay’s, aside from the different categories expressions might fit into depending upon their use, is the assumptions which must be made about language in order to treat it as subject to categorization. In order to speak of “language” as Walter Ong demonstrated in *Orality and Literacy*, it requires that “language” be abstracted as a “thing” which can be studied. Describing language “abstractly sequential, classificatory, explanatory examination of phenomena or [as] stated truths is impossible without writing and reading”50 and points out that “Writing fosters abstractions that disengage knowledge from the arena where human beings struggle with one another. It separates the knower from the known.”51 Jack Goody draws a similar conclusion in *The Domestication of the Savage Mind* when he finds that “The increased consciousness of words and their order results from the opportunity to subject them to external visual inspection, a process that increases awareness of the possible ways of dividing the flow of speech as well as directing greater attention to the ‘meaning’ of the words which can now be abstracted from the flow.”52 Thus, in order to be separated from the expressions in which they occur, categorized, and defined, the language Jay describes assumes that the words he identifies make sense outside the expressions and contexts in which they occur at least enough that they can be distinguished from one another by their general, abstracted, “types of reference or meaning that dirty words employ.”53

This abstraction is especially important when considering the heavy reliance upon etymologies in the literature.54 Many articles and books in the literature are named after or examine a single word over time. Exemplary examples of this tendency are Randal Kennedy’s legal analysis of hate speech title *Nigger: The Strange Career of a Troublesome Word*,55 Christopher Fairman’s legal analysis of a single

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49 Montagu, *The Anatomy of Swearing*.
51 Ibid., 43.
54 The term “the literature” is itself an abstraction made possible by drawing distinctions between sets of texts.
word in *Fuck: Word Taboo and Protecting Our First Amendment Liberties*, and Jesse Sheidlower’s dictionary *The F-Word* which includes hundreds of etymologies and variations on the single word *fuck*. This project resists etymologies for several reasons, the most significant being that the history of a word cannot tell us much about its current “meaning,” even if it can tell us how those meanings have changed over time, and because the reliance upon written records means that the language of the “vulgar” illiterate classes and slaves are not represented. My study of racial slurs, for example, challenges the recurring argument that *nigger* “did not originate as a slur but took on a derogatory connotation over time” by demonstrating that the texts which etymologies have used to make this assertion were written predominantly by Anglo Europeans. In the United States learning to read and write was expressly prohibited to black slaves in many states, black Americans have historically had less access to good literacy education and printing technologies, and their writings were less likely to be preserved or included in archives. To argue that *nigger* “did not originate as a slur” is to assert and perpetuate the hegemony of Anglo Europeans in deciding the “meaning” of specific language, what they “reference,” and the political eligibility of those who use or hear them. Similarly, in order for Jay to categorize *cursing* as “The intent of cursing is to invoke harm on another person through the use of certain words or phrases,” he must assume that speaking involves intent (an assumption the chapter on uncontrollable cursing challenges), that words have the power to harm (an assumption the chapter on racial slurs challenges), and that “certain words or phrases” have a meaning or reference which is stable between contexts.

These abstractions are more than heuristics or a useful way to organize a study. In juridical and legislative discourse, for example, the definition and classification of language is used to determine whether or not it can be subjected to regulation. Legal studies of taboo language—like Fairman’s *Fuck* and the edited volume on hate speech *Words that Wound* by Mari J. Matsuda, Charles R. Lawrence III, Richard Delgado, and Kimberle Williams Crenshaw—reproduce the legal categories and definitions created by judges, and are primarily concerned with having specific words re-classified so that they can be freed from regulation (Fairman’s main argument regarding the word *fuck*) or subjected to regulation (the main argument of *Words that Wound* regarding racial slurs). Similarly, focusing on a single word or category of words and tracking juridical treatments of those words through case law limits these studies to demarcated discursive conventions, which I discovered in my study of broadcast obscenity influences the decision-making process of judges as they subject written transcriptions of comedy performances to

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57 Sheidlower, *The F-Word*.
textual analysis rather than judge them as oral performances with participatory audiences. More importantly, asking a judge to move an expression from one category to another, and approaching the study of taboo language using the juridical categorization of language, depoliticizes the juridical assumption of authority to make language taboo or subject taboo language to legal regulation. In order to break with these apolitical approaches, I find it necessary to change the question driving taboo language research.

An Alternative Approach: “When is Language Bad and Taboo?”

Defining what constitutes bad and taboo language has been inextricably linked to arguments or implementations of language regulation. The chapter on broadcast obscenity regulation, for example, demonstrates that anything and any expression might be considered “obscene.” Finding a similar phenomenon with regards to pornography, Walter Kendrick begins his history of pornography in The Secret Museum by pointing out that “We have always had obscenity, at least as long as we have had a scene of public, reportable life that requires a zone of darkness to lend a sense to it by contrast” and so concludes that obscenity, above all else, names an argument and not a thing. The same is true of taboo language. Judges trying to determine whether fuck is obscene have done so because someone made the case that it should be obscene and asked the judge to make a final judgment on the status of the word or the conditions under which it could be obscene. Judges have in turn regulated language by separating, or cutting up expressions, and organizing them into legal categories. For example, when a parent heard George Carlin’s famous Seven Dirty Words monologue on the radio and complained to the Federal Communications Commission (FCC) that it should be considered obscenity, the FCC agreed and issued a fine to the broadcaster. However, on appeal, the Supreme Court decided that Carlin’s monologue, which included the word fuck, was “patently offensive” and “indecent,” but not obscene. Making fuck indecent did not prevent the FCC from regulating it, since Congress had given the FCC authority to issue fines for broadcast indecency, but until the parent made the claim that fuck was obscene its definition as an obscene word was not an issue.

Thus, rather than carefully define and categorize what constitutes obscenity as many studies of taboo language have done (often reproducing and thereby legitimating the legal definition as the final definition), I resist defining what constitutes taboo language and focus instead on how it is constituted: how specific language becomes the separated from the rest of language and understood as taboo, how it

61 FCC v. Pacifica Foundation, 438 US 726 (Supreme Court 1978).
becomes a political problem and enters into regulatory discourse, how different institutions and discursive practices shape its treatment or the people who use it, and the consequences of its regulation.

My study of graphic language, for example, discovered that “bad language” in English only became a problem after socially mobile members of the new middle class who, during the late 17th and early 18th centuries, identified “good language” as the style, spelling, and manners of the aristocratic class began describing the language used by lower orders of society as “vulgar” or “bad.” The term “bad speller,” for example, rarely appears in English books before the 18th century. Since then, bad language arguments most often appear in descriptions of writing and ways of speaking—bad grammar, bad spelling, and bad pronunciations. Therefore, when this project uses “bad words” and “bad language,” it always refers to the argument that a grammar, spelling, or pronunciation is “bad” and in need of correction or some kind of intervention.

Disguising between bad language and taboo languages is also in reference to the argument being made about an expression’s status. Carlin, for example, described “dirty words” as “words that are always bad.” He was not referring to the bad spelling or pronunciation of fuck, but to the affective response the use of fuck could elicit. What identified fuck as a problem in the broadcast of Carlin’s Seven Dirty Words monologue, what prompted the first obscene-argument about it, was the affective response its use excited in the parent. If there is any defining characteristic of taboo language, it is its power to shock, offend, injure, or excite affective responses and discourses about that affective response. Thus, “censorship” involves a regulation of sensation—perhaps better called “sensorship”—which tries to manage who, when, and how taboo language is shocking. While much of the literature and popular debates about taboo language disagree on definitions and categories, they do generally agree that taboo language is primarily identifiable by the affective responses its use can excite.

Therefore, what makes fuck taboo language is the argument that its use produces an affect which should be regulated. Just as Bakhtin uses the term “heteroglossia” to refer to the linguistic phenomena of multiple ways of speaking using the same language, I use “taboo language” to refer to the multiple arguments made about regulating specific expressions identified by their affective register. Taking this alternative approach contributes to the literature on taboo language is to trouble the questions driving much of the literature: “What is taboo language?” and “What gives taboo language its power?” Instead, I start by asking the more politically salient questions: Under what conditions does taboo language become

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63 Ibid., 171.
a political problem or a threat to “the American nation”? and How are different conceptions of what gives taboo language its power in the U.S. used to authorize institutional interventions into that language?

The Project Design

To answer these driving questions, I have selected four domains of discourse and interventions which historize the use of language regulation in the United States as a tool of American nation-building. These four domains are print-capitalism (graphic language), juridical discourse (broadcast obscenity and hate speech), medical discourse (Tourette syndrome), and technical discourse (computational word-processing) as cases. The scope of this project is limited to language regulation in the United States and American English, but tracing the development of the institutions and techniques used to regulate language in the U.S. has sometimes required a study of antecedents in France and Great Britain. The four domains make good case studies not only because they are the most important areas of language regulation in the U.S., but also because the literature on taboo language is limited to a handful of studies conducted by linguists, psychologists, and legalists. However, none of these studies have attempted to figure out the conditions under which taboo language becomes a political problem, the relationship of language regulation to nation-building or how institutional interventions into language legitimate their exercise of power over discourse. Without a better understanding of language policing and cultural governance, we are left with an inadequate analysis of what gives language its power.

Another reason for selecting these four domains is that the primary sources show how each has been institutionalized through specific processes, the result of disagreements over what should be counted as speech and disagreement over who does the counting, which then develop language regulation techniques useful for determining who counts as a member of the American nation. Each domain is interdependent, with capacities developed in one domain at one particular historical moment often being employed or modified for intervention into different language problems. The contemporary championing of “Internet freedom” by monopolistic technology companies, for example, is the result of earlier disagreements about whether governments or markets are best equipped to decide between “good” and “bad” English. Historicizing the development of this debate, and the interventions it inspired, I problematize the idea that new communications technologies entails the elimination or weakening of the state’s ability to regulate language. The methods I use to answer the project’s driving questions are
therefore genealogical and primarily based upon a critical discourse analysis (CDA) of primary source materials.

Methods

To perform a genealogy of taboo, this project relies on methods first used by Friedrich Nietzsche in *On the Genealogy of Morals* and later elucidated by Michele Foucault in his essay “Nietzsche, Genealogy, History.” A genealogy of taboo language accounts for the constitution of knowledges about taboo language without making reference to a subject which is transcendental in relation to the field of events which surrounds it. Instead, the genealogy conducted here locates taboo language within the field of events which constitute its use as a political problem, a threat to the nation, and a tool for determining the intelligibility of expressions and the political eligibility of speaking subjects. The goal of this project then is not to create a historical chronology showing how language regulations have evolved over time or engage in a search for the origins of taboo language as much of the literature has done, but rather to show the plural and sometimes contradictory pasts which reveal traces of the influence that power has had on language and American national culture.

This genealogy of taboo language and American cultural governance deployed critical discourse analysis (CDA) methods described by Fairclough and Wodak to study power relations between actors by 1) “reading” each source two times, once sympathetically and once critically. Next, I put the material into an appropriate genre or context by 2) considering the intended audience for the documents and the productive source of the material. Finally, I framed the material by 3) revealing the key concepts, claims, topics, agency (active or passive), omissions, presuppositions, insinuations, connotations, and tone. This project applies CDA to primary source materials such as publishing records, journals and diaries, historical and contemporary newspaper articles, laws, judicial decisions, comedy routines, movie production codes, psychiatric treatment reports and published studies, technical documentation, public interviews, and secondary literature produced by historians, linguists, psychologists and psychiatrists, legal scholars, lexicographers, and media scholars interested in taboo language or cultural governance.

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The first chapter is a genealogy of good, bad, and taboo language. Building off of Anderson’s theory of print-capitalism as a catalyst for imagined communities, this chapter examines the “discourse networks,” or circulation of texts in Great Britain and the British colonies in North America and finds that the combination of print and capital production did contribute to nation building projects in both regions, but that print-capitalism also conditioned the possibility for “bad” language as members of the socially mobile middle-class became increasingly concerned with following the “proper” conventions of aristocratic writing. The secondary literature was especially helpful in this chapter for identifying the historically important texts dealing with regulating bad language. Jack Lynch’s *The Lexicographer’s Dilemma,* and his quasi-biography of Samuel Johnson, were invaluable for figuring out how Johnson selected “good” English for inclusion in his dictionary. I performed CDA on Johnson’s *A Dictionary of the English Language* and his published travel journal *A Journey to the Western Islands of Scotland,* but Lynch’s insights into the affects Johnson used for making definitions and his special interest in the language which excited Johnson’s moral sensibilities were invaluable. I also used CDA on newspaper articles written by language reformers like Daniel Defoe, Jonathan Swift, and John Adams and reviews of Johnson’s dictionary, like the one written by Adam Smith, shortly after its publication published in newspapers in Britain and the U.S. David Simpson’s *The Politics of American English* was helpful, especially his detailed framing of the language academy debates within the frame of electoral politics in the U.S. (what Rancière and I find closer to “policing”) between 1776-1850, and his text led me to several primary sources written by Noah Webster, especially his *American Dictionary of the English Language* and *Dissertations on the English Language.* H. L. Mencken’s *The American Language*
contained a great many examples which helped my CDA of the primary and secondary literature, especially his study of black American English. The age of Mencken’s text, which might normally be a hindrance, contained valuable references and quotations from texts which seem to have not survived and his analysis of “forbidden words” has held up far better than any other text I encountered from 1919. While several of these texts referenced Webster’s censored version of The Holy Bible, which contains a wealth of explanations for his moral turn late in life, it is still a surprise that the secondary literature has largely ignored Webster’s Bible. The fact that it does not seem to have sold well, or perhaps because it does not fit in well with the biographical approach most of the texts take towards Webster, may account for this. Finally, I performed CDA on some of the most popular travel publications written by Britons during the 19th century to see how they, and people in the U.S., thought about American Victorianism. The secondary literature, especially Simpson and Lynch, directed me to Frederick Murryat’s A Diary in America: With Remarks on Its Institutions, though they both seem to agree with Murryat that Americans were more Victorian than the subjects of Queen Victoria, despite considerable evidence that Murryat fabricated stories and seems to have been generally despised in the U.S. for making that claim.

Through my study of these texts, I conclude that print-capitalism was the point of intervention for projects hoping to promote “good” English and stamp out “bad” English, especially by the cartel of printers who sponsored the production of Samuel Johnson’s “authoritative dictionary” and Noah Webster’s interventions into the American print market using copyright law and pedagogy with his Grammar, Speller, and Dictionary. I argue that with Webster, language regulation went from being a matter of class mobility to a tool of cultural governance aimed at producing a common language which would hold the nascent American nation together. This chapter also examines the introduction of Victorian language prohibitions on explicit discourse about sex and Webster’s decision to censor the Bible. I conclude that Victorian language prohibition did not prevent a discourse about sex, but excited an explosion of discourses about sex and new techniques for regulating “graphic language.” I found that while projects in the U.S. aimed at purging bad language imagined a national community, Victorian


language prohibitions imagined a community of vulnerable subjects in need of protection which conditioned the development of institutional obscenity broadcast regulation.

Chapter two is a genealogy of legal interest in regulating obscenity and what kinds of power judges ascribe to taboo language. This chapter performs a CDA of juridical discourse on “landmark” obscenity decisions written by the Supreme Court like Chaplinsky v. New Hampshire,79 Jacobellis v. Ohio,80 Roth v. United States,81 Cohen v. California,82 FCC v. Pacifica Foundation,83 and FCC v. Fox Television Stations.84 However, rather than reproduce the decisions, I discovered a general reluctance of Courts to review evidence that was not textual and so the object my CDA was to see how judges thought about obscenity through the textual conventions which shape legal discourse. The surprising tendency of judges and legislators to be especially concerned with the linguistic obscenities of comedy performances led me to the New York obscenity trial of Lenny Bruce, The People v Lenny Bruce,85 an interesting case not only because Bruce was the only comedian to be convicted under New York’s obscenity statutes (New York seems to have had a rash of obscenity cases between 1950-1970) and because there was enough sustained interest in the case to motivate Bruce’s 2003 posthumous pardon 37 years after Bruce’s death. The primary source materials the Court used and the transcripts of the case put together by the University of Missouri-Kansas City School of Law Archives, and put online, were invaluable resources.

Very few academic discourses are as organized as legal scholarship, largely in part because the secondary literature (at least that concerned with obscenity and hate speech) seems to simply follow the citations judges use in their decisions when determining which cases are important. While countless treatments of the FCC v. Pacifica Foundation case can be found in the secondary literature, I discovered that no one, including the Supreme Court justices deciding the case, seems to have noticed the odd notations of the transcript of Carlin’s Seven Dirty Words monologue made by the FCC and cited by the Court. Christopher Fairman’s book Fuck86 contains a lot of detail on many of the cases I examined, but even his very strong arguments against obscenity regulation failed to notice the references to the audiences’ responses reproduced many times as “(laughter).” I found that “obscenity” does not name a thing, but an argument which when made before a judge is concerned with having juridical speech (juris-

79 Chaplinsky v. New Hampshire, 315 US 568 (Supreme Court 1942).
80 Jacobellis v. Ohio, 378 US 184 (Supreme Court 1964).
81 Roth v. United States, 354 US 476 (Supreme Court 1957).
82 Cohen v. California, 403 US 15 (Supreme Court 1971).
83 FCC v. Pacifica Foundation, 438 US 726 (Supreme Court 1978).
84 FCC v. Fox Television Stations, Inc., 129 S. Ct. 1800 (Supreme Court 2009).
86 Fairman, Fuck.
...diction) overcode alternative understandings for what might constitute obscenity. Studying the decisions and rational for contradictory findings about obscenity, I argue that judges determine whether or not language is obscene by measuring their own affective response to an expression and then overcode that affective response as one which everyone shares. I also found that one way judges have justified obscenity regulations is to imagine a “community standard,” which they sometimes theorize as local (as in The People v. Lenny Bruce) but most often simply refer to as a standard all Americans share, and rarely ever attempt to measure. Similar to the reasons given by Webster for censoring the Bible, I found that a recurring rationale for justifying the regulation of broadcast content for obscenity is the assumption that it is injurious to vulnerable populations, especially women and children, who are counted as members of the nation but whose expressions about obscenity no Court has ever found it necessary to count.

Chapter three continues the genealogy of juridical discourse, but this time looks at projects aimed at regulating racial slurs as “hate speech.” The chapter begins by demonstrating the limitations within the literature on taboo language with regards to racial slurs, especially the reliance upon etymologies by showing that the common belief that terms like nigger “did not originate as a slur but took on a derogatory connotation over time” does not account for the historical exclusion of black Americans from inclusion in the literature etymologies rely upon. The chapter similarly challenges the apolitical popular argument in the literature that racial slurs acquire their power to injure by becoming insulting misspellings and mispronunciations of words for skin color or mis-characterizations of racial and cultural “preferences.” I subjected Hughes’ Swearing: A Social History, and the linguistic accounts made in Adam Croom’s recent publications on racial slurs and Robin Lackoff’s work on taboo language because they each participate in this debate and, I argue, are seriously undermined by their lack of attention to the historical exercise of power which shaped the etymologies and definitions they depend upon.

Like the chapter on judicial treatments of obscenity, I performed CDA on several of the “landmark” cases identified in the secondary literary as significant, but given that hate speech initiatives have largely been unsuccessful, there were far fewer cases to consider, though there are a few significant cases like RAV v. St. Paul which used Chaplinsky very differently than in the obscenity cases. For hate speech, the secondary literature is where most of the debate about what gives racial slurs their power is happening and so my study focused there. I focused most on the seminal work Words that Wound and

87 Kennedy, Nigger, 4–5.
the critical replies made by Judith Butler in *Excitable Speech* and Randall Kennedy’s legal reply *Nigger*. Kennedy’s book also led me to the case of *In re Jerry L. Spivey*, significant because it was one of the first successful codification of juridical hate speech and because the decision clearly articulates some of the reasons Butler, and Kennedy, worry about in their responses to *Words that Wound*. The *Spivey* case was also useful because Kennedy acquired transcripts of the trial from parties involved and donated them to the Harvard Law School library, so I had access to them while working at Harvard over the past two summers and could study them carefully. I found that judges dealing with racial slurs have inverted the reasons given for regulating broadcast, this time regulating the vehicle of communication rather than the content of an expression, and attempting to codify the speech situations in which a racial slur can be understood as injurious, especially evidenced by the case *In re Jerry L. Spivey*. I argue that the regulation of racial slurs represents a turn in American cultural governance away from homogenous nation-building to multi-cultural governance which produces a diversity of cultures held together, and kept formally equal, by the United States. I discovered that in addition to institutionalizing a juridical form of racism, where the race and assumptions about race of those present in speech situation becomes the primary criteria for determining injury, hate speech also reduces racism to a scene between individual citizens capable of injuring each other with speech and requires that the injuries or “wrongs” of racism be expressed as linguistic injure using state-sanctioned discourses of “rights” to free speech and equal protection. The chapter ends by giving an alternative political theory of what gives racial slurs their power to injure grounded in the injury of the racial state creating subject positions for racialized subjects and then policies the intelligibility and political eligibility of racialized subjects.

Chapter four provides a genealogy of medical discourse and cursing, examining how mental health experts became interested in uncontrollable cursing and how they designed interventions aimed at regulating the expressions of individual patients. Given that the vast majority of what has been written about uncontrollable cursing has been medical, most of the documents I used for my critical discourse analysis have been primary sources written by physicians. However, given the popularity of the disorder and the rather surprising tendency of physicians to rely upon literary accounts of the encounters with the disorder rather than clinical observation, the primary source material makes frequent use of newspaper reports, journals and published memoirs, even novels and theatrical performances. Whenever possible, I attempted to review these other literatures as primary source materials, but given that much of the early medical debates about the disorder were written in French and many were never published in an

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92 Kennedy, *Nigger*.
93 *In re Jerry L. Spivey*, District Attorney, 480 SE 2d 693 (Supreme Court 1997).
94 Ibid.
accessible format, I have sometimes had to rely upon secondary sources for quotations or summaries (always indicated in the footnotes). An invaluable resource has been the histories of Tourette syndrome written by Howard I. Kushner, especially his book *A Cursing Brain?*, which is by far the most complete and most detailed medical history of the disorder available today. Kushner was able to access many of the primary sources housed in hospital or medical association archives and also able to translate many texts which would otherwise have been inaccessible to me. Kushner was kind enough to correspond with me and directed me to primary texts not available to the University library, confirmed my reading of some of the primary sources, and even shared a manuscript draft he had recently completed, now published, which included more translations of source materials I was unable to access. Many of these secondary sources where useful, but very few have attempted to understand the politics of TS or the regulation uncontrollable cursing as a technique of cultural governance.

My CDA of these sources found that doctors treating Tourette syndrome have treated their patients as a kind of media which can be re-written. Physicians first became interested in uncontrollable cursing because the disorder was a popular sensation, but also because uncontrollable cursing complicates the idea that individuals are responsible for their expressions. I found the earliest treatments focused on building a patient’s will-power, or “moral treatments,” and then shifted towards circumventing a patient’s will-power to intervene in the patient’s mental state more directly using the mediums of “animal magnetism” and later hypnosis. I found that Freud theorized about mental illness as a produce of Victorian language prohibition and that his treatment, the talking cure, both freed a patient’s speech and authorized the doctor to separate a patient’s noise from discourse. The patient records and published accounts also revealed a strong correlation between how mental health experts wrote about their patients and their treatment of patients as essentially re-writable media, especially their rendering of patients as characters in novels and national literature. I found that shortly after psychoanalytic techniques became popular in the U.S., largely as a result of Jewish mental health experts emigrating before and during WWII, parents and patients began to challenge the authority of doctors in treating the disorder, restaging earlier discourses about freedom made by Webster and his cohort. The slow turn towards pharmaceuticals continues to describe the patient as a type of media, this time chemically rewritable, but since drugs are a form of “automatic questioning” they do not need to excite (or extract) discourse like Victorian psychoanalysis in order to intervene in an individual’s expressions.

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The last chapter considers technical, namely computational and digital, techniques for language regulation and language control. By doing a CDA of Internet Engineering Task Force “Request for Comments” documents regarding content regulation, juridical decisions to strike down two important pieces of early Web regulation, the 1996 Communications Decency Act and the 1998 Child Online Protection Act, I found that recurring panics over online obscenity and pornography, and the idea that vulnerable populations like children will be injured by them, led to the juridical overcoding of the Internet as a self-regulating marketplace of ideas, making free speech into “corporate speech” or “Internet freedom.” I also performed CDA on a wide variety of publications by Internet technology companies, especially Google and Facebook, and presented the results of my attempt to track the operation of the Google SafeSearch algorithm designed to “keep families safe on the web.” I found that techniques developed to regulate print-capitalism, such as the use of symbols to regulate graphic language and copyright, have been updated and deployed as digital language filters. Since many of these filters were designed to protect children and were developed by technology companies, they have not typically been described as censorship or infringements on free speech, but they have been used to suppress dissent in authoritarian regimes and, perhaps more importantly, have led to the development of new techniques for controlling discourse.

To understand these new techniques of control, I used two of Deleuze’s most important texts on what he called the “control society, Control and Becoming” and Postscript on Societies of Control, and secondary literature by Alexander Galloway and Wendy Chun which similarly use Deleuze to explain control in digital systems. I contrasted their studies of control with arguments and examples given by Richard H. Thaler and Cass Sunstein in Nudge and with examples from Google’s corporate management system. I found that technical forms of language control are not concerned with the morality of the user, unlike Victorian language prohibition, or the intent of the user, unlike judges dealing with hate speech and mental health experts with trying to regulate an individual patient’s cursing, but instead intervene in the conditions of expression by regulating how a user uses devices and software. I argue that these interventions into “pre-speech” are concerned with governing “dividuals” and preventing challenges to digital language control. While not overtly about cultural governance, I argue that the deregulation of the Internet by the U.S. government sponsored the development of digital language.

101 Chun, Control and Freedom.
103 Deleuze, “Postscript on the Societies of Control,” 3.
control technologies and monopolistic Internet technology companies which allowed the security state to conduct mass surveillance. Part of the reason for this, I contend, is that data collection by corporations and the state is used to steer or nudge users through “choice architectures,” 104 making them easier to manage as individuals and making their expressions more “pre-dictable.” I also performed CDA on the frequent use of George Orwell’s novel Nineteen Eighty-Four, ending the chapter with an a study of techniques used to evade or irritate digital language control, but ultimately conclude that leveraging the “distributed agency,” 105 a concept articulated by Jane Bennett in Vibrant Matter, 106 of communications networks might offer a more sustainable way to challenge digital language control.

While the scope of this project is limited to language regulation in the U.S., and American English, providing a political accounting of what gives taboo language its affective power and the ways in which its use excites institutional regulations to govern American culture is not an easy task. This project goes well beyond what we usually think of as “censorship.” As we will see, censorship is rarely a prohibition of speech. Indeed, one of my main discoveries was that censorship produces speech, putting into public discourse the very terms it hoped to remove by raising questions about why these terms now and questions about the legitimacy or authority of the censors to decide. By constantly returning to Foucault’s simple question “what gives ‘power’ its power,” 107 this project always looks to the more significant, if difficult to see, ways power shapes discourse—it always looks to the historical exercise of power which assigns speaking roles, determines whose expressions count as politically eligible, and who counts as a member of the American nation. The best way to see how institutions regulate language for cultural governance is to, as Bob Dylan’s infamously said, “Play it fucking loud!” 108

104 Thaler, *Nudge*.
106 Bennett, *Vibrant Matter*.
Chapter 1. Fixing Graphic Language

When a language begins to teem with books, it is tending to refinement…speech becomes embodied and permanent; different modes and phrases are compared, and the best obtains an establishment….There may possibly be books without a polished language, but there can be no polished language without books.

—Samuel Johnson 1775

The uncivilized, murderous, backward English. Inbred savages hiding behind Shakespeare, pretending to be cultured. Don’t be misled by the manners – if you want to know what lurks beneath the surface, take a look at soccer crowds. That’s the true British character. I’m Irish and American, and we had to kick these degenerate mother fuckers out of both countries.

—George Carlin, *Napalm & Silly Putty*

When doing a genealogy of bad language, it becomes apparent that the history of English is the history of vulgarisms being recorded by grammarians and later specific words becoming a political issue and being recorded by grammarians. It also becomes obvious that before the 17th century there was very little interest in English language, but by the end of the 17th century it had become an object of intense study and bad English the subject of cultural governance. As noted in the introduction, Anderson described the development of modern nationalism as a “largely unconscious process” which, facilitated by the combination of print media and capitalism, had by the 17th century coalesced European languages into their modern form. Anderson is primarily focused on the processes of national assembling enabled by print-capitalism, and so his study only briefly considers the “conscious manipulation” of languages by states like Thailand, Turkey and the USSR during the 20th century. This chapter is indebted to Anderson’s analysis, but in understanding how English became the object and subject of American cultural governance, this study resists Anderson’s separation of conscious and unconscious processes of national language formation. Instead, this study focuses on the governance of language, specifically “bad” and

“taboo” language, as a historical process resulting from the exercise of power which Michael J. Shapiro has called a “method of nations” whereby “peoples are accorded varying degrees of cultural coherence and political eligibility—not on the basis of national divisions, but as the exercise of power.”\textsuperscript{112} While it is certainly true that the United States has directly and indirectly intervened in the formation of an American national language for the purposes of creating a homogenous national culture it can then claim to represent as a nation-state, following Jacques Rancière’s theory of politics, this study primarily considers the historical exercise of power which created bad language to be a history of disagreements over whose expressions count as discourse and whose are treated as mere noise.\textsuperscript{113} The nation-building practices of the United States also accord with Gilles Deleuze and Felix Guattari’s conceptualization of the state as a scripting machine which “overcodes” alternative distributions of bodies and territories.\textsuperscript{114} Shapiro summarizes Deleuze’s view as naming the process by which “nationalizing states translate biological bodies into social bodies. The Deleuzian state is therefore a machine of capture.”\textsuperscript{115} As we will see, the United States has used bad language to determine which bodies count as a member of the American nation it claims to represent, which bodies are excluded from the nation but still captured by the state, and which expressions count as discourse and which as mere noise. This study finds that the treatment of good English as a cultural commodity, evidence of intellectual ability and moral virtue, and commitment to national unity has been one of the most effective ways of determining whose expressions count as intelligible and who counts as a member of the nation. This chapter examines how language regulations incorporated into nation-building initiatives in the United States created the conditions under which bad language first appeared as an object of concern. There is evidence that bad and taboo language exists before the introduction of writing,\textsuperscript{116} but this study discovered that graphic representations of language as print were a necessary condition for bad and taboo language to become an issue for the nation. I find that bad language first became an issue when written language could be compared with oral language and that early forms of language regulation were focused on managing literacy. In Britain, bad grammar and bad spelling became an issue for socially mobile members of the middle class who, during the late 17th and early 18th centuries, defined good language as the expressions of the aristocracy and bad, or vulgar,  

\textsuperscript{112} Michael J. Shapiro, \textit{Methods and Nations: Cultural Governance and the Indigenous Subject}, New edition (Routledge, 2003), xvii.  
\textsuperscript{113} Jacques Rancière, \textit{Disagreement: Politics And Philosophy}, 1st ed. (University of Minnesota Press, 2004), 22. Throughout this study I refer to the “state” and the “United States”, and the “U.S. government,” as largely interchangeable. However, “the nation” or the “American nation” always refers to the goal of the cultural governance initiatives I examine.  
\textsuperscript{115} Shapiro, \textit{Methods and Nations}, 41.  
\textsuperscript{116} Montagu finds evidence of taboo language in some contemporary illiterate cultures, but the history of cursing he constructs is heavily dependent upon written accounts Ashley Montagu, \textit{The Anatomy of Swearing} (Philadelphia PA: University of Pennsylvania Press, 2001).
language as expressions of the lower orders. Reformers thought they could eradicate bad language by establishing national academies, as was done on the European Continent, to legislate for correctness in grammar and spelling. However, these initiatives failed and instead reformers worked to produce authoritative language texts, which cartels of print-capitalists sponsored, including grammars, spellers, and dictionaries. Later, as the British Empire spread, languages which did not conform to London English were considered bad. In the United States, I found that language regulation became part of nationalist projects which first hoped to establish a distinct American English and then unify the country with a “common” language. Early nation-building projects in the United States tried to create an American language academy but, as happened in Britain, these academies failed, so nationalist reformers turned towards markets to produce grammars, spellers, and dictionaries as textbooks for teaching children good American English. Victorian language prohibitions on explicit language about sex encouraged an explosion of euphemisms to censor language and American cultural governance initiatives invented new techniques for producing a shared national morality by linking morality with rationality. These techniques used graphic symbols—or “grawlixes” like @&%# for example, to record the fact of censorship and argued that offensive language was harmful to women and children. The chapter concludes by examining the role of Victorian language prohibitions in contemporary American cultural governance and finds that the state, through the judiciary and the Federal Communications Commission, has ‘overcoded’ discourse about taboo language, encouraging discourse to describe what gives this language its power as law or taboo and authorizing institutions to regulate their reproduction outside print media.

**Graphic Language**

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119 Ibid., 116.

120 No one bothered to name these graphic symbols until 1964 when Mort Walker began using the term “for my own amusement” and the name caught on. See Mort Walker, *The Lexicon of Comicana* (Lincoln, Neb.: iUniverse, 2000), 3.
Most linguists agree that humans have been speaking a language for around a hundred thousand years, and English for about fifteen hundred years. But only about three hundred years ago did anyone single out one variety of English as “correct.”

When writing was first invented, it was used primarily to keep financial accounts or historical records. In some cases, official political authority was given to the people (scribes or priests) capable of making and understanding these visual representations of sounds. It took many generations for the invention of writing to become interiorized by the cultures which used it and even then, it was often viewed as suspicious and foreign. In Greece, for example, Plato lamented the fact that his dialogues had to be reduced to writing in order to be preserved. Walter Ong summarizes Plato’s objections to writing in the Phaedrus and his Seventh Letter “as a mechanical, inhuman way of processing knowledge, unresponsive to questions and destructive of memory.” Despite Plato’s objections, it was soon recognized that written methods for storing information and knowledge had advantages over the oral and mnemonic methods of continual repetition. The translation of the Iliad and the Odyssey into a graphic language, for example, made it possible to contrast a poet’s performance with a previous written transcription and make judgments about the correspondence between the two as accurate or erroneous. Oral performances before writing were subject to constant changes (often requested by audiences), but after transcription became the object of truth claims. As Jack Goody puts it, “The increased consciousness of words and their order results from the opportunity to subject them to external visual inspection, a process that increases awareness of the possible ways of dividing the flow of speech as well as directing greater attention to the ‘meaning’ of the words which can now be abstracted from the flow.” This abstraction and attention to meaning was a necessary condition for the creation of “bad words” capable of being offensive because of the meanings they are presumed to always carry. Similarly, as spoken language is transcribed into graphical symbols, the “existence of a text or score implies the existence of rules of procedure…because writing draws attention to itself and makes explicit what was formerly implicit.”

This leads not only to the creation of grammatical rules which codify writing conventions, but also make graphic representations of bad speech offensive, perhaps more than their spoken corollary because graphic language can circulate beyond the limits of those within earshot. As we will see in the chapter on jurisdiction, by drawing attention to itself and making explicit rules

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123 Ibid., 25.
125 Ibid., 125.
which were before implicit, writing also makes possible the ability to pick a decision or norm and codify them as a rule or law.\textsuperscript{126}

With writing, the author of a text has to imagine their audience and likewise, the authors of texts, often dead or unreachable, remain at a distance and cannot be made to change their minds. Jacques Rancière has argued that the primary reason Plato objected to writing, contrary to the reasons Plato gives, was a concern over controlling who had access to written materials. According to Rancière, Plato worried that a philosophical text could be picked up and read by anyone without the guidance of the philosopher to explicate its meaning.\textsuperscript{127} The anti-democratic Plato would have seen this as a potentially dangerous challenge to the need for an elite literati and create the possibility of a text being misused. According to Ong, the dialogic philosopher also distrusted writing because a “written word cannot defend itself as the natural spoken word can: real speech and thought always exist essentially in a context of give-and-take between real persons.”\textsuperscript{128} Ong suggests one of the reasons books are burned is their inability to recant, even when proven wrong.\textsuperscript{129}

Writing then was regarded by many as dangerous, even magical, requiring an expert, priest or guru to control. The magical power of written and spoken language is most apparent in Middle English words like \textit{spell}, \textit{charm}, and \textit{grammar}. \textit{Spell} referred to “speech, narrative, discourse,”\textsuperscript{130} though spells could be case for curse or protection, largely becoming a symbol of malignance during the Renaissance. \textit{Charm}, which is usually considered a symbol of protection or good luck in English cultures today, both \textit{spell} and \textit{charm} were typically linked to oral performances. \textit{Grammar} is linked to writing and “came to mean occult or magical lore, and through one Scottish dialectical form has emerged in our present English vocabulary as ‘glamor’ (spell-casting power).”\textsuperscript{131} After the introduction of the printing press into England and the Industrial revolution, grammar and spelling became objects of reform and tools for leveraging the governance of national culture.

Bad Grammar, Bad Spelling, Bad Words

\textsuperscript{126} Jack Goody, \textit{The Logic of Writing and the Organization of Society} (Cambridge University Press, 1987), 175.
\textsuperscript{128} Ong, \textit{Orality and Literacy}, 78.
\textsuperscript{129} Ibid.
\textsuperscript{130} Geoffrey Hughes, \textit{Swearing} (Penguin (Non-Classics), 1998), 39.
\textsuperscript{131} Ong, \textit{Orality and Literacy}, 91.
The first arguments about bad and good language in England were primarily concerned with separating the vulgarity of the lower orders of society from that of the nobility. Class mobility has played a large role in the history of bad language. Capitalism created a new class of people in England, no longer peasants and also not part of the traditional aristocracy, with a growing appetite for the affectations of nobility which print-capitalism was quick to accommodate. During the late 17th and 18th century in Europe, conduct manuals instructed this class of anxious nouveau riche in how to pass as a member of the elite social order. One of the most popular of these guides, published in 1741, is best described by its own titled: Letters Written to and for Particular Friends, on the Most Important Occasions: Directing Not Only the Requisite Style and Forms to Be Observed in Writing Familiar Letters; but How to Think and Act Justly and Prudently, in the Common Concerns of Human Life. The book contained 173 letter templates which could be adjusted slightly to fit the required situation by people now “expected to read, to write, to manage servants, and to correspond with the rest of the world.”\(^{132}\) There had been English grammars written for foreigners to aid in translation, but it was not until the production of conduct manuals that native speakers of English were given advice about English grammar.\(^{133}\) The upper classes tended to look upon conduct manuals with derision because the texts “threatened to blur the line between the to-the-manner-born aristocracy and the vulgar pretenders.”\(^{134}\) These texts were not designed for aristocrats and it was not aristocrats who imposed proper rules of grammar upon the lower orders of society. Proper grammar was, more than anything else, an invention of the newly literate middle class working to imitate the language and expressions of their social superiors. Bad language was associated with the lower orders whose vulgarities reflected character defects, loose moral standards, and social impropriety.

The first English grammars appeared in the late 16th century and were based on William Lyly’s Latin grammar.\(^{135}\) As scholars compared English writing to Latin, they became increasingly concerned with the irregularities of English and many 18th century grammars were designed to teach students how to use English according to Latin standards. Thomas Sheridan’s 1780 General Dictionary of the English Language, for example, finds “out of our most numerous array of authors, very few can be selected who write with any accuracy…[S]ome of our most celebrated writers, and such as hitherto passed for our English classics, have been guilty of great solecisms, inaccuracies, and even grammatical improprieties.”\(^{136}\) Additionally, the inaccessibility of Oxford and Cambridge, and other schools which

\(^{132}\) Lynch, The Lexicographer’s Dilemma, 41.
\(^{133}\) Ibid., 45.
\(^{134}\) Ibid.
\(^{136}\) Cited in Charles C. Fries, American English Grammar (Irvington Pub, 1940), 17.
insisted on Latin as the primary pedagogic language, to the nouveau riche inspired the establishment of several “Dissenting academies” in England where students were taught in the English language and read English texts. Many of those who would propose and champion an official, state-sponsored, English language academy charged with cleaning up the language and many future spelling or grammar reformers were Dissenters. Daniel Defoe, for example, was a Dissenter and wrote guidebooks of his own.\textsuperscript{137} Grammars for written English appeared relatively late compared to France, Italy, and the rest of Europe but upwardly mobile class of 18\textsuperscript{th} century England relied upon grammar as a means of sorting classes. With the invention of writing came the possibility of cultural governance which, in the context of 17\textsuperscript{th} and 18\textsuperscript{th} century language reformers, made bad English into a kind of language which would offend the sensibilities of aristocrats and out a social climber as a member of the noisy vulgar classes.

Early printers were the first to introduce spelling reforms, but like grammar, no one seems to have considered alternative spellings as correct or bad until the 17\textsuperscript{th} century. Most of the early debates about spelling, most of which have yet to be settled, were concerned with how to represent language change. The first printer to set up shop in England, William Caxton, noted in 1490 “our langage no vsed varyeth ferre from that. whiche was vsed and spoken whan I was borne.”\textsuperscript{138} Early printers were the first to worry about language change, largely because they were concerned about the durability of their products and the intelligibility of their texts across communities. Another problem for printers especially was that alphabet English writers have used which was designed for a different language, a modified version of Latin developed around 700 B.C.\textsuperscript{139} This version had only 23 letters and could not represent a variety of English sounds. The runic alphabet, which had also been used to record English until it died out in the 11\textsuperscript{th} century, contained thirty three letters. Some of these runic writings “are probably among the oldest lines in the English language”\textsuperscript{140} and these magical writings became symbolically powerful even to those who could not read them. Scribes using Latin to record English combined letters to represent sounds like \textit{th} and the obsolete \textit{yogh}.\textsuperscript{141}

\textsuperscript{137} Lynch, \textit{The Lexicographer’s Dilemma}, 47.  
\textsuperscript{138} Cited in ibid., 51.  
\textsuperscript{139} Ibid., 166.  
\textsuperscript{141} Lynch, \textit{The Lexicographer’s Dilemma}, 166 There have been many attempts to systematically expand alphabets for English, including attempts by Americans like the printer Benjamin Franklin or the “Deseret alphabet” commissioned by Brigham Young and taught in Mormon schools. There have been many attempts to systematically expand alphabets for English, including attempts by Americans like the printer Benjamin Franklin or the “Deseret alphabet” commissioned by Brigham Young and taught in Mormon schools. The Deseret Alphabet is sometimes still taught in Utah grade schools. I recall learning to use this alternative alphabet in the second grade before a field trip to a reconstructed pioneer town which featured a late 19th century schoolhouse which had the Deseret Alphabet above the chalkboard and likely also a copy of Webster’s famous “Blue Backed Speller” on the bookshelves.
Claxton was confronted with the added difficulty of having to buy his printing materials from the Continent. The first book printed in English, Claxton’s translation of Raoul Lefèvre’s *Recueil des histories de Troie*, came off Claxton’s press in Bruges around 1473 and starts with the conventional formula of the time “Here beginneth” as “hEre begynneth the volume intituled and named the recuyell of the histories of Troye.”

When Claxton went home to England, he took the same printer he used in Bruges with him. Claxton and his successors made incalculable changes to the orthography of written language, removing German character slugs from the typeset and adjusting words to better fit page alignments. A detailed history of these changes is beyond the scope of this study, though interest in the evolution of spelling has produced several recent books on its history. What is important to note is that Claxton was printing during the period linguists call the “Great Vowel Shift.” Just as spelling was being regularized, and the old systems of spelling being fixed, English phonology was quickly changing.

When the printing press was first introduced into England, it exaggerated individual and regional differences between written English. However, because most of the early printing presses were in operation in the South-Eastern part of England, print tended to reproduce that dialect at the expense of others. Between 1500 and 1750, London’s print industries far outpaced that of any other city. Jack Lynch determined that during this period 44 books were produced in Manchester, 67 in Birmingham, 428 in Bristol, 470 in New Castle, 574 in York, and 4,000 in Cambridge and 5,300 in Oxford (a third of these two university prints being in Latin and Greek). In all of the North American colonies combined, from the first colonies until 1750, only 6,500 books were printed. London, over the same period, turned out a massive 190,000 titles, nearly four times as much as the rest of the English speaking world. In large measure, London English was good English, but in most cases written good English was more about convention than phonetics. The difference between written English and spoken English would eventually help drive the division between British and American English as lexicographers in both countries argued over which spellings were most correct. However, Lynch speculates that “Had our early printed books captured our pronunciations more accurately from the beginning, it’s possible that we would have been less tolerant of later inconsistencies, and would have changed our spellings to keep up with our changing

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142 Cited in ibid., 168.
pronunciations.”\textsuperscript{146} Instead, the inconsistencies of spelling and the rapid changes to the English language became the subject of increasingly intense projects of cultural governance. At first many called upon the state directly to establish rules for good English and purge the language of impurities, but it soon became clear that economics was better suited to governing British and American cultural linguistics.

**Governing Hard Words with a National Academy**

From around the 1480s to 1700s, the needs of print-capital seem to have driven most changes in English spelling. Before the 18\textsuperscript{th} century, the phrase “bad speller” rarely appears in English books,\textsuperscript{147} but after the 1700 spelling became an issue for commercial and national culture. In 1569 John Hart wrote that English spelling was similar to a code, made of “such confusion and disorder, as it may be accounted rather a kinde of ciphering.”\textsuperscript{148} In 1667 John Evelyn wrote that he hoped for “a more certain Orthography”\textsuperscript{149} to make written closer to spoken English, and in 1704 an anonymous author published *Right Spelling Very Much Improved* concluding it was odd that “so few should endeavor to Write English tolerable true” blaming these “gross Mistakes” on “the fairer Sex.”\textsuperscript{150} Almost as soon as English sounds and writing had been fixed into a print language, the characters used became the subject of spelling reform. However, by late 18\textsuperscript{th} century spelling had taken on a new urgency and many proposals were aimed at arresting further changes to written and spoken English. The mechanistic requirements of the printing press introduced many regularizing artifacts into graphic language. Elizabeth Eisenstein has pointed out that European printers introduced “regularly numbered pages, punctuation marks, section breaks, running heads, indexes” and “Arabic numbers for pagination.”\textsuperscript{151} For many who dreamt of a standardized language, the printing press seemed to have proven it was possible. However, it wasn’t until several authors like Franciscus Junius, Edmund Waller, and Alexander Pope read Chaucer and worried that England’s greatest poet would be inaccessible to later generations and began voicing anxieties over the introduction of foreign words into English that standardizing the language became urgent.\textsuperscript{152} As Sterling Andrus Leonard put it, “The prevailing view of language in the Eighteenth Century was that

\begin{itemize}
  \item \textsuperscript{146} Ibid., 173.
  \item \textsuperscript{147} Ibid., 171.
  \item \textsuperscript{148} John Hart, *An Orthographie Conteyning the Due Order and Reason, Howe to Write or Paint Thimage of Mannes Voice, Most like to the Life or Nature. Composed by I.H. ... The Contents Wherof Are next Folowing.* (S.l.: EEBO Editions, ProQuest, 2010), 2.
  \item \textsuperscript{149} John Evelyn, *The Diary of John Evelyn* (University of California Libraries, 1906), 310.
  \item \textsuperscript{150} Quoted in Lynch, *The Lexicographer’s Dilemma*, 176.
  \item \textsuperscript{152} Lynch, *The Lexicographer’s Dilemma*, 52–53.
\end{itemize}
English could and must be subjected to a process of classical regularizing."¹⁵³ During the 18th century, it also became popular to refer to “rude” subjects and objects using Latin or Greek terms. Renaissance writers used terms like *fuck, buttocks, coney* and *prick* whereas 18th century writers used *copulate, fundamental anus* or *posterior, pudendum,* and *penis* to refer to the same activities or body parts.¹⁵⁴ Geoffrey Hughes understands this change as euphemism, but as the new middle class attempted to emulate the Latinate aristocrats, it seems just as likely writers used Latin for these terms in emulation of aristocratic proper conventions and because they wanted to ensure future generations would be able to understand their vernacular language.

Another reason from arresting change was the idea that Hobbes’ theory of social contracts required an intelligible common language which could last for several generations. Writers at the end of the 17th century, fearing that future generations would not be able to access the great works of English culture, perpetuated the Renaissance myth that Greek and Latin had not changed for centuries and reinforced the idea among writers that English was a decayed version of formerly pure tongues. Francis Atterbury, for example, argued “We have Greek Books writ by Authors at almost Two thousand Years distance, who disagree less in their Phrase and Manner of Speech, than the Books of any Two English Writers do, who liv’d but Two hundred Years asunder.”¹⁵⁵ Given this context, it is not surprising that at the end of the American Revolution a few members of Congress proposed that English be prohibited in the U.S. and replaced with Greek, Latin, or Hebrew.¹⁵⁶ It was thought that documents which codified a social contract, like the U.S. Constitution, ought to be written in a language less likely to be misunderstood by future generations. In 1724, professor of mathematics at William and Mary College, Hugh Jones, wished that a “Publick Standard were fix’d” in order to “direct Posterity, and prevent Irregularity, and confused Abuses and Corruptions in our Writing and Expressions.”¹⁵⁷ For many during the first quarter of the 18th century, it was argued that governments should take charge in preventing further linguistic decay.

¹⁵⁴ Hughes, *Swearing*, 146.
¹⁵⁷ There is some disagreement as to whether or not this was seriously proposed. Mencken finds that it was a likely debate, but Simpson finds the evidence lacking and questions the veracity of Mencken’s claim. The anti-American writer William Gifford may have originated this claim as an attempt to make fun of a bill in Congress about whether or not to publish laws in German for recent German immigrants to Virginia. Mencken, *American Language*, 88–89.
¹⁵⁸ Quoted in Mencken, *American Language*, 57–58.
There were precedents in Europe for rationalizing and improving spelling. In 1582, Italy founded the Accademia della Cruscia which, after a few decades, produced the *Vocabolario della Crusca*, a dictionary designed to prescribe the “official” form of Italian. The French soon followed and in 1635 the Académie Française was founded, which choose forty French scholars and authorized them to rule on what counted as good French. The “forty immortals” are still active today and spend much of their time modifying American English words into French pronunciations or legislating on which words to exclude from official French. Britons saw these developments and imagined something similar for English. In 1660, “R.H. Esquire” attempted to finish a book by Francis Bacon and published an image of the future which included an “Eminent Academy of selected wits” capable of correcting “all errors in books” and tasked to “purifie our Native Language from Barbarism.” Also in 1660, after spending years in exile and following the activities of these institutions, King Charles II chartered the Royal Society of London for the Improvement of Natural Knowledge, a group of scholars who would create the genre of modern scientific writing by purging journals of flowery prose. Four years after its charter, the Royal Society formed a committee “for improving the English language,” but the committee was slow to make actual reforms and by 1702 Daniel Defoe began calling for an English Academy like the kind in Italy and France. The purpose of this Academy, Defoe wrote, “shou’d be to encourage Polite Learning, to polish and refine the English Toungue” and to purge all “Irregular Additions.” Defoe’s proposal, which appeared in his *Essays upon Several Projects: or, Effectual Ways for Advancing the Interest of the Nation*, did not make a big impact, but when Jonathan Swift began calling for a similar institution capable of putting “Proper Words in proper Places” the idea gained in popularity. Swift’s *A Proposal for Correcting, Improving and Ascertaining the English Tongue* laid out a project for English language reform, and at the top of Swift’s list was “the frequent use of obscure Terms, which by the Women are called Hard Words, and by the better sort of Vulgar, Fine Language.” Clarity, style, and above all else politeness were the hallmarks of good English for Defoe and Swift, and the primary purpose of an academy would be to freeze the language and, for Swift, make sure authors would still “have a Chance

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163 Jonathan Swift, *A Letter to a Young Gentleman, Lately Enter’d into Holy Orders. By a Person of Quality. It Is Certainly Known, That the Following Treatise Was Writ in Ireland by ... Dr. Swift, ... The Second Edition.* (Gale ECCO, Print Editions, 2010), 5–6.
for Immortality.”164 What England needed, according to Swift, was a body “made of such Persons, as are generally allowed to be best qualified for such a Work, without any regard to Quality [rank], Party, or Profession” to draw up bylaws and devise methods for curtailing the spread of bad language and obliterating “jarring” sounds from the English language.165 Swift also proposed as one of his satirical “projects” a plan for The Swearer’s Bank, in which he imagined an Act of Parliament fining citizens one shilling for profane swearing and using the profits from the Bank to erect charity schools.166 While the Bank was an ironic proposal, Swift was serious and committed to the creation of an English language academy.

Shortly after Swift made his proposal for an academy, and for several decades, many prominent Britons and Americans echoed the call for an official language academy. Most Americans saw no significant difference between British and American English or, more often, if they did perceive a difference, the British was assumed to be more correct. However, by the end of the 18th century some Americans did call for a language academy. In 1780, John Adams wrote a letter to the President of Congress calling for that body to erect “by their Authority, a Society under the Name of “The American Academy, for refining, improving and ascertaining the English Language.”167 Adam’s proposal was largely ignored, though the Federalists and Anti-Federalists would later argue about the merits of an official academy. John Quincy Adams, 20 years after his father wrote to Congress, helped organize the American Academy of Language and Belles Lettres in New York and became the organization’s president.168 However, in nearly every way imaginable, the formal and informal institutions answering the call for arresting language change or simplifying spelling all ended in failure in Britain and America. The leaders of these reform movements often assumed their own speaking and writing preferences would become codified as official and while they sometimes began with great momentum, they very rarely produced any legislative decisions which were followed.

Rather than accept these failures, Dissenters and reformers decided that if an academy could not clean up bad language, perhaps a definitive reference book could. Again, the English were behind Italy and France when it came to producing language dictionaries—the Accademia della Crusca had produced a Vocabolario which set standards in Italian for decades, the Academia Española had published a Diccionario de la lengua cantella by 1739, and the Académie Française had produced a Dictionnaire
already in its third edition by 1740.\textsuperscript{169} In 1592, Richard Mulcaster created the first English language dictionary which listed 8000 English words, but these were not alphabetized and did not always contain definitions.\textsuperscript{170} By the 1740s many of Mulcaster’s words were already obsolete. Several others had attempted an English dictionary, but with limited libraries to draw upon and without the protection of copyright preventing easy duplication of their efforts and the absence of royalties (writers still depended upon patrons), few authors tried to create an authoritative dictionary. In 1741, David Hume lamented that “Elegance and Propriety of Stile have been very much neglected among us. We have no Dictionary of our Language, and scarcely a tolerable Grammar.”\textsuperscript{171} Lacking an English Academy, a group of printers and publishers came together in the mid-1740s and formed a cartel to share in the startup costs or sharing the risk in producing a definitive English language dictionary.

It is difficult to determine why the cartel chose Samuel Johnson to author the book. Johnson had no serious qualifications or experience, suffered from strange ailments, often muttered under his breath, spat while he talked and sweated while he ate, and is now widely believed to have had Tourette syndrome. Aside from these odd physical attributes, Johnson was famous for his inventive use of obscenities, despite not including a single term in his dictionary. Accounts from his contemporaries often made note of Johnson’s propensity for spoken taboos. When someone asked him what gave him the most pleasure in life, Johnson answered that first was “fucking and second was drinking.”\textsuperscript{172} Johnson had not even finished his bachelor’s degree and only became “Doctor Johnson” after being awarded an honorary master’s and doctorate degree later in life. Why the cartel chose Johnson is still a mystery, but Johnson was a strong contrast to Defoe and Swift. Johnson later wrote “Swift, in his petty treatise on the English language allows that new words must sometimes be introduced, but proposes that none should be suffered to become obsolete. But what makes a word obsolete, more than general agreement to forbear it? and how shall it be continued, when it conveys an offensive idea…when it has once by disuse become unfamiliar, and by unfamiliarity unpleasing.”\textsuperscript{173} Johnson agreed with Swift that simplified spelling was bad English,\textsuperscript{174} but argued the English language could not be governed with an academy the way France had done. He wrote “an academy should be established for the cultivation of our stile,” focusing on pedagogy, and argued “the spirit of English liberty will hinder or destroy” the legislation of language by a

\textsuperscript{169} Lynch, \textit{The Lexicographer’s Dilemma}, 71.
\textsuperscript{171} Quoted in Lynch, \textit{The Lexicographer’s Dilemma}, 73.
\textsuperscript{172} Hughes, \textit{Swearing}, 144.
\textsuperscript{174} Mencken, \textit{American Language}, 489.
prescriptive academy.¹⁷⁵ Fifty years after Swift’s proposal, the grammarian Joseph Priestley argued against the establishment an academy, arguing “a publick Academy, invested with authority to ascertain the use of words” would be “unsuitable to the genius of a free nation.”¹⁷⁶ Articulating an early argument for laissez-faire economics eight years before Adam Smith’s The Wealth of Nations was published, Priestley concluded “the best forms of speech will, in time, establish themselves by their own superior excellence.”¹⁷⁷ Johnson’s arguments against an academy, while preceding Priestley and Smith by a few years, reflect the emerging idea that markets and language were self-regulating. Swift thought of language as a mercantilist—calling for governmental regulation on word circulation, preventing the “coining” of new words, and preserving the accumulation of traditional English—whereas Johnson, and the cartel of print-capitalists supporting him, believed the best way to govern the English language was to produce a large dictionary, release it onto the market, and measure its success by whether or not language consumers purchased it. Johnson was not against governance of the English language, even coercive legislation about what counts as good and bad language, only the method of governance. Noah Webster would make similar Smithian arguments against an academy, citing American liberty, but he would disagree with Johnson’s determination of which markets count when distinguishing between good and bad English. While Johnson did not like the idea of a coercive academy, he was in favor of coercion if it meant improving English and he set about writing the “authoritative” dictionary English academies had failed to produce.

Cutting Words and Johnson’s Dictionary

Knowing where to begin a catalog of the English language was not easy, but Johnson decided the best way to determine which words were worth collecting and defining was to read the great works of English literature and culture. Johnson decided that English writing had peaked with Bacon, Edmund Spencer, and Shakespeare (whose spelling was so inconsistent he had at least three alternative spellings of his own name). Johnson decided not to include anything written before them or after the works of Sir Philip Sidney who had died in 1586.¹⁷⁸ Johnson began marking interesting words in Shakespeare’s plays, the works of Shakespeare, Milton’s Paradise Lost, John Dryden’s poetry, Joseph Addison’s essays, George Abbott’s Briefe Description of the Whole World, Richard Allestree’s Causes of the Decay of Christian Piety, John Arbuthnot’s medical texts, Roger Ascham’s educational texts, John Ayliffe’s legal

¹⁷⁵ Johnson, Samuel Johnson’s Dictionary, 42.
¹⁷⁷ Ibid.
writing, John Woodward’s texts on fossils, and the poems of Sir Henry Wotton.\footnote{Lynch, The Lexicographer’s Dilemma, 78–79.} After nine years of work, Johnson’s A Dictionary of the English Language was finally published in 1755. The book was large, too large for a single printer to manage producing on their own, and cost £1,600 (more than Johnson had been paid to write the book).\footnote{Henry Hitchings, Defining the World: The Extraordinary Story of Dr Johnson’s Dictionary, 1ST edition (New York: Farrar, Straus and Giroux, 2005), 195.}

The details of how Johnson selected words, organized them alphabetically, or came up with definitions is less important to this study than his treatment of bad language. The word vaulty, for example, was defined by Johnson as “Arched; concave…A bad word,” ruse as “A French word neither elegant nor necessary,” and scomm as “A buffoon…A word out of use, and unworthy of revival.”\footnote{Quoted in Lynch, The Lexicographer’s Dilemma, 85.} More often, Johnson simply omitted words he considered bad, offensive, or taboo. He knew there were too many words to include in his Dictionary, and excluded specialized jargon and technical terms, but he also decided not to include nonstandard English or slang, which he considered “a fugitive can’t, unworthy of preservation.”\footnote{Quoted in Hughes, Swearing, 157.} He also excluded terms specific to Scotland, popularly known as Scottishisms, and words imported from British colonies, including many terms which would later be derisively labeled Americanisms. Johnson did include several “four letter” words, but avoided ones he found most offensive. Johnson was not a prude, and yet his dictionary did not include popular words like fuck, cunt or shit. Other contemporary dictionaries, like Nathan Bailey’s Dictionarium Britannicum published in 1730, included many Johnson avoided like fuck and cunt. Words like these were certainly in circulation at the time, in fact Captain Francis Grose’s 1785 A Classical Dictionary of the Vulgar Tongue referred to fucking as “common” despite its absence from Johnson’s dictionary and much of the written record.\footnote{Ibid., 161.}

One of the first criticisms of the book came from none other than Adam Smith, who wished Johnson “had oftener passed his own censure upon those words which are not of approved use, though sometimes to be met with in authors of no mean name” and found Johnson’s organization to be not “sufficiently grammatical.”\footnote{Quoted in Hitchings, Defining the World, 199.}

However, Johnson was well aware of his audiences’ interest in bad and taboo language, and in Johnson’s treatment of them in his Dictionary. When one woman asked Johnson whether he had included any of his verbal obscenities in his dictionary, Johnson reportedly replied “No, Madam, I hope I have not daubed my fingers” but then jokingly accused the women “I find, however, that you have been looking
for them.”

In much of the literature on dictionaries, Johnson has been portrayed as a language tyrant, single-handedly ruling which parts of language are bad and which are not worth recording. Jack Lynch has recently argued that this interpretation of Johnson is unfair, pointing out that unlike many other dictionary writers before and after him, Johnson worked hard to make his Dictionary correspond to the writing of the greatest English writers and points out that a majority of Johnson’s definitions are direct quotations from these writers. According to Lynch, these authors told “Johnson what the words mean, and Johnson in turn tells us.” Most dictionaries at the time in other countries were written by groups, even large institutions, whereas the task of creating THE authoritative English dictionary fell to one man in England. Before Johnson, most dictionaries just used synonyms, and Johnson seems to have consulted the appropriate texts when writing his definitions, for example, quoting the chemist Robert Boyle for alcohol and laboratory or Isaac Newton for light and gravity. Lynch points out that the way Johnson wrote his Dictionary mirrored “English common law, which comes not from proclamations, not even from legislatures, but from tradition.” Finally, Lynch argues, simply because Johnson made decisions about what was worth entering into his Dictionary does not make him a dictator, since people could use his texts or ignore them. Putting aside the debates about Johnson and his authority to legislate language, the idea that a word can be pulled from its surrounding sentences and expressions, defined, given a history, and sometimes made a problem demonstrates how lexicographers make language an object and subject of power.

Johnson’s writing process is as important as the final product released into the print market. He started by reading what he considered the great works of English literature and marked interesting words with a vertical line, put the first letter of words to be included in the margins, handed the marked book to his copyist who then transcribed the quotation onto small slips of paper which Johnson later organized alphabetically. When it came time to define a word, Johnson abstracted a general meaning from the contexts in which it had been used. The definition then is meant to encapsulate the meaning of a word, but it also makes words into individual objects by freeing them from the contexts in which they are used. While there were taboo expressions before writing (one could swear and curse), but there were no taboo words (swear-words or curse-words) until writing could represent them visually and remove them from the sentences in which they appeared. Johnson’s innovation was not only to abstract a stable meaning for individual words, systematically de-contextualizing and re-contextualizing individual words, but also

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185 Winchester, *The Professor and the Madman*, 98.
187 Ibid., 88.
188 Ibid.
189 Ibid., 92.
190 Ibid., 79; Johnson, *Samuel Johnson’s Dictionary*, iii.
defining them according to human sensation. In his study of Johnson’s dictionary, Lynch found that Johnson described at least 133 distinct human sensations in the definitions he produced.\textsuperscript{191} For Johnson, part of the “meaning” of a word was the affective responses its usage inspired. While Johnson never makes this argument directly, we can see that his decision not to include taboo language was an effort to regulate the affective power those words inspired in him, universalizing their meaning using the same technique judges would use in the U.S. to justify the regulation of broadcast obscenity. Judith Butler has recently pointed out that “if the very definition of the phenomenon involves a description of it as ‘evil,’ then the judgment is built into the definition (we are, in fact, judging before knowing).”\textsuperscript{192} According to Butler, definitions have been exchanged with descriptions, making both activities judgments. Johnson made this judgment by accounting for the affects a word produces, but his decision to exclude taboo language from his dictionary also meant Johnson did not need to specifically define which of the 133 senses he discerned their use affected. Johnson saw taboo language as a problem, but his exclusion of taboo language from his dictionary was a form of “sensorship” not concerned defining the affective meaning of words or concerned with protecting others from their affective power—a distinct contrast from the obsessions of Victorian language prohibitions a quarter century later.

Johnson’s \textit{Dictionary} was a huge commercial success. In his history of the Oxford English Dictionary, Simon Winchester found that by the end of the 18\textsuperscript{th} century, “every educated household had, or had access to, the great book. So firmly established did it swiftly become that any request for ‘The Dictionary’ would bring forth Johnson and none other.”\textsuperscript{193} Despite Adam Smith’s criticism, the commercial and cultural success of Johnson’s \textit{Dictionary} seemed to prove that self-regulating markets were better governors of the English language than any academy. Shapiro has argued that landscape paintings and photographs during the 18\textsuperscript{th} and 19\textsuperscript{th} century were popular among middle class consumers because while they could not often afford to possess English land, a landscape enabled them to imagine themselves as members of the English nation.\textsuperscript{194} Similarly, owning Johnson’s \textit{Dictionary} became a way for the English middle class to own the English language and imagine themselves as part of a national culture held together by linguistic homogeneity. The writing of Elizabethan England, according to Richard Helgerson, was addressed to the issue of “who counts as a member of the nation,”\textsuperscript{195} but during the 18\textsuperscript{th} and 19\textsuperscript{th} century expansion of the British Empire, the dictionary also became a technology of linguistic subjugation. English dictionaries became a technology for including and excluding who could

\begin{itemize}
  \item \textsuperscript{191} Lynch, \textit{The Lexicographer’s Dilemma}, 80.
  \item \textsuperscript{192} Judith Butler, \textit{Frames of War: When Is Life Grievable?} (London; New York: Verso, 2010), 155.
  \item \textsuperscript{193} Winchester, \textit{The Professor and the Madman}, 98.
  \item \textsuperscript{194} Shapiro, \textit{Methods and Nations}, 114.
\end{itemize}

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be considered a member of the British nation. Johnson’s *Dictionary*, and its treatment of good English or exclusion of alternative Englishes became a problem for many of the colonized and colonizers. For many others, adopting the English standards set out by Johnson was, like those studying conduct manuals, a means of ensuring social mobility and having one’s expressions recognized as discourse. Even as spoken dialects began to divide between Britain and America, most literate colonists and their American-born children worked hard to adhere to Johnson’s *Dictionary*, even as Johnson himself openly disparaged Americans and their unrefined Americanisms.

However complicated the relationship between British and Americans, for a long time Johnson’s *Dictionary* reigned supreme in both places. According to James Basker, in a study of 18th century American libraries and booksellers, texts written by Johnson were in nearly all of them. Basker concluded “Throughout America by the 1790s Johnson is not only omnipresent but dominant: he is by far the most widely available author, English or American”\(^\text{196}\) and the *Dictionary* was used by many of the founders while drafting the Declaration of Independence, the Constitution and Bill of Rights, and the *Federalist Papers*.\(^\text{197}\) George Washington’s signed 1786 edition of Johnson’s *Dictionary* survives and Thomas Jefferson owned a copy too, even recommending it to a friend on a 1771 list of books for cultivating virtue.\(^\text{198}\) Despite the book’s popularity among the founders, for Johnson American English was always bad English and the next generation of Americans, especially Noah Webster, began agitating for cultural independence from Great Britain and the language of King George. The differences between the way Americans talked and the good English Johnson had laid out galled him. While Webster plagiarized some 333 definitions directly from Johnson’s *Dictionary* for his 1828 *An American Dictionary of the English Language*, and nearly two thirds of the citations Webster lists include Johnson, Webster was insulted by Johnson’s anti-American statements and was among the first to challenge Johnson, denouncing his *Dictionary* as “extremely imperfect and full of error” and writing “Not a single page of Johnson’s *Dictionary* is correct.”\(^\text{199}\) Both Johnson and Webster agreed there was such a thing as good language, and that its legislation was necessary to ensure national and cultural unity, but each found the other’s English to be bad language.

**Americanisms Threaten Linguistic Unity**

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\(^{198}\) Lynch, *The Lexicographer’s Dilemma*, 121.

\(^{199}\) Quoted in ibid., 123.
It is difficult to determine exactly when early colonists to North America began using different words, expressions, and pronunciations than their European contemporaries. The lexicographer Allen Walker Read has demonstrated that at least fifty years before the American Revolution, people on the Continent and in North America became increasingly aware of groups speaking English with different accents, though H. L. Mencken has argued this recognition must have gone back to at least the early 17th century since British colonists in America “were in frequent contact with Frenchmen and Dutchmen” and later “Swedes, Germans and Spaniards, and meanwhile the nascent Americans began to notice that the Scotch, Irish, and Welsh immigrants who came in, and even some of the English, spoke in ways different to their own.” Mencken also argues these “nascent Americans” were also aware of Native Americans who had learned English, but spoke with an accent, and would have heard differences in dialects between Southern black slaves, rustic Yankees, and the Westerner. However, it is important to add that recent immigrants from Great Britain would have been aware of dialect differences between Irish, Welsh, Londoners, and various other groups speaking and writing a variety of Englishes.

Rather than create a narrative in which Americans suddenly discover linguistic difference as Read and Mencken have done, Simpson offers a more compelling cultural governance analysis for why Europeans and North Americans would at this period take notice of difference and remark upon it in their writings. According to Simpson, “opinions about the kind of language a nation should speak, and how it should write, tend to alert us to the suspicion that there was no such thing as a single nation, neither in language nor in terms of social and political affiliations.” Indeed, many in North America and many Britons visiting North America continually denied any difference at first between British and American English, and then later any difference between the writing or speech pathways of groups within the United States. In 1759, Benjamin Franklin wrote that Americans “speak the language with such an exactness both of expression and accent, that though you may know the natives of several countries of England, by peculiarities in their dialect, you cannot by that means distinguish a North American.” In 1835, Alexis de Tocqueville asserted that “American authors may truly be said to live more in England than their own country, since they constantly study the English writers and take them every day for their own models.”

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Later, North American and British authors would accept some differences between British and American English, but deny any difference between speech and writing in the United States. Webster acknowledged that different states could have different spellings for some words, something he would later hope to resolve, and some regions seemed to speak a little differently, but insisted on linguistic uniformity. In 1789 he wrote “The people of distant counties in England can hardly understand one another, so various are their dialects; but in the extent of twelve hundred miles in America, there are very few, I question whether a hundred words, except such as are used in employments wholly local, which are not universally intelligible.” When authors did note differences between the speech and writing of other groups, they often imagined them in decline as technologies made people and print increasingly mobile. James Fenimore Cooper, who with Mark Twain would attempt to write the differences in dialect he heard, said in 1828 that differences in speech between New England, Pennsylvania, and New York were less prominent than they had been twenty years before. Other authors saw differences, but insisted upon a standard and uniform American linguistic culture. George P. Marsh, for example, thought dialects were mostly fixed by the 1860s but was still convinced that “Not only is the average of English used here, both in speaking and in writing,” and in a way which echoed British travellers to the U.S after the Revolution, concluded that “In spite of disturbing and distracting causes, English is more emphatically one in America than in its native land.” Reflecting the idea that if there is a linguistic difference in the U.S., technology will soon erase them, Mencken concludes his examination of dialect by arguing “The railroad, the automobile, the mail-order catalogue, the movie and, above all, radio and television have promoted uniformity in even the most remote backwaters.”

A recurring trope among British travellers in the U.S. between the Revolution and the War of 1812 was to remark upon how much more linguistic difference there was in Britain than in America, usually praising the conformity of speech across the nation. Mencken speculates that English colonists in North America created new words to describe the things they found in the New World which had no counterparts in England. Later, they began incorporating Native American language, especially Algonquian words like caribou, moccasin, raccoon, and woodchuck. However, early colonists also began mixing parts of speech—making nouns into verbs, verbs into nouns, and both into adjectives—for

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207 Quoted in ibid.
208 Ibid., 450.
209 Ibid., 448–449.
210 Ibid., 110.
example making *scalp* into *to scalp*\(^{211}\) and turning *to squat* into *squatter*\(^{212}\) before the end of the 17\(^{th}\) century. The most notorious, and later most offensive, of these linguistic innovations were denounced in Britain and in the colonies as “wigwam words.” John Witherspoon (the Scottish clergyman who later became president of Princeton, signed the Declaration of Independence and Articles of Confederation, and served as a member of the Board of War during the Revolution) argued that “the vulgar in America speak much better than the vulgar in England” but coined the term *Americanisms* to describe words and phrases invented by English colonists.\(^{213}\) Franklin avoided and disapproved of many Americanisms, but the free-spirited Jefferson was regularly attacked for using terms like *to belittle* and caused a scandal when he described distance using the word *lengthy.*\(^{214}\)

However, after the War of 1812, when it became clear the former colonies would not rejoin the United Kingdom, most British travel publications and reviews of American texts mentioned American English only to revile it. For example, after a visit to the U.S., Captain Tomas Hamilton wrote “The Amount of bad grammar in circulation is very great; that of barbarisms enormous” and added that “Unless the present progress of change be arrested by an increase of taste and judgment…the nation will be cut off from the advantages arising from their participation in British literature.”\(^{215}\) Frances Trollope (mother of Anthony Trollope) reported that in America she rarely “heard a sentence elegantly turned and Captain Frederick Marryat reported “it is remarkable how very debased the language has become in a short period in America.”\(^{216}\) For these visitors, and for literary figures like Samuel Johnson, the American language and words which originated in America were always a bad language. Frances Trollope concluded that “something either in the expression or the accent”\(^{217}\) Americans used was offensive and shocking to her refined sensibilities. Oddly, the idea that American English is an archaic form of British English has been used by Americans hoping to legitimize their English with references to Shakespeare and also by British arguing against American originality.\(^{218}\) However, that these debates and search for originality should appear when they did was not coincidental. A year after Franklin praised his fellow North Americans for being linguistically indistinguishable from Britons, he also asked David Hume to edit some of his writing and reports. Hume, who had worked to remove all traces of his Scottish origins, had identified “some unusual Words in the Pamphlet” and decided to replace them “since they are not in common use here

\(^{211}\) Ibid., 133.
\(^{212}\) Ibid., 136.
\(^{213}\) Quote in ibid., 6.
\(^{216}\) Quoted in ibid., 27.
\(^{217}\) Quoted in ibid.
\(^{218}\) Ibid., 139.
[England] I give up as bad.”219 For Franklin, just as it was for Trollope and other British travelers decades later, difference from British language was bad language.

The intense focus on linguistic difference happened during the late 18th century and 19th century because that difference had become a problem for states claiming to represent coherent nations. As Simpson points out, John Locke and Adam Smith both tried “to avoid admitting that there were or need be any divisions of interest or inequalities of opportunity within the class of ‘general nature’.”220 Hobbes’ belief that without a standard and unchanging language the social contract would break down was influenced by his reading of Babel, and many calls to fix English or arrest its change often cite Babel as a danger. This period’s focus on the Lockean “general nature” and “common usage”, and the popularity of texts like Thomas Paine’s Common Sense, occur at precisely at the moment when such commonalities were called into question. Simpson’s reading of Paine and this historical moment finds “it is clear that the widespread philosophical obsession with the topics of the origin, identity, and progress of language can be situated within specific historical contexts that give some sense of urgency to their appearance.”221 The use of etymologies by lexicographers writing dictionaries, especially Johnson and James Murray in Britain and Noah Webster in the U.S., were as much concerned with showing national temporal unity as they were with finding original meanings. Webster especially used etymologies to show how American terms and pronunciations were closer to the pre-Norman Anglo-Saxon language than British English. Linguistic nation building projects like these tended to treat language difference as bad language, discounting that different ways of writing or speaking counted as meaningful discourse. Instead, the focus on origins and good language reflect a desire for a shared tradition, agreed upon conformity, and national uniformity. In the Federalist #2, for example, John Jay asserted “Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government.”222 The timing of this assertion demonstrates a shift in cultural governance as the model of a United Kingdom is displaced by United States. Jay, in his argument for federal unity, asserts that uniformity already exists in the form of a national community which will be represented by a federal government. Differences, irregularities, or deviations from language and religion do not count as part of the nation. By 1778, a committee of the Continental Congress proposed that “the language of the United States” be used for all

219 Quoted in Lynch, The Lexicographer’s Dilemma, 122.
221 Ibid., 33.
“replies or answers” to the French Ambassador and in 1783 the term “American language” was used in the Continental Congress.  

The influence of Protestantism meant that Americans were more likely to be able to read and write than their counterparts in Britain. The American Revolution was a highly “literate” event, spurred on by flood of print and pamphlet literature.  

The French maintained a close relationship between linguistic and political reform in France after 1789, but the British were far more likely to fear linguistic contamination from foreigners than Americans. However, debates between the Federalists and their adversaries often centered on questions of who counts as a member of the new nation and what language counts as part of politically eligible discourse. In the post-Revolution period, most debates about language in the United States were concerned with whether or not to accept British or American cultural values. Federalists and Antifederalists disagreed about the need for an American national academy of language or literature to create a distinctive American language for American reading publics. The disagreement was not so much over which expressions count as speech as it was over which modes of speaking were most appropriate for the newly independence state. At the same time, laws preventing black slaves from learning to read and write, and Congressional funding for missionary Indian schools, determined which bodies counted as members of the American nation. Black slaves were excluded from the nation, and their emissions treated as little more than expressions of pleasure and pain, whereas Native Americans were increasingly compelled to learn English and assimilate into the English-speaking American nation. This treatment of black Americans as not counting and Native Americans as being captured by the United States, made to speak but still treated as politically ineligible, is evidenced by the nearly complete lack of historical records on Black English before 1850.  

When black Americans appeared in literature before then, as David Simpson has put it, they “play the role of clown or scapegoat…his language is not represented as affecting the evolution of the hegemonic American English” and “The Native American is dramatized, but only because he is posited as disappearing.” The portrayal of Black English as a source of condescension or parody represents the new nation’s fear of a threat to the hegemonic culture it hoped to produce. Another reason for this omission follows from Anderson’s observation that vernacular languages lend themselves to the production of national history since later readers can access the writing of previous generations and claim them as antecedents to

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223 Mencken, American Language, 90.
226 Battistella, Bad Language, 106.
228 Ibid.
contemporary national communities. Excluding Black English, suggested by J.L. Dillard in Black English, prevented challenges to the assumption “in our language histories and in our grammars that only the British-derived parts count.” Similar contemporary debates about the need for establishing an official national language work to discount rising numbers of Spanish and Chinese speakers as intelligible members of the American nation.

Bad Language as an American National Concern

Though differences between British and American language were already a topic of debate before the Revolution, most bad language reforms focused on bringing Americans into closer alignment with British standards. While many insisted on an already unified American nation, the sense of national community was delayed until after the War of 1812. In the colonies, conflicting interests were suppressed during the Revolution and few Americans were disconnected from events in Europe. Nearly a third of the population were Loyalists, supporting Britain, but even ardent patriots like Jefferson were focused on supporting France. As Mencken put it, “This engrossment in the rivalries of foreign nations made it difficult for the people of the new nation to think of themselves, politically and culturally, as Americans.” After the Revolutionary War, many colonists imagined they would soon be reconciled with Great Britain. After it became clear reconciliation was not likely, many began to believe that linguistic drift between the United Kingdom and the United States was inevitable. Noah Webster, unlike most of the founding generation calling for an academy or conforming to British standards, believed that linguistic drift between Britain and America was more than inevitable—it was necessary and should be helped along. In 1783 he declared that “America must be independent in literature as she is in politics” and three years later, recognizing differences within the United States while calling for national unity, asked in a letter to a friend “A national language is a national tie, and what country wants it more than America?”

Webster’s influence on American language and culture is immense. Webster was one of the first to challenge the linguistic hegemony of Johnson and London, though his disagreements with Johnson

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229 Anderson, Imagined Communities, 44–46.
231 Mencken, American Language, 145.
232 Ibid., 142.
233 Lynch, The Lexicographer’s Dilemma, 128.
234 Ibid.
were often directed towards overtly nation-building ends. For example, Webster did not disagree with Johnson’s argument that language change should be directed towards “slow improvements,” but vehemently disagreed that change should be “of gradual correction.”

Webster’s nickname, The Schoolmaster of the Republic, conjures up images of an authoritarian legislator correcting English or lecturing on the proper use of language, but Webster was far more radical than any schoolmaster. Time and again, Webster argued that it was the lexicographers job to record the language they encountered without prescribing how people ought to read or write. Johnson had argued that our written language should not “comply with the corruptions of oral utterance, or copy that which every variation of time or place makes different from itself, and imitate those changes, which will again be changed, while imitation is employed in observing them.”

Webster disagreed with Defoe, Swift, and Johnson over how a language should be made stable. Instead of resisting change or using history to correct current forms, Webster saw no reason “pronunciation and orthography cannot be rendered in a great measure permanent” using the alphabet to record changes over time. Webster’s spelling reforms, though often interpreted as imposing correct spelling, were directed at closing the gap between spoken English and written English, something others had tried in the past but which Johnson denounced as the “foolish opinion…that we ought to spell exactly as we speak.” For example, Webster proposed the omission of silent letters and replacing several consonant-and-vowel combinations, like tough with tuf.

While neither Johnson nor Webster was in favor of an official academy, Johnson (and Adams) was in favor of authoritative and coercive legislation to correct language whereas Webster (and Jefferson) believed that any initiative for a common American language, like government, should represent the will of the people.

Where Johnson and other Britons attacked new American words as bad language, Webster often argued that Americanisms were traditional British words which Britons had allowed to become corrupted. Webster often argued that British English was a recently fallen form of the language Americans, far from London, had managed to preserve, for example arguing “Our language was spoken in purity about eighty years ago; since which time, great numbers of faults have crept into practices about the theater and court of London.”

For Johnson, good English was found in the writings of great English literature, but for Webster it was found primarily in the speech of American gentleman farmers. Webster, juxtaposing the

236 Ibid.
237 Webster, *Dissertations on the English Language*, 35.
238 Quoted in Mencken, *American Language*, 489.
239 Ibid., 480.
240 Battistella, *Bad Language*, 103.
yeoman farmer with Shakespeare and Addison declared “the people of America, in particular the English descendants, speak the most pure English known in the world.” Perhaps most importantly, Webster saw American English as the English of the future, arguing in 1806 that “in fifty years from this time, the American-English will be spoken by more people, than all the other dialects of the language, and in one hundred and thirty years, by more people than any other language on the globe, not excepting the Chinese.” In 1824 he also predicted that “The English language will prevail over the whole of North America…and, according to the regular laws of population, it must, within two centuries, be spoken by three hundred millions of people on that continent.” Shortly after Webster’s death in 1843, the population of America passed England’s and the population of the U.S. recently passed three hundred million twenty years sooner than Webster had predicted. However, Webster’s innovations in cultural governance went far beyond simply disagreeing with Johnson and the contemporary conventions of good language.

Webster’s made language a national and a moral concern. In his history of American English, Simpson concludes that it is impossible “after Webster, to be unaware of the argument about language as a national argument.” In the first few years after the Revolution, Webster’s arguments and nation-building projects were overtly patriotic and economic. The new nation was thought by many to be a new beginning. Jefferson argued for a democratizing of the language of government, asserting “Will it not be better…while we are reforming the principles to reform also the language of treaties, which history alone and not grammar with justify? The articles may be rendered shorter and more conspicuous, by simplifying their stile and structure.” Adams also saw the imagined new nation as a new beginning, writing in favor of the academy Britain had failed to create arguing “[w]e have not made war against the English Language, and more than against the old English character.” While Franklin had earlier tried to introduce a new alphabet, and wrote to Webster complaining about changes New Englanders were making in his Bostonian language, language reform was not a high priority for most of the founders.

242 Webster, Dissertations on the English Language, 288.
243 Noah Webster, A Compendious Dictionary of the English Language in Which Five Thousand Words Are Added to the Number Found in the Best English Compends ... (Hartford and New Haven: Increase Cooke & Co.; Hudson & Goodwin, 1806), xxii–xxiii.
244 Quoted in Lynch, The Lexicographer’s Dilemma, 133.
245 Ibid., 132–133.
247 Quoted in ibid., 32.
248 Quoted in Battistella, Bad Language, 104.
For Webster, however, the Revolution meant “Now is the time, and this country, in which we may expect success, in attempting changes favorable to language, science, and government.”\textsuperscript{250} For Webster, the Revolution made a new nation “prepared to receive improvements, which would be rejected by nations, whose habits have not been shaken by similar events” and America could have “a national language, as well as a national government” so long as action was taken before delay allowed the inertia of habit to cause “a national acquiescence in error.”\textsuperscript{251} These errors, for Webster, were “To copy foreign manners implicitly” and a national language initiative’s purpose “is to reverse the order of things, and begin our political existence with the corruptions and vices which have marked the declining glories of other republics.”\textsuperscript{252} Between the Revolution and the War of 1812, the founders and Webster used the rhetoric of a new nation not only to support governance innovations, but also to allay fears that the new state would not last long. As Simpson puts it, the new nation was imagined as “begin[ning] in a state of perfection…and because it has no history, it need not be assumed to be on the point of decline.”\textsuperscript{253} It is only under these conditions that we can understand the innovation in cultural governance made by Webster and the founders.

British cultural governance treated bad language as a deviation from original purity, but, after Webster, American cultural governance simply assumed original purity and instead focused on preventing culture from developing in negative ways. The yeoman farmer speaks good English because he is neither an illiterate English peasant nor a member of the aristocracy. For Webster, good language can never be found among the “polite” class, they are in fact the people whose caprice perverts language,\textsuperscript{254} and since Webster imagined no peasant class in the American nation (again excluding black slaves and non-English speakers) he imagines that Americans already use good language. Webster’s goal then was not to correct bad English, but to produce a standard national language without a privileged or lettered class. The problem, Allen Walker Read demonstrated by studying advertisements for runaway slaves, was that “the American colonies of the middle quarters of the eighteenth-century abounded with speakers of languages other than English.”\textsuperscript{255}

\textsuperscript{251} Webster, \textit{Dissertations on the English Language}, 406.
\textsuperscript{252} Ibid., 179.
\textsuperscript{254} Ibid., 76.
\textsuperscript{255} Read, “Bilingualism in the Middle Colonies, 1725-1775,” 99.
For Webster, the British had already proven that an academy was not as good at governing language and culture as Johnson’s Dictionary. In 1783, Webster believed “the reformation of the language we speak will some time or other be thought an object of legislative importance,” but after failing to convince Franklin to introduce a bill on spelling to Congress, Webster gave up on governmental language and cultural governance. In 1788, Webster marched in a parade put on by the newly formed Philological Society of New York, an organization created “for the purpose of ascertaining and improving the American Tongue,” but the society quickly fell apart. When in 1820 William Samuel Cardell tried to enlist Webster’s help in forming the American Academy of Language and Belles Lettres, Webster replied “Such an institution would be of little or no use, until the American public should have a dictionary which should be received as a standard work.” Instead of law or an academy, Webster decided to follow Johnson’s lead in using the market to determine which language was most appropriate. However, unlike Johnson, Webster had no established print market upon which to test his dictionary. As noted earlier, the London print industry dominated the English book market. Additionally, Congress did not recognize reciprocal copyright arrangements with foreign states until 1891, pressuring American authors into making their writing comfortable for British readers who were by far the largest consumers of English-writing during the 19th century. Popular American books, printed in the more expensive shops of North America, were also often appropriated by British printers who could produce cheaper copies in England and then flood the market on both sides of the Atlantic, but this also made it easier for Webster to plagiarize Johnson. James Fennimore Cooper, one of the most widely read American authors of the 19th century, included footnotes in his novels for American words British readers might not understand (though he publicly remarked that “the prodigious influence that England has and still exercises over American thought is both amazing and mortifying.”) Webster would agree with Anderson’s argument that print-capitalism was a primary driver of national consciousness, which is why he made the production and distribution of texts in the United States the point of application for his nation-building initiatives.

Economic Language Interventions

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256 Quoted in Lynch, The Lexicographer’s Dilemma, 132.
259 Lynch, The Lexicographer’s Dilemma, 121.
In response to the dominance of English print markets, Webster at first hoped to stimulate a new American market. Many responded by asserting that Webster’s real reason for changing spelling was to create a need for American imprints of all things published in English. This may have been part of his intention, but he also argued that American spelling reform would make printing cheaper by “diminishing the number of letters about one sixteenth or eighteenth. This would save a page in eighteen; and a saving of an eighteenth in the expense of books, is an advantage that should not be overlooked.” Many Americans during this period were anxious about dependence upon British imports of manufactured goods, which Webster saw as “the pernicious, the fatal effect of our dependence on foreign nations for our manners.” Webster was just as interested in creating a market for American books as he is in ridding Americans of their British Anglophilia, not by using Mercantilist governmental regulations but by deploying Smithian arguments which persuade with cheap books for American readers. Webster’s Smithian economic arguments were designed to “not only stimulate a native book trade, but would embody a native morality, politics, culture, and fashion.” Johnson, and the cartel of printers which supported his Dictionary, believed good English could be measured by book sales on the free market. Webster’s innovation was to use economics in order to govern American culture, a practice which has become a prominent method for regulating language on radio, film, TV, and Internet. For Webster, cheaper books also meant a wider readership, a more closely unified reading public where regional differences would eventually be subsumed into national interests.

In the end, Webster’s argument that American spelling would make for cheaper books probably failed to convince many printers. Johnson sometimes argued that commerce was a corrupting influence, seeing English as already complete and only corrupted by circulation, for example writing “Commerce, however necessary, however lucrative, as it depraves the manners, corrupts the language; they that have frequent intercourse with strangers, to whom they endeavor to accommodate themselves, must in time learn a mingled dialect.” Webster took the opposite position and was never afraid to get his hands dirty with business or marketing if it meant purifying American English of British corruptions. The Revolution had been good for domestic print-capitalism, because of the increased demand for pamphlet literature and the suspension of trade with England, and by the time the colonies became the United States in 1781

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261 Ibid., 52–53.
262 Webster, Dissertations on the English Language, 397.
263 Webster, Rudiments of English Grammar Being an Introduction to the Second Part of The Grammatical Institute of the English Language, 88.
265 Quoted in ibid., 72.
every state had at least one printing press in operation. The campaign for copyright between 1783 and 1786, in which Webster was an active participate, was seen by the new nation's literati as a nation-building project which could promote domestic literature over imported alternatives. For Webster and other American nationalists leading state copyright campaigns, especially Tomas Paine and John Trumbull, copyright was important because it could encourage printers to produce reputable cultural literature. When Webster decided to update Thomas Dilworth’s A New Guide to the English Tongue, fixing what he thought were serious errors in the popular text, he consulted with a friend who encouraged Webster to “contract with printers upon good terms, or take some other cautions plan” before writing to make sure he would be compensated for his efforts. Webster hoped for a national copyright, but James Madison and Thomas Jefferson argued that the Articles of Confederation did not give Congress authority to pass such a law. Instead, Webster petitioned the Connecticut General Assembly to grant him sole right of publication for the text, arguing that his reforms would contribute to the nation's cultural future, but warned he would not take on the task without copyright protection. Connecticut granted him the copyright and Webster produced a series of small books, most notably his three-part 1783 Grammatical Institute, of the English Language, which Webster later unbundled and made more overtly patriotic renaming the three as the American Spelling Book, the American Grammar, and the American Selection of Lessons in Reading and Speaking. With these texts, Webster hoped to reform American education which he saw as being too dependent upon British culture.

Webster’s focus on creating a nation is unmistakably put forward in the preface to the speller: “The author wishes to promote the honour and prosperity of the confederated republics of America and cheerfully throws his mite into the common treasure of patriotic exertion” and adds “It is the business of Americans to...diffuse uniformity and purity of language, to add superior dignity to this infant empire.” Webster’s early texts were aimed at helping schoolmasters raise a new generation of culturally uniform national subjects of the United States. The title page of his reader includes a motto which makes this nation-building project overt: “Begin with the Infant in his Cradle: Let his first Words he lisps be Washington.” Rather than drawing upon ancient Greek, ancient Roman, or British classics Webster included selections for students to study from Benjamin Franklin’s “Way to Wealth” and “General

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267 Quoted in ibid., 449.
269 Noah Webster, A Grammatical Institute, of the English Language Comprising, an Easy, Concise, and Systematic Method of Education, Designed for the Use of English Schools in America.: In Three Parts. : Part I. Containing, a New and Accurate Standard of Pronunciation. (Hartford: Printed by Hudson & Goodwin, for the author., 1783), http://opac.newsbank.com/select/evans/18297.
Washington’s farewell Orders to the Army.” His headnotes also include overtly patriotic messages designed to help students imagine a uniformly American nation even before the Revolution, for example describing British restrictions following the Boston Tea Party as “rash and cruel measures, [which] gave great and universal alarm to Americans.” With these texts, according to Lynch, Webster “hoped his language books would promote American unity and lead to the ratification of a strong national Constitution.” Webster’s Speller was an instant success and by 1814 it was estimated to have sold more than three million copies, by 1837, 15 million copies, and by 1889 nearly 62 million copies—reaching a majority of young students in the American education system for five generations. Webster’s biographer, Harry Warfel, estimates that around 100 million copies were eventually sold, making the Speller one of the bestselling schoolbooks in history, though his American Dictionary would surpass it to become one of the most popular books in English. Using the Speller as an example of copyright as an effective tool for cultural and economic governance, Webster lobbied other states to pass copyright laws, later federal copyright law, and extended copyright laws which remained in effect until 1909. Webster also used his proceeds to sponsor his far larger, and far more influential, dictionary project.

Linking Morality and Rationality

A detailed study of Webster’s American Dictionary reforms goes beyond the scope of this study, though several have written at length on the specifics. More important is his use of the dictionary as a tool of cultural governance. The very title of his dictionary, An American Dictionary of the English Language, is an overt decision to place America before England in order of importance. Additionally, an overt goal of his American Dictionary, discussed in the 1828 preface, was to draw attention to

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271 Lynch, The Lexicographer’s Dilemma, 128.

272 Menken, American Language, 402.


275 Lynch, The Lexicographer’s Dilemma, 129.
American authors by citing them as sources. Webster, who by this time had become skilled at marketing as well, challenged Johnson by advising British writers in his preface that they ought to consult his *American Dictionary* if they wanted to know the real meaning of words.\(^{276}\) Webster also made a point of including popular Americanisms, which scandalized some British reviewers, but Webster was clear in his role as lexicographer declaring “If a word becomes universally current in America, where English is spoken, why should it not take its station in the language?”\(^{277}\)

And yet Webster did not include some of the most common words universally current among American English users, an observation which generations of young students excitedly leafing through his *American Dictionary* searching for *fuck* or *shit* have repeatedly made. Webster did not care whether his Americanisms, or other parts of his texts, offended British readers. They were never his intended audience and he likely took special pleasure in provoking the English. However, Webster was extremely concerned with producing a national culture which shared not only a common language, but also a shared national morality. The editors of the *Oxford English Dictionary* also claimed to including every word in common usage, omitting only a few on moral grounds like *fuck* and *cunt* until the 1960s, but even the Victorian James Murray included many potentially obscene words which Webster avoided like *condom*. Understanding this difference, and Webster’s commitment to euphemism, demonstrates how American cultural governance is particularly interested in moralizing bad language and discounting certain parts of language as part of political discourse. Mencken puts it best when he writes “Victoria was not crowned until 1838, but a Victorian antipathy to naughty words had flourished in this country [the U.S.] since the Seventeenth Century.”\(^{278}\) In terms of language regulation, many have argued that Americans were more Victorian than the British, especially when it came to public discussions about sex.\(^{279}\) However, these interpretations fail to adequately account for the role of cultural governance in separating discourse from mere noise, the management of national moralities, and the productive power of censorship to which I now turn.

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\(^{276}\) Noah Webster et al., *An American Dictionary of the English Language: Intended to Exhibit, I. The Origin, Affinities and Primary Signification of English Words as Far as They Have Been Ascertained, II. The Genuine Orthography and Pronunciation of Words, according to General Usage or to Just Principles of Analogy, III. Accurate and Discriminating Definitions, with Numerous Authorities and Illustrations: To Which Is Prefixed, an Introductory Dissertation on the Origin, History, and Connection of the Languages of Western Asia and of Europe, and a Concise Grammar of the English Language* (New York: S. Converse, 1828), ii.


\(^{278}\) Ibid., 355.

Webster is a good example of extreme American Victorianism in action. The King James Version of the Bible was first printed in 1611, at nearly the same time the English sent colonists to North America, but because the Crown held the copyright, colonists were prohibited from printing an English Bible in the colonies. When the Continental Congress banned British imports in 1775, imports of the Bible were also banned, but even before the Revolution Americans had started printing copies. However, Webster believed these British English translations were a problem for Americans because “Whenever words are understood in a sense different from that which they had when introduced, and different from that of the original languages, they do not present to the reader the Word of God.” In order to remedy this, arguing that Americans reject governmental regulations on religion just as they do on language, in 1831 Webster began working on revisions to the King James Version of the Bible which he published in 1833 under the title *The Holy Bible, Containing the Old and New Testaments, in the Common Version With Amendments of the Language.*

Webster’s decision to revise the Bible contradicts his claim that American English is more pure, having escaped the corruptions of London politics by coming to America at the same time the King James Version was printed, but regardless Webster had other innovations in mind which were more important than Americanizing the Bible’s language. Webster planned to remove a different kind of bad language, concluding “The Bible is the chief moral cause of all that is good, and the best corrector of all that is evil in human society; the best book for regulating the temporal concerns of men, and the only book that can serve as an infallible guide to future felicity. With this estimate of its value, I have attempted to render the English version more useful, by correcting a few obvious errors, and removing some obscurities” and in a move which would surprise even the most prudish Victorians in England, decided to replace “objectionable words and phrases” with euphemisms. Webster’s bowdlerized Bible makes many odd revisions. Psalm 22’s “took me out of the womb” is changed to “brought me forth into life, Ecclesiastes 11 “grow in the womb” is replaced by “conception.” In Deuteronomy 23:1 “He that is wounded in the stones, or hath his privy member cut off” is changed to “He that is wounded or mutilated in his secrets,” Job 40 the word “stones” becomes “male organs,” and “him that pisseth against the wall” and “drink their own piss” in the book of Kings are replaced by “males” and “excretions.” In Genesis 34, Exodus 7, Exodus 16, Psalm 38, and John 11, the crude word “stink” is replaced with the words “odious,” “putrefy,” and “offensive.” In Genesis 38, Leviticus 19, 21, Deuteronomy 22, Judges 2, Psalm 106, Ezekiel 16, 23, and Ephesians 5, the phrases “whoredom,” “whore,” “went a whoring,” and “whoremonger,” are replaced with “lewdness,” “lewd woman,” “harlot,” “went astray,” and “lewd person.”

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280 *The Holy Bible Containing the Old and New Testaments in the Common Version with Amendments of the Language by Noah Webster, LL. D. (New Haven: Durrie and Peck, 1833), i.*
281 Ibid., ii.
Webster’s substitutions are difficult to understand without considering the political significance of American-Victorian morality. British visitors to the United States since the 17th century until the present denounce American language as bad language, but they also report surprise at American linguistic morality. In 1832 Frances Trollope reported discussing British playwrights with an American and being surprised by his reaction, “Shakespeare, Madam, is obscene and, thank God, WE are sufficiently advanced to have found out! If we must have the abomination of stage plays, let them at least be marked by the refinement of the age in which we live.” While Shakespeare is often obscene, a topic which will be examined in the chapter on legal language governance, Americans have been particularly concerned with the language of performances. Another often quoted travel journal from 1839 is Captain Frederick Marryat’s report that asking a young woman who scraped her knee “Did you hurt your leg much?” provoked a shocked and offended response in the young woman. He reports asking her why should be offended and receiving the reluctant explanation “that the word leg was never mentioned before ladies.” Marryat also recounts discovering that Americans hid the legs of their pianos, writing a woman had “dressed all these four limbs in modest little trousers, with frills at the bottom of them!” Richard Grant White’s 1880 *Every-Day English* dictionary defines “Limb” as “A squeamishness, which I am really ashamed to notice, leads many persons to use this word exclusively instead of leg.” Marryat’s report was a sensation in Great Britain and seemed support the popular assumption at the time that Americans were more Victorian than the subjects of Queen Victoria.

**Victorian Language Prohibition: Recording the Fact of Censorship**

A significant feature of Marryat’s account is his repetitive reference to shock and surprise, both the shock of the twice injured young woman and his own surprise at her shock. By repeatedly calling attention to surprise and shock, Marryat is making much the same statement as White when he reports being “ashamed to notice” the exaggerated prudishness of many Americans. Much of the discourse surrounding taboo language is similarly composed. Whether discussing the need for increased regulation or loosening regulation, the function and utility of the “repression hypothesis,” as Foucault calls it, is rarely considered. In *The History of Sexuality Volume 1*, Foucault argues that Victorian language governance “Rather than a massive censorship…what was involved was a regulated and polymorphous

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incitement to discourse."

Webster’s bowdlerized version of the Bible is a good example of how censorship produces speech; encouraging the invention of many different ways to speak about prohibited subjects and also producing a greater amount of discourse about sex. Webster, in the preface to his Bible, feels compelled to explain why certain words must be updated for a modern audience and “objectionable words” replaced with euphemism, asserting their replacement will lead to better understanding, but he also makes certain his reader will understand specific phrases are taboo sexual topics not to be discussed explicitly. Before Webster changed the phrase “spilled it on the ground” to “frustrated the purpose” in Genesis 38:9, his audience might not have identified “spilled” as a sexual referent, but by identifying the term as an object of sexuality and then subjecting it to Victorian moral censorship, Webster has produced a new way to talk about sex and has also made God speak about it. In explaining his reasons for euphemisms, citing obscenity as a barrier to understanding the intent behind the Word of God, Webster is fulfilling a primary requirement of Victorian cultural governance—namely that discourse on sex, as Foucault puts it, “would not derive from morality alone but from rationality as well,” a requirement which was “sufficiently new that at first it wondered at itself” and exemplified by White’s shame in noticing leg as a sexual euphemism “sought apologies for its own existence.”

In order for Victorian cultural governance to successfully link morality with rationality, people had to be both aware of censorship and the potential for reasons behind it.

The use of euphemism to identify a piece of language as taboo still includes a formidable number of replacement words, but these substitutes run the risk of failing to communicate the important moral fact of censorship. For example, we can assume many reading Webster’s Bible did not detect his replacement of “stink” with “odious” or understand his reason for making the substitution. As a remedy, writers in the 18th invented a system of graphical symbols to denoting the use, and censorship, of offensive expressions. The most persistent form is the use of asterisks to record omissions, for example f***, f**k, or f*ck. At other times, the use of graphical symbols only records the fact of omission and the reader is given the task of linking the morally absent word with rationality. In Alexander Pope’s edition of Shakespeare, for example, the word hats is omitted from a line in Julius Caesar which now appears as “Their ---- are pluckt about their ears.”

Some of these graphical symbols have entered into speech, the most obvious being the word blank. Even after the invention of new technologies for recording and transmitting speech augmented textual recordings, the need for audiences to detect and rationalize moral censorship is an important features of American cultural governance. American

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286 Ibid., 24.
287 Hughes, Swearing, 18.
288 Quoted in ibid., 19.
newspapers reproducing transcriptions of Richard Nixon’s infamous White House tapes began using the phrase “expletive deleted” to euphemize offensive words. In broadcast radio and television, a “bleep” sound signals the censorship of an offensive word, often with just enough bleeped to let audiences know which word was used.

In order for Victorian-style cultural governance to effectively link morality with rationality, it had to record the fact of censorship so that readers would understand, or invent, moral reasons for their regulation. The commitment to euphemistic discourse about sex and language was interested in policing what can be said, by whom, and under what conditions—helping determine which expressions count as speech and which as noise. During this era, the governance of taboo and potentially offensive language also helped condition the possibility for vulnerable reading publics which the state was put in charge of protecting. This will be examined more closely in the chapter on legal treatments of obscenity, but it is important to note that Victorian language prohibitions focused most intensely on woman and children. Webster’s bowdlerized Bible cites the need to expunge bad language as a barrier to understanding, but as the Schoolmaster of the Republic, Webster also took pains to ensure his texts would instill a shared moral attitude towards bad language. Webster ends his Bible’s introduction with a pedagogical and political argument, finding that “some parents do not permit their children to read the scriptures, without prescribing to them the chapters…. Further, many words and phrases are so offensive, especially to females, as to create a reluctance in young persons to attend Bible classes and schools, in which they are required to read passages which cannot be repeated without a blush; and containing words which, on other occasions, a child could not utter without rebuke.” For Webster, offensive language inhibits understanding for everyone, but it also excludes women and children from participating in community discourses which require the Bible to be read aloud. However, Webster is not arguing for an egalitarian recognition that women and children are politically eligible speakers able to contribute to community life. Rather, Webster finds the perceived vulnerability of women and children as a useful reason for his moral decision to protect them from bad language.

Foucault has demonstrated that Victorian institutions were concerned with producing knowledge about the sexuality of woman and children, exemplified by psychiatric monitoring of children for manifestations of sex and the formation of hysteria for women. In Rancière’s terms, psychiatric discourse denied patients the ability to speak about sexuality and authorized psychiatrists to speak for their patients. Women and children were counted as part of the nation, indeed Webster focuses his nation-building initiatives on children especially, but they count only as subjects which must be morally instructed and

289 The Holy Bible Containing the Old and New Testaments in the Common Version with Amendments of the Language by Noah Webster, LL. D., ii.
defended from corruption. Webster makes this explicit when he argues in his Bible that women and children possess a “Purity of mind…that ought to be carefully cherished,” and finds that “purity of language is one of the guards” which can be used to “protect this virtue.” The presumed vulnerability of women and children is so common in justifications for governance interventions that Cynthia Enloe, in her exploration of its deployment as a justification for war, named the argument “women and children.” Since the 19th century, ‘women and children’ has been a very useful justification for extending American cultural governance over language and linking morality with rationality.

At the same time, the reasons given by Victorian moralists sometimes conflicted with American cultural imaginaries. Webster’s bowdlerized Bible was published at the beginning of what historians call “the great immigrations” as large numbers of Germans, Irish Catholics, and Chinese moved to the United States. Many of these new immigrants used Webster’s Speller and Dictionary, but they brought with them many different ways of reading, writing, and speaking English which exceeded the British-American English debates which inspired Webster’s nationalism. Simpson notes that electoral politics during the 1830s were characterized by Jackson’s successful use of populist rhetoric against the old Federalists’ doctrines of necessary elitisms, a strategy which the Federalists (now called Whigs) adopted until “all factions [had to] now support Americanisms in the official language” and anyone running for office could “no longer afford to present the speech of the lower orders as improper, ridiculous, or sociologically charged.” Vernacular speech had never been an ideal for national speech, but during the Jackson Era using bad language became a way to rebel against conventional authority. John Burnham argues that visitors from abroad were often shocked by the rough language lower class Americans “used to defy authority and consolidate comradeship among themselves.” However, after the Civil War, white Americans colonizing the west believed spreading good American English across the North American continent would help civilize the territories. Many of the early schoolmasters settling on the western side of the Ohio River were Scotsmen or Irishmen who were later replaced by women, but pedagogues carried Webster’s Speller and American Dictionary with them to the frontier where they were used to teach American-born colonists, recent emigrants from Europe, and Native Americans how to speak and write like a member of the American nation.

290 Ibid., iii.
294 Mencken, American Language, 406.
During this period, Native Americans became the subject of increasingly intense pressure to assimilate into the white American nation. In an 1887 report by the Commissioner of Indian Affairs, J.D.C. Atkins, the destruction of Native American culture was clearly tied to Websterian concepts of language as a means for cultural governance. Atkins wrote “Through sameness of language is produced sameness of sentiment, and thought; customs, and habits are molded and assimilated in the same way, and thus in the process of time the differences producing trouble would have been gradually eliminated.” Following the economic techniques Webster had advocated with his copyright and pedagogical initiatives, Atkins argues that Native Americans “must be taught the language which they must use in transacting business with the people of this country.” And yet the 20th century also saw a shift in attitudes towards taboo language. By the 1930s, Burnham notes, “journalists portrayed formal opponents of swearing as merely quaint eccentrics.” Social scientists also began trying to explain the function of obscenity, most notably Allen Walker Read’s essay “An Obscenity Symbol” which argues that a function of obscenity is “to maintain the sacredness” of taboo words and, by claiming to protect children from them, allows moralists to reinforce “a titillating thrill of scandalized perturbation” with their censorship. I conclude this genealogy of bad language picking up where Read left off to consider what function they serve in contemporary American cultural governance.

**Victorian Language Prohibition and American Cultural Governance**

While obscenities, curses, and other forms of taboo language preceded the invention of writing, bad language did not become an object of regulation until spoken language was translated into graphical texts. I argue that language first became a problem when spoken and graphical languages were compared for accuracy, and so the first forms of language regulation were tied to control over literacy. During the late 17th and early 18th centuries in Britain, bad grammar and bad spelling became objects of concern for socially mobile members of the middle class who emulated the manners and modes of expression of the aristocracy. Language reformers at first hoped to purge bad English by establishing national academies tasked with rationalizing grammar and spelling, but after these initiatives failed, cartels of print-capitalists commissioned the production of authoritative grammars, spellers, and dictionaries. During the late 18th century and early 19th century, graphical language regulation was incorporated into nation-building projects which first hoped to make American English distinct from British English and later produce a

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295 Quoted in Battistella, *Bad Language*, 106.
296 Quoted in ibid.
standard national language and uniform national culture which the United States could represent as a nation-state. Victorian language prohibitions on explicit discourse about sex served to excite an explosion of new discourses about sex with euphemism. I wish to conclude this genealogy of bad language by considering why Victorian language prohibitions feature so prominently in discourses, then and now, about American cultural governance and national morality.

Marryat’s report about the peculiar American response to leg, for example, has been reproduced and debated by Mencken, Lynch, Simpson in their studies of American language, but Marryat’s description of prudish Americans covering piano legs appears often in the literature on American moral or “Puritanical” exceptionalism and in feminist histories of American Victorianism. Marryat himself was well known in the United States and, before he left in 1838, he was threatened by a lynch mob, hung and burned in effigy, and had seen copies of his books publicly burned in the towns he had visited. Marryat was accused of sensationalizing American morality for British audiences, but contemporary treatments of Marryat’s writings also sensationalize Victorian American attitudes towards sex. Marryat has proved a useful vehicle for narratives of contemporary sexual liberation which include a new requirement that sex be discussed explicitly.

The idea of taboo language—words which are bad not because they are illegitimate or ungrammatical—but words with the power to repress, offend, and injure has become a particularly a useful technology of American cultural governance since the 19th century. At the turn of the 20th century, many British authors imagined an imminent end to bad and taboo language. In 1927, for example, the poet Robert Graves argued that the invention and popularity of the birth control pill had loosened moral strictures concerning sex, which made sex less taboo and subject to moral censorship. However, contemporary interest in Victorian language prohibition, especially the hypocrisy of requiring subjects to continually speak about sex while denying explicitly sexual language, demonstrates a recent shift in tactics in language regulation. According to Foucault, the Victorian requirement of sexual confession has now become “linked to the challenging of taboo” and “linking together the processes that make it

possible to free oneself both of repression and of domination and of exploitation.” Marryat’s description of American prudishness is useful to contemporary liberation discourse because he measures how far American morality has come after the “sexual revolution” liberated subjects from Victorian sexual repression and language prohibitions. In contemporary American cultural governance, the idea of taboo language prevents challenges “to what gives ‘power’ its power,” or the regime of intelligibility which separates discourse from noise, and because it “enables one to conceive power solely as law and taboo.” Accordingly, 20th and 21st century resistance to American cultural governance with language regulation has framed taboo language as a matter of law.

Foucault challenges us to rethink our understanding of Victorian language prohibition by asserting “We must not think that by saying yes to sex, one says no to power.” Following Foucault, we can see that the same moment discourse was liberated from Victorian language prohibitions, and Victorian methods for determining whose expressions counted as discourse, taboo language became an issue for judges interested in building a national morality and “community standards” which the United States must defend. Bad language went from being an issue for a particular class, to a national and cultural concern for the United States, and then a moral issue for legalists who imagined communities which share a common vulnerability to offensive language. The highly contentious and public debates in Great Britain about bad language were an attempt to regulate who counted as a member of the British or English nation with colonists marked by their difference and not quite counting as full members. The political eligibility of expressions was judged by their style, grammar, pronunciation, and spelling with upper class English counting more than the vulgar English of the lower orders. In the U.S., language reform was equally as contentious as it was in Britain, but reformers like Webster helped make the political contest over language regulation an issue of nationalism. However, Victorian language prohibitions changed the focus of the debate and depoliticized language regulation as a matter of morality. The literature is filled with anecdotes about confrontations with Webster by various people over his definitions or spellings of words, but no similar reports regarding his censored Bible—despite the audacity of presuming to clean the Word of God. Defending women and children against taboo language has since become an effective way to justify language regulation with law.

The Comstock Laws for example, named for the United States Postal Inspector and passed by Congress in 1873, was implemented to suppress the “Trade in, and Circulation of, Obscene Literature and

304 Ibid., 131.
305 Ibid., 155.
306 Ibid., 157.
Articles of Immoral Use” through the U.S. Postal Service,\(^{308}\) regulating bad and taboo writing with law. After the phonograph, radio, and telephone made it possible to distribute sounds without first constraining them to alphabets and regulations of graphic print, the legal regulation of taboo language by the Federal Communications Commission was authorized to protect “children, not only from exposure to indecent language, but also from exposure to the idea that such language has official approval.”\(^{309}\) However, the film industry managed to avoid regulation by the U.S. government by producing the Motion Picture Production Code (MPAA) in 1930. The MPAA was written by the former Postmaster General William H. Hays, a man familiar with how legal regulations on postal communications were justified, and makes the same arguments about protecting women and children. However, the MPAA also asserts that movie industry (sponsors, producers, distributors, and audiences) can self-regulate, deciding what kinds of language to prohibit. Webster also saw markets as a means for producing a uniform American culture based upon a shared common language. By not directly regulating broadcast content, the United States authorizes radio, television, movie, and Internet industries to self-regulate language in much the same way its economic policies imagine markets as self-regulating. Thus, the influence of sponsors on what is broadcast or the installation of SafeSearch filters by Internet search engine companies to block offensive Web content are not often discussed as censorship in the United States, even if their deployment is justified by the need to protect women and children.

However, Foucault points out that Victorian sexual prohibitions that in addition to exciting a euphemistic discourse about sex, they also excited a “plurality of resistances”\(^{310}\) to the exercise of power over discourse. One way of resisting Victorianism, for example, was to be sexy and provocative or later (the focus of Foucault’s argument) resistance meant declaring one’s refusal to be inhibited. Freud resisted Victorian language prohibitions, which he saw as the cause of mental illness, by freeing the speech of his patients to vocalize their thoughts without inhibition. Similarly, Victorian language prohibitions also excited a form of resistance which continues in scholarly and popular debate about censorship; pointing out the irrationality of taboos and the hypocrisy of taboo language regulations based on irrationality. George Carlin’s *Seven Dirty Words You Can’t Say on Television* comedy monologue is one such denunciation of Victorian language prohibitions. When Carlin’s monologue was broadcast over the radio it became the object of juridical discourse regarding broadcast obscenity, but only after it was transcribed as a text and subjected to graphical study. In resisting Victorian language prohibitions by pointing out the irrationality of taboos, believing that what gave language its power to offend was taboo, Carlin

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\(^{309}\) *FCC v. Pacífica Foundation*, 438 US 726 (Supreme Court 1978).

\(^{310}\) Foucault, *The History of Sexuality, Vol. 1*, 95.
unwittingly provided the means for judges to regulate broadcast obscenity with law—identifying the specific words the Federal Communications Commission (FCC) should regulate and providing the arguments judges would use to justify the FCC’s regulations. In this way, resistance to Victorian language prohibitions also conditioned the juridical construction of a homogenous national morality, or “community standards,” and it is that feature of American cultural governance to which I turn next.
Chapter 2. Regulating an Obscene Politics of Aesthetics

Perhaps no one example better illustrates the breadth and importance of the FCC’s role in modern America than September 11, 2001, when all Americans were reminded of the importance of reliable, easily available, and interoperable communications…So, while the formal charge of Congress to the FCC can be summed up in less than 30 words—the day-to-day reality may be that there is no more ubiquitous presence in the lives of most Americans than the FCC-regulated communications industries.

—FCC.gov on the History of Communication

In 1961, Lenny Bruce was arrested at a comedy club in San Francisco on charges of obscenity after he used the word *cocksucker* and made the grammatical joke “to is a preposition, come is a verb.”\(^{311}\) The jury acquitted Bruce, but law enforcement agencies in multiple states began monitoring his performances and sent undercover officers to his performance tasked with recording Bruce’s taboo expressions. In 1962 Bruce was arrested in Chicago for using the word *tits*. Bruce managed to be acquitted of both California obscenity charges, but his use of *tits* in Chicago ended in a conviction. The Chicago Court found that Bruce’s “entire performance was originally held by us to be characterized by its continual reference, by words and acts, to sexual intercourse or sexual organs in terms which ordinary adult individuals find thoroughly disgusting and revolting as well as patently offensive,” and decided from three summaries given by undercover officers on the stand that the performance “went beyond customary limits of candor, a fact which becomes even more apparent when the entire monologue is considered.”\(^{312}\) The Court sentenced Bruce to a year in prison, but Bruce appealed and eventually avoided jail time. Free on bond during the Chicago appeal, Bruce attempted to do a show in London, but was instead taken to the airport and deported as an “undesirable alien.”\(^{313}\) In 1963 Bruce was again arrested on obscenity charges in Los Angeles, this time by an off-duty police officer offended by Bruce’s use of the words *schmuck* and *putz* (Yiddish terms for penis), but was acquitted for a third time in California. In


total, Bruce was arrested nine times for his language.\textsuperscript{314} Bruce’s arrests became so common that his not being arrested after a performance became news. Physically and financially exhausted from his legal ordeals, Bruce took a job doing nightly shows at Howard and Ella Solomon’s Cafe Au Go Go in Greenwich Village, where he managed to avoid arrest for a few months until March 31, 1964. A member of the audience, a former CIA agent turned license inspector for the city of New York named Herbert Ruhe, did not like what he was hearing and busily took notes on Bruce’s language including terms like “jack me off,” “go come in a chicken,” and (perhaps forgetting California) the term “nice tits.”\textsuperscript{315} The next day, Inspector Ruhe reported Bruce’s language to the New York District Attorney’s office, four officers were sent in undercover to transcribe Bruce’s performance as evidence for the grand jury, and Bruce was indicted for violating New York Penal Code 1140-A prohibiting “obscene, indecent, immoral, and impure drama, play, exhibition, and entertainment…which would tend to the corruption of the morals of youth and others.”\textsuperscript{316} The People vs. Lenny Bruce sparked protests across the U.S., but the Court ultimately concluded that Bruce’s performance had “appealed to prurient interest,” was “patently offensive to the average person in the community,” and lacked “redeeming social importance.”\textsuperscript{317} The six-month trial ended in Bruce’s being sentenced to four months in a workhouse and the legal fees financially ruined the comedian. Bruce appealed the decision, but died of a drug overdose before the appeal could be decided. Bruce inspired an entire generation of comedians who resisted obscenity regulations with provocative, purposely shocking, performances which denounced the irrationality of institutional regulations on taboo language.

The Chief Justice presiding over Bruce’s New York trial, John Murtagh, in an unpublished opinion concluded that Bruce’s monologues “were obscene, indecent, immoral, and impure,”\textsuperscript{318} but one of the three judges presiding over the case, J. Randall Creel, dissented and eventually resigned over the Bruce case. In a publication for the New York Bar Journal, Creel summarized his decision to resign as a protest against the assumption of power his fellow justices had taken, concluding that “A very large measure of judicial subjectivity is inherent in the determination of obscenity by the judicial process and by judges and it is suggested that this phrase ‘community standard’ is most probably but another robe to cloak the extent to which the judiciary which has been forced to reshape and mold the law as to obscenity,

\begin{footnotesize}
\textsuperscript{314} Lenny Bruce was arrested 9 times: 05/30/1956 Los Angeles, 09/29/61 Philadelphia, 10/04/61 San Francisco, 10/05/62 Los Angeles, 10/17/62 Los Angeles, 12/04/1962 Chicago, 02/12/63 Los Angeles, 02/23/63 Los Angeles, 03/03/64 New York City.
\textsuperscript{315} Linder, “The Trials of Lenny Bruce.”
\textsuperscript{316} Ibid.
\end{footnotesize}
exercise the powers of super-legislators or indeed of absolute monarchs.”

Corresponding with Creel’s conclusion, this chapter considers how juridical subjectivity has been used to create legal knowledges about what constitutes obscenity, which institutions are authorized to regulate obscenity, and how the exercise of legal authority over taboo language is justified. Understanding how Bruce become the object of legal scrutiny as “the most shocking comedian of our time” and subject to the exercise of legal power.

In the introduction to this project, I argue that a political approach to taboo language should, instead of asking the conventional question “What is taboo language?, ask questions like Under what conditions does taboo language become a political problem or a threat to “the nation”? and How are different conceptions of what gives taboo language its power used to authorize institutional interventions into that language? Walter Kendrick, in The Secret Museum, finds that what constitutes “obscenity” can be anything and concludes that obscenity names an argument, not a thing. My study of legal decisions and secondary accounts elaborating the reasons for those decisions agrees with Kendrick’s conclusion, finding that judges answering the question “What is obscene?” do so by making an argument which, because that argument carries the weight of the state, means that juris-diction overcodes alternative arguments about whether or not something is obscene. However, I argue that the way judges make this decision is by measuring their own affective appraisal of an event and, like Johnson did with his dictionary, abstract the meaning of an event or word and their affective response to it as a universal meaning across contexts. The focus on content and message in obscenity cases, contrasted in the next chapter dealing with the juridical regulation of hate speech and vehicles of communication instead of messages, can be accounted for as an interest in building a certain kind of nation. The chapter on graphic language demonstrates how affect was used by Johnson to define terms for his dictionary and by Webster in justifying the “sensorship” of the Bible, imagining classrooms of ‘womenandchildren’ prevented from learning the Word of God, but Creel’s article also draws attention to the juridical imagining of a community held together by something besides a common language—held together by a common sense or a “community standard.” In his article, Creel asks, “Is the mandate to find the ‘community standards’ as to obscenity just a judicial snipe hunt?” and agrees that “community standards” are imagined. This chapter pushes Creel’s analysis beyond a denouncement of arbitrary power to consider how the juridical regulation of obscenity serves as a technique of American cultural governance which determines the intelligibility of expressions and the political eligibility of subjects. Legal treatments of obscenity, like the

319 “The People v Lenny Bruce: Excerpts from the Cafe Au Go Go Trial.”
320 Linder, “The Trials of Lenny Bruce.”
322 “The People v Lenny Bruce: Excerpts from the Cafe Au Go Go Trial.”
one made by the judges in *The People v. Lenny Bruce* and Christopher Fairman’s book *Fuck: Word Taboo and Protecting Our First Amendment Liberties*, are caught up in defining what an obscenity is. I am more interested in what an obscenity does. Rather than simply a matter of how they shuffle words between categories, I argue that the regulation of obscenity is primarily about the regulation of affect—which bodies can sense what and when—which are as much a part of the definitions given by judges as the meanings they hope to codify. These regulations, I argue, are an attempt to codify a legal distribution of subjects and legislate for the appropriate affective response those subjects should sense. Following Rancière’s argument that “In politics, subjects do not have consistent bodies; they are fluctuating performers who have their moments, places, occurrences, and the peculiar role of inventing arguments and demonstrations,” this chapter examines the conditions under which obscenity arguments are made and how their power to shock is demonstrated.

The categorization of taboo expressions by scholars and judges often works by exchanging descriptions with definitions. The difference between obscenity and profanity, for example, is often considered to be the difference between an image and speech. The word *obscene* seems to refer to a *scene* of some kind. However, the separation between speech and image is never self-evident, and much of what we call speech should be thought of as “graphic language.” Following Jacques Rancière, we find that “voice is not the manifestation of the invisible, opposed to the visible form of the image. It is itself caught up in a process of image construction. It is the voice of a body that transforms one sensible event into another, by striving to make us ‘see’ what it has seen, to make us see what it tells us…there are images in language as well.” Furthermore, J.L. Austin has pointed out that “words are not (except in their own little corner) facts or things: we need therefore to prise them off the world, to hold them apart from and against it, so that we can realize their inadequacies and arbitrariness, and can re-look at the world without blinkers.” Words do not make sense outside of the sentences in which they are uttered and sentences are only intelligible within a specific social context. An obscenity expressed in speech may no longer be sensed as obscene when presented in another medium or when encountered in a different social context. While the scope of this project is limited to taboo language, it is impossible to do a political study of juridical treatments of taboo language without examining how certain words become the subject of obscene arguments. In other words, rather than determine whether *fuck* counts as an obscenity, as so

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many treatments of taboo language have done,\textsuperscript{327} this chapter looks at the juridical “politics of aesthetics” regarding obscenity; disagreements over what counts as obscene and the authority of those doing the counting or regulating language as obscenity.

The juridical politics of aesthetics is particularly interesting because of the numerous standards and rationales judges must invent to make their arguments about taboos and their reasons for regulating their expression. These rationales are often based on assumptions about the power of certain expressions to shock, offend, or injure and vulnerable communities in need of protection. However, rather than simply reassert the power of taboo language to shock or influence physical and psychological states, this chapter takes the Foucaultian approach and examines “what gives ‘power’ its power,” or the policing of intelligibilities at play which “enables one to conceive power solely as law and taboo.”\textsuperscript{328} The chapter begins with a political accounting for how bodies learn to be shocked by specific language. The process of defining a word as taboo and placing it into a specific category is how juridical decisions make differences between obscenity, profanity, hate-speech, and fighting words in order to justify their regulation or protect their use as “free speech.” Anyone interested in the development and interpretation of the First Amendment’s protection of free speech will discover an inordinate amount of attention paid to live and broadcast comedic performances. Comedic performances have historically excited more moral panics and calls for the regulation of language than any other genre. The translation of comedy monologues into juridical language (juris-diction and juris-writing) often produces and neutralizes taboos as judges attempt to define them as obscene. In order to see this politics of aesthetics in action, I explore the process by which language is rendered into text and how judges make their affective experience of taboo language legible within the conventions of legal writing. This chapter will examine two legal cases in detail, returning to \textit{The People vs. Lenny Bruce} and the famous case incited by George Carlin’s \textit{Seven Dirty Words} monologue, in order to show how their comedic performances are read by juridical discourse before showing how an obscene-comic event can be used to sense a redistribution of taboos following a public trauma. As we will see, the considerable attention paid to the language used in comedic performances by monarchs, judges, and judiciaries provides a useful vehicle for understanding what taboo language \textit{does} and the politics of aesthetics used to determine how different bodies sense an obscenity, whose expressions count as discourse, and whose expressions are disregarded as noise.


An Obscene Politics of Aesthetics

The power of taboo language to excite physiological and psychological responses is a prominent feature of the literature, especially legal literature, and popular debate. The ability of certain words to shock and offend is a prominent feature in the literature on taboo language. Montagu, for example, made note of “certain Arabs who, when cursed, ducked their heads or fell flat on the ground in order to avoid a direct hit.” He also describes a scene in which a drunken Irishman hurling curses at a young man waiting for a train at Union Station in New York and is at a loss to explain why the young man winces with every utterance. The poet Robert Graves, in his *Lars Porsena: Or the Future of Swearing and Improper Language*, describes the affective use of obscenity in the trenches of World War I to unfreeze paralyzed troops. Graves recounts that officers were instructed to judiciously mete out taboo expressions and “hold the heavier stuff in reserve for intense bombardment and sudden panics.” A contemporary military study at the University of East Anglia on obscene language concluded that in many cases, these expressions serve “the needs of people for developing and maintaining solidarity, and as a mechanism to cope with stress.” Several psychological studies have been recently published on the affective power of taboo language, including one study which found that participants who immersed their hands in cold water reported less pain, and endured the freezing water for an average of 40 seconds longer, than participants who spoke without using taboo language. However, what gives language the power to influence physiological and psychological states requires a genealogy of obscene pedagogy, comedy, and legislative attempts to control them.

Learning to be Affected

Learning what to sense and the appropriate response to particular sensations is part of becoming an adult. Aristotle argued that a child could not be considered a human being until they learned to

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Following Rancière’s re-reading of Aristotle, we can say that part of being a “political animal” capable of making speech is demonstrating one’s ability to sense, and conform to, the distribution of sensation policed by social norms. In his study of childhood language on the playground, Jay found that children learn at an early age which expressions are more appropriate for which genders and, importantly, demonstrate they have learned the gendered organization of language by insulting each other with wrong expressions gendered expressions. A child calling a boy named “Patrick” by the feminine version of that name, “Patricia,” is demonstrating an awareness of gender names and the sensation Patrick should feel by being called with the wrong name. After observing elementary school playgrounds and recording instances of children using the typically identifiable taboos such as fuck, shit, shithead, bitch, ass and asshole, Jay also found that children who use these words used them in grammatically correct expressions and showed an understanding for gendered differences in the words. For example, an insult directed at a female child would be bitch whereas an insult directed toward a male child would be asshole. In interviews with the children, Jay found that they understood the word shit to be a reference to excrement and ass as a reference to the anatomical region. Jay was uncertain how to consider the child’s understanding of the word fuck as sexual, whether they had a sexuality or understood sexuality yet, but concludes that children understood fuck carried an “offensive force” and directed that force appropriately. Through surveys and observation, Jay ultimately concluded that children frequently use taboo language much more often than adults and use context-appropriate obscenities. In other words, he discovered that children understood what taboo language could do and how to use taboo language intelligibly, but that they had not fully learned the social norms which discourage adults from using that language more frequently. Children understood how to use the language, but did not necessarily sense its use as shocking, offensive, or injurious. This comes later when considering the justification given by judges that taboo language must be regulated to protect children from their affects, but Jay’s findings are also significant because they show that children must learn to be shocked or offended by taboo language.

There is nothing inherently offensive about the word fuck, but in order for fuck to have status as a taboo expression—in order for the expression to do something—its affective value must be taught to those who might otherwise not perceive its use as shocking. A person learning to be offended mimics the

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335 Jay, Cursing in America, 17–27.
336 Ibid., 124.
337 Ibid., 168.
338 Jay, Cursing in America.
reactions of others and learns to feel the shock of an obscene encounter. Children must learn to be offended, or not, by watching the reaction of adults and learning to sense the taboo appropriately. This forms the basis of aesthetic education and hinges upon the logic of a pedagogical relationship. Rancière points out that the distribution of roles in this power-relationship aims at reducing the distance between the ignoramus and the teacher, but that this distance can only be reduced by constantly re-creating the gulf between knowledge and ignorance. In other words, the ignorant child already knows a mass of things which they have learned themselves by observation and repetition, but to the aesthetic teacher this is only an ignoramuses’ knowledge; messily ordered, fragmented, and incomplete. The teacher’s task, as an expert in re-ordering the ignoramus’s affective experiences, is to produce a subject which feels the way it ought and reacts the way it should. The first thing an aesthetic teacher must do is teach the ignoramus about their own ignorance and then, after winning the authority to teach the ignoramus and by presupposing the inequality of intelligence between teacher and ignoramus, reorder the aesthetics of the student. For a moral teacher, a person not shocked by an obscenity is simply ignorant of what an obscenity is supposed to do, someone in need of instruction. A good example of how a moral teacher tries to teach, or impress, the sensation of obscenity in people who do not sense it can be seen in the arguments made by New York City Mayor Rudolph Giuliani in a 1999 court case brought against the Brooklyn Museum displaying an “offensive” painting by Chris Ofili.

In many obscene-arguments, the assumption is often made that certain representations are universally disturbing, distressing, and traumatic. The painting portrayed the Virgin Mary spattered with elephant dung and vaginal icons. Judith Butler has argued that Giuliani’s attempt to cut the museum’s funding assumes that the painting is waging an ideological war and that the sacredness of Mary as a symbol is shared by all. Further, Giuliani’s argument is meant to shore up “the rights of those religious people not to have that frame of reference disrupted…conflating the frame of reference that exists for that religious community for the frame of reference that ought to exist for us all.” Continuing the “globalizing mission of Christianity,” the Mayor’s obscenity argument hopes to extend the shock and offense he felt at seeing Mary depicted in this way to others who would otherwise not have registered the pictures as obscene. Giuliani hoped to teach aesthetic ignoramuses how to be shocked by this depiction of Mary. Learning to be shocked by obscenity is the process of what Rancière has called a “redistribution of the sensible” or a shift in how we experience, what we experience, and who can legitimately decide what is experienced or felt. How one reacts to an obscenity is just as important as learning to register a shock.

Part of being an upper class woman in Victorian England, for example, was by performing an exaggerated

339 Rancière, The Emancipated Spectator, 8.
affective response to an obscenity—fainting when confronted by a language taboo. Contemporary reactions to taboo language and scenes include covering one’s eyes or ears, covering the eyes or ears of a child, feeling ill or like one is about to vomit, squirming, or laughter. However, as Jill Bennett has recently argued when approaching offensive sensations as political and aesthetic, rather than psychological and moral, “the registration of sensation or an embodied affectivity cannot be reduced to the dynamic of a mechanistic stimulus-response trigger.” Instead, the registering of an obscenity and the making of an obscenity-argument should be thought of as a politics which emerges through antagonism of a given order which has aesthetics at its core. One of the most persistent areas of aesthetics policing has been a institutional interventions into staged performances, especially comedy.

**Comedy and the First Official Censor of the English Language**

In my genealogy of linguistic obscenity, and the regulation of obscenity with law, I discovered that legislators and judges have historically maintained an overwhelming interest in regulating theatrical performances, especially comedy performances. In the *Republic*, for example, Plato includes prescriptions for a massive regime of censorship designed to control poets and regulate performances. In his *Laws*, Plato argues that citizens ought to avoid comedy and that, “We shall enjoin that such representations be left to slaves or hired aliens, and that they receive no serious consideration whatsoever. No free person, whether woman or man, shall be found taking lessons in them” and “No composer of comedy, iambic or lyric verse shall be permitted to hold any citizen up to laughter, by word or gesture, with passion or otherwise.” Aristotle agreed with Plato that laughter, especially scornful laughter, should be avoided although he considers wit to be a useful tool in the art of rhetoric. In the *Nichomachean Ethics*, Aristotle echoes Plato, “Most people enjoy amusement and jesting more than they should…a jest is a kind of mockery, and lawgivers forbid some kinds of mockery—perhaps they ought to have forbidden some kinds of jesting.”

The culture Plato hoped to govern was one filled with obscenities and inventive taboos. Aristophanes’ *Lysistrata*, for example, includes a comedic scene in which the women of Athens withhold sex until the men agree stop making war. Aristophanes’ comedies are filled with language and sense which still invoke obscene registers in modern audiences. For example, in *The Clouds* Aristophanes

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[^342]: Plato *Laws* 7: 816e
[^343]: Plato *Laws* 11: 935e
[^344]: Aristotle *Nichomachean Ethics* 4, 8
invents the verb “raphanido” to describe the act of a man having “large white radish rammed up his arse.”\textsuperscript{345} The decay of language is a central theme for Aristophanes and he often poked fun at regional dialects, the mumbo jumbo of political elites, and the jargon of the overeducated. Aristophanes’ comedies were also deeply critical of established order and his use of obscenity encouraged both laughter and social commentary. Understanding how legalists, philosophers, and moralists have attempted to govern American culture by regulating obscenity requires a brief examination of the conditions under which Anglo Europeans have historically approached theater, comedy, and obscene performances.

For the Christian communities drawing upon Aristotle during the Middle Ages, the regulation of affect shifted towards religious prohibitions on taboo expressions, staged performances, and laughter especially. The Bible, for example, warns against laughter and gives parables warning readers to avoid mockery. In \textit{Kings}, a group of children teasing the prophet Elisha for being bald are suddenly killed by two bears who appear and maul the laughing children.\textsuperscript{346} Plato generally objected to Homeric poems and comedies which described Mount Olympus as filled with the laughter of the gods, but the Bible’s only reference to God’s laughter is malicious, “The Lord who sits enthroned in heaven laughs them to scorn; then he rebukes them in anger, he threatens them in his wrath.”\textsuperscript{347} So dangerous was comedy to early Christians that one of the first monastic orders, the Pachom of Egypt, expressly forbade joking and found that “Laughter is the beginning of the destruction of the soul.”\textsuperscript{348} The Rule of St. Benedict advised monks to “speak no foolish chatter,” to do “nothing just to provoke laughter,” and ordered monks “not love immoderate or boisterous laughter.”\textsuperscript{349} The Irish monastery St. Columbanus Hibernus prescribed strict punishments for monks who were seen smiling or laughing during ceremonies, “He who smiles in the service … six strokes; if he breaks out in the noise of laughter, a special fast unless it has happened pardonably.”\textsuperscript{350} Despite these warnings, monks often engaged in lighthearted grammatical parody, transposing letters and sentences of established Latin texts, to create erotic and bodily jokes.\textsuperscript{351} Chaucer presented a serious problem for monks who both enjoyed his writings and also occasionally found it necessary to “clean up” his stories while making copies or illuminating manuscripts.

Chaucer and Rabelais are exemplars of medieval comedy. They both made good use of obscenities and thematically explored excesses of bodily functions (sexual, scatological, and alimentary) as satire and public humor. Both, like Aristophanes, focused on the decay of language and often had

\textsuperscript{345} Aristophanes \textit{Clouds} 1390
\textsuperscript{346} Kings 2:23
\textsuperscript{347} Psalms 2:2-5
\textsuperscript{348} Quoted in Victor Raskin, \textit{The Primer of Humor Research} (Walter de Gruyter, 2008), 217.
\textsuperscript{349} Quoted in ibid.
\textsuperscript{350} Quoted in ibid.
\textsuperscript{351} Bakhtin, \textit{Rabelais and His World}, 20.
characters engage in double-talk, nonsense, inarticulate utterances, and pun. In the *Miller’s Tale*, for example, Chaucer has characters use language which is expressly vulgar in both senses; avoiding euphemism and crude references to female anatomy. Rabelais often included images of drinking and drunkenness, but his themes also dealt with the decay of language. Rabelais’ writings show a fondness for speeches which parody Church language, revel in nonsensical utterances, and are filled with nonverbal forms of expression out of the body like farting, vomiting, excretion, and urination. For many decades, the utility and obscenity of Rabelais was incomprehensible to modern readers.

During the Middle Ages, according to Mikhail Bakhtin, the comedic events of carnivals and feasts provided a “second life” to people otherwise prevented from displays of laughter. Bakhtin points out that while official rituals and ceremonies expressly prohibited obscenity and laughter, the common “folk” people often used both regularly. Before laughter was cut down to cold humor, irony, and sarcasm in the Renaissance, Bakhtin argues that carnivals were not simply isolated comic events, but played an important role in bringing discourse down to earth. Parody and blasphemy thrive in carnival’s atmosphere, especially in profane and irreverent language of comedy which Bakhtin calls “billingsgate.” 352 This carnival laughter found its greatest expression in Erasmus’ *In Praise of Folly*, but laughter was soon stripped of this joyful expression when philosophers began changing “Images of bodily life, such as eating, drinking, copulation, defecation...into ‘vulgarties.’” 353 During the Renaissance, new regimes of regulation called for the repression of certain bodily activities and a tighter control on language. With the Renaissance, obscenity became “narrowly sexual, isolated, individual, and [had] no place in the new official system of philosophy and imagery.” 354 For Bakhtin, the classical, medieval, Renaissance, and modern eras are all definable by their attitudes towards laughter and governance of affect. Classical laughter is keyed to individual identity, social ritual, public life, and engenders the health of individual bodies. Medieval laughter, by contrast, is not sanctioned by official culture and the Church, but is instead part of the social life of popular celebrations. Renaissance laughter was considered to have its own philosophical meaning. Modern laughter has lost its sense of universality and has become instead an occasion for individuals; a momentary release, a form of amusement, and a private response which is no longer a controlling vernacular for social life. Bakhtin demonstrates that Rabelais focus on “the lower stratum” of the body is as much about inspiring laughter as it is about the “material body” being a site of social satire and political reform. However, by the end of the Middle Ages, obscenity had become a political problem and in England the theater became the object of obscenity regulation. Queen Elizabeth

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354 Ibid., 109.
instituted the first official censor of the English language, the Master of Revels, who was charged with curbing obscenity on the stage.\footnote{Geoffrey Hughes, Swearing (Penguin (Non-Classics), 1998), 102.}

The result was an explosion of euphemism, in-joking, and creative circumvention. Shakespeare’s language and incredible linguistic inventions cannot be fully appreciated without understanding the influence of the Master of Revels on taboo language. Shakespeare’s Renaissance comedy, much like Roman New Comedy, often centered on plots of mistaken identity, rural humor, wordplay, and dirty jokes. For example, Shakespeare’s \textit{The Merry Wives of Windsor} features a euphemistic play on words in which Mistress Quickly says that servants mistook their “directions” from Mistress Page by accidentally declaring “Alas the day! good heart, that was not her fault: she does so take on with her men; they mistook their erection.”\footnote{William Shakespeare, \textit{The Merry Wives of Windsor} (Yale University Press, 1922), 68.} Falstaff, who cannot resist cracking a dirty joke, replies “So did I mine, to build upon a foolish woman’s promise”\footnote{Shakespeare, \textit{The Merry Wives of Windsor}.} referring to his regret at being sexually aroused by Mistress Page’s promise to have an affair with him. Shakespeare’s wordplay, especially his elaborate deployment of double entendre, makes fun of Elizabethan language codes and is a strategy for avoiding the Master of Revels’ censorial exercise of power—a form of comedic resistance which again became popular in the 20\textsuperscript{th} century as comedians like Bruce and Carlin ridiculed Victorian language prohibitions. Shakespeare managed to escape prosecution under Puritanical restrictions imposed by the Master of Revels, but other comedic playwrights were not so lucky. Ben Jonson’s 1632 play \textit{The Magnetic Lady}, for example, led to a charge of blasphemy and the play was prohibited\footnote{Quoted in Hughes, \textit{Swearing}, 117.} much as Bruce’s obscenity conviction three hundred years later prohibited his monologues from being performed in New York City.

Shakespeare deployed foreign language, had characters curse ancient Roman gods, and made frequent use of sexual innuendo. In \textit{Much Ado About Nothing}, for example, Shakespeare has Beatrice say “With a good leg and a good foot, uncle, and money enough in his purse, such a man would win any woman in the world if ‘a could get her good will’ ” (II. i. 1.). The double entendre of this statement is difficult for modern audiences to sense, but would have been clear to his Audiences. Leg refers to penis, foot to fouture or fuck in French, and will is an euphemism for sexual appetite.\footnote{Geoffrey Hughes, \textit{Swearing: A Social History of Foul Language, Oaths, and Profanity in English} (Cambridge, Mass. USA: Blackwell, 1991), 108.} Even the word \textit{Nothing} in the title of the play is a sexual pun for an “O thing,” namely a vagina. \textit{Nothing} is used again in \textit{Hamlet} when Hamlet publicly degrades Ophelia by declaring “That’s a fair thought to lie between maid’s legs” to which Ophelia asks “What is, my lord?” and Hamlet responds “Nothing” (III. ii. 120-9).
By the 1640s, performances were so feared that English theaters were closed by the Puritans and remained closed, but during the Restoration of the 1660s, English theaters were reopened but the only performances allowed were Shakespearean revivals, moral tragedies, and comedies of wit and social class. Theaters were heavily regulated, with only two receiving royal sanction by the Stage Licensing Act in 1737. During this period, literary criticism bifurcated comedy into risible (healthy amusement) and ridiculous (bad and derisive) humor. The introduction of print journalism in the 18th century also made newspapers a popular venue for individuals to become literary and cultural critics. Familiarity with written plays and verbal prowess became an important indicator of social status. Books, plays, and dictionaries became commodities for middle-class consumption. In this new social setting, the Puritans who temporarily managed to rule England in the mid-17th century, and those who migrated to North America, set themselves explicitly against the taboo language of the street and stage. The influential Puritan William Prynne, for example, argued that Christians should not be “immoderately tickled with mere lascivious vanities” or “lash out in excessive cachinnations in the public view of dissolute graceless persons.” Taboo language, they argued, re-injured the body of Christ and was therefore a serious offense, giving rise to taboo terms like God’s wounds God’s hooks (later euphemized as gadzooks). Puritan communities in the New World often expressly outlawed comedies and, regardless of the producers’ intent or the specific content, comedic performances were understood to be obscene in themselves and bordering on idolatry.

Moralists in later periods often censored the plays and scripts of earlier comedy writers. One of the most notable examples comes from an 1818 edition of Shakespeare produced by Dr. Thomas Bowdler. Bowdler’s *The Family Shakespeare* is a monumental piece of censorship and careful revision and the title page of Bowdler’s edition promises “those words and expressions are omitted which cannot with propriety be read aloud in a family.” Like most censors, Bowdler’s revisions are inconsistent and he curiously retains expressions like *impudent strumpet!* and *cunning whore of Venice* in *Othello*. In *Timon of Athens*, for example, Bowdler removed several expressions but indicated their removal using italics, prefiguring the Victorian language prohibition’s invention of grawlixes like #&@!. After Shakespeare, Bowdler produced a less successful revision of Gibbon’s *Decline and Fall of the Roman*
Empire. Bowdler’s effort to clean up these texts was so infamous that his name has been made into a descriptive activity; today, to bowdlerize a text means to censor its language.

Legal Interventions into Obscene Discourse Networks

The Puritans, after settling in North America, produced a large body of treatises against obscenity and, as we will see later, comedy which became codified in North American colonies as legal codes. For example, Massachusetts adopted obscenity statues which, until 1697, made obscenity punishable by death. Many studies of the Puritan’s interest in obscenity draw connections between colonial obscenity laws and those instituted during the republican period of Oliver Cromwell’s Interregnum in England. Hughes, Jay, and Mohr all begin with their legal explorations of obscenity with Cromwell’s fine system to regulate the language of his soldiers in which he ordered that “Not a man swears but pays his twelve pence,” but under his military law, a quartermaster found guilty of uttering obscenities was condemned to have “his tongue bored with a red hot iron, his sword broken over his head, and be ignominiously dismissed the service.”

However, there is no evidence that anyone in Cromwell’s England had their tongue pierced for a spoken obscenity and no one was executed under the Massachusetts statute. Furthermore, as Edwin Battistella points out, the Puritans had frequent contact with people famous for taboo linguistic habits like sailors, exiled convicts, and the vulgar classes of poor European immigrants. It was only during the reign of Queen Victoria that obscene language became a political problem in Britain and the U.S., mirroring Kendrick’s observation that the invention of “pornography” led to increased charges of obscenity. It was not until the late 19th century that obscenity became a political problem for the nation, thanks in large part to the efforts of Anthony Comstock and the New York Society for the Suppression of Vice which he led.

365 Jay, Cursing in America, 197.
366 Quoted in Hughes, Swearing, 188; Melissa Mohr, Holy Sh*t: A Brief History of Swearing (Oxford; New York: Oxford University Press, 2013), 4; Jay, Cursing in America, 110.
368 In 1656 the Quaker James Nayler reportedly had his tongue pierced with a hot iron and the letter “B” branded on his forehead, followed by two years of hard labor in prison, for the blasphemy of re-enacting Christ’s entry into Jerusalem by riding into Bristol on a donkey. See William G. Bittle, James Nayler, 1618-1660: The Quaker Indicted by Parliament (W. Sessions, 1986), 131–145.
Paul Abramson has argued that the spread of pornography during the American Civil War gave rise to the anti-pornography movement, and the Comstock Act of 1873, but Abramson’s account finds the initiating event to be the death of Comstock’s friend and Comstock’s belief that his friend had contracted venereal disease from excessive masturbation. According to Abramson, Comstock blamed the man who sold his friend “erotic materials” and initiated a campaign to regulate the networks of pornography he saw spreading across America. Comstock led several such crusades, first making formal objections to the profanity of his fellow soldiers during his time in the Union Infantry and later with the Young Men’s Christian Association encouraging New York to pass a law allowing police to search for, seize, and turn over to the District Attorney “indecent books, papers, articles and things” as evidence for potential conviction under the state’s obscenity statues. Comstock also simply took it upon himself to police the distribution of obscenity, making citizen arrests and famously removing content he found obscene from his neighborhood’s mailboxes. With the YMCA, Comstock wrote the Comstock Act and through various methods detailed by Abramson, managed to get the bill introduced and enacted by Congress. The Act authorized the regulation of obscenity through the mail and created a new position within the U.S. Post Office, Postal Inspector, authorized to remove obscenity from the mail. Comstock was later appointed to the position and exciting the rancor of civil liberties organizations, feminists, and popular authors like George Bernard Shaw. Reflecting a concern examined in the graphic language chapter over American Victorianism, Shaw publicly asserted that “Comstockery is the world’s standing joke at the expense of the United States. Europe likes to hear of such things. It confirms the deep-seated conviction of the Old World that America is a provincial place, a second-rate country-town civilization after all.” In his study of Comstock’s influence, Paul Buchannan determined that Comstock had destroyed nearly 4,000,000 pictures, 15 tons of books, 284,000 pounds of plates for printing “objectionable” books, been responsible for 4,000 arrests. Comstock himself determined that in his “fight for the young” he had driven fifteen people to suicide. Much of the literature on the Comstock Act has focused on Comstock himself, in part because he was by all accounts a controversial figure, but

372 Paul D. Buchanan, American Women’s Rights Movement: A Chronology of Events and of Opportunities from 1600 to 2008 (Branden Books, 2009), 75.
373 Laws of the State of New York, CH. 747, 1872.
374 Shaw’s quotation can be found in Gurstein’s study of “Comstockery as Epithet” in Rochelle Gurstein, The Repeal of Reticence: A History of America’s Cultural and Legal Struggles Over Free Speech, Obscenity, Sexual Liberation, and Modern Art (Macmillan, 1998), 127.
375 Buchanan, American Women’s Rights Movement, 75.
the literature has largely not considered why obscenity would be viewed as such an important issue in 1873 that Congress would pass a law to regulate it.

While there is evidence to support Abramson’s argument that pornography during the Civil War led to Comstock Laws and the regulation of mail for obscenity, but it is important to note that spoken obscenity only became a serious political problem after the 1876 invention of the telephone, 1877 invention of the phonograph, and simultaneous inventions of broadcast radio at the turn of the century. It was with these new channels of discourse, no longer requiring speech to be channeled through alphabets and writing, that legislatures and judiciaries decided that interventions into print-capitalism were no longer equipped for regulating these new channels of communications. However, while mail was regulated for content, most of the regulations for telephones, radio, and television focused on the mediums they used for communication, for example the legislative formation of the Federal Radio Commission (FRC) in 1927 to issue licenses for frequency channels so as to prevent the “chaos” of overlapping signals, but did not regulate the content of messages.

The Radio Act of 1927, which created the FRC, did not give the five person team heading the FRC censorial powers, but it did include a provision requiring radio programming not include “obscene, indecent, or profane language” without describing how the FRC should enforce that provision. However, after receiving complaints about language, the FRC did publicly ask the first “shock jock” in the U.S., William K. Henderson, to clean up his “vulgar” language and stop playing music his rural farmer audience in Louisiana did not appreciate (jazz). Henderson responded by calling the commissioners “crooks,” “skunks,” and “grafters” on his radio program and railed against what he called “the electrical and financial monopoly” and accused the FRC of being captured by the industry it was supposed to regulate. In the early days of radio, it was not uncommon for taboo language to be broadcast. Henderson, for example, on-air called the Republican candidate for President “a harebrained ninny-compoop,” “a son of a bitch,” “a half-assed Englishman,” and “a cross between a jackass and a bulldog bitch.” Henderson also articulated the prevailing view among those who argued against regulating radio when, in a segment in which he read complaint he received, he told an offended listener “Why in hell don’t you turn the little knobs of your radio set? Every radio set has little knobs on it. You made an ass out of yourself by sending me this telegram.” As consumers, radio audiences were given a choice and, like Webster, it was argued that the self-regulating market was best able to handle abuses of language. Even

378 Ibid., 90.
379 Ibid., 75.
380 Quoted in ibid., 76.
after the FRC was abolished and the Federal Communications Commission (FCC) took its place in 1934, and given the power to revoke licenses for stations which broadcast “any obscene, indecent or profane language by means of radio communication,” radio content was largely not regulated by legislatures. For twenty-seven years the FCC did not regulate content for obscenity until, in 1961, a popular radio personality in South Carolina, Charlie Walker, was investigated and denied a license for broadcasting material which “was allegedly coarse, vulgar, suggestive, and susceptible of indecent double meaning.”

In the Walker case, the FCC made the reverse argument Henderson had made, finding that “at the flick of a switch to young and old alike, to the sensitive and the indifferent, to the sophisticated and the credulous.” However, despite little treatment in the literature regarding the Comstock Act, the sudden decision made by the FCC to regulate radio broadcast in 1961 cannot be understood without acknowledging the increased juridical interest in regulating taboo language after 1948. Judicial obscenity arguments, and the use of obscenity regulations as a tool of American cultural governance, is the subject to which I turn next.

**Juris-Diction over Obscenity and American Cultural Governance**

In my study of cases and in the secondary literature, I found that during the late 19th century until the mid 20th century U.S. courts followed British standards for obscenity and focused on the sexual nature of material, assuming that obscenity was morally corrosive to susceptible populations. Many cite the 1868 British obscenity case *Regina v. Hicklin*, a case publicly debated in the U.S. and still featured on the American Civil Liberties Union case law website, in which Lord Chief Justice Cockburn asserted “I think the test of obscenity is this, whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.” In Cockburn’s articulation, obscenity is identifiable by its ability to “corrupt those whose minds are open” and not by his own affective response to the event he was asked to judge. Webster made a similar argument in the preface to his Bible three years later when he argued that “many words and phrases are so offensive, especially to females, as to create a reluctance in young persons to attend

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383 Ibid., 136.
385 Quoted in Fairman, *Fuck*, 94.
Bible classes and schools, in which they are required to read passages which cannot be repeated without a blush. For Cockburn and Webster, the affect of taboo language was legible on the faces and bodies of ‘women and children,’ but a few decades later judges would struggle to make their own affective responses legible as legal discourse in order to justify their decisions.

The first obscenity argument brought to the Supreme Court, in 1897, upheld the conviction of a man for mailing and delivering a newspaper called the “Chicago Dispatch” which the Court (borrowing Comstock’s wording) argued contained “obscene, lewd, lascivious, and indecent matter.” In the fifty year period between 1897 and 1948, no arguments regarding obscenity interested the Supreme Court until another conviction appeal from New York, this time regarding the distribution of war stories, that linked obscene expressions with ideas that language excited affects in the public which must be regulated. In Winters v. New York, the Court overturned the conviction, but found that stories of war horrors might become so “massed” that they would become “vehicles for inciting violent and depraved crimes.” The decision was based on a recent argument made in Chaplinsky v. New Hampshire that “There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting’ words those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.” The distribution of speaking subjects Chaplinsky articulates is examined in greater detail in the next chapter, but it is important to note that following the Winters case the Supreme Court became increasingly interested in adjudicating the obscenity arguments made to it on appeal from lower courts. In 1950, the Court heard a case regarding the interstate distribution of obscene phonograph records and in 1957, the Court decided a Michigan Penal Code prohibiting reading a book containing “obscene language…tending to the corruption of the morals of youth” in public was too broad, asserting a need to protect children from obscenity, but that regulating public spoken obscenity “is to burn the house to roast the pig.” Two decades later the Court would again employ the pig metaphor, that time to justify the regulation of broadcast obscenity, but in another case from 1957 the Supreme Court

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386 The Holy Bible Containing the Old and New Testaments in the Common Version with Amendments of the Language by Noah Webster, LL. D. (New Haven: Durrie and Peck, 1833), ii.
389 Chaplinsky v. New Hampshire, 315 US 568 (Supreme Court 1942).
392 FCC v. Pacifica Foundation, 438 US 726 (Supreme Court 1978).
specifically discounted obscenity as intelligible expressions and initiated a juridical project of nation-building centered on its regulation.

**Juris-Diction and the “Average Person”**

In *Roth v. United States*, the Court decided to provide a test for measuring whether or not something was obscene which broke with British standards articulated in *Regina v. Hicklin* as the visible affective responses shown by vulnerable people, while also upholding the conviction of Samuel Roth for distributing obscenity in, again, New York City. William Brennan, writing the decision, asserted that obscenity could be identified now by its content, not its affect. After Roth, obscenity was not protected by the First Amendment since obscene content is “utterly without redeeming social importance;” in other words, obscenity is noise. Identifying obscenity, and what can be legally banned as “obscene” according the Brennan, is “whether the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.” Fifteen years later Brennan reversed this decision, making an opposite argument, but significant here is Brennan’s invention of “the average person,” “community standards,” and the “prurient interest.” Brennan makes no description of how a judge could know what an “average person, applying contemporary community standards” presented with Roth’s materials would think, or how much interest is too much interest in sex—the prurient interest. Instead, Brennan imagines the average person and community standards.

Brennan does not need to describe how a judge could know how an average person might view obscenity because the “average person” Brennan imagines is himself. Brennan invents the legal fiction of the average person in order to justify his decision, but a few years later in 1964 the Court no longer found it necessary to employ the legal fiction when deciding what counts as obscenity. In *Jacobellis v. Ohio*, the Supreme Court was asked to determine whether a French film which portrayed sexual acts constituted obscenity or should be considered pornographic. After the justices spent hours viewing potentially pornographic movies together and compared affective experiences with each other, Chief Justice Potter Stewart finally defined obscenity as “I know it when I see it.” The judge’s affective experience of an event is simultaneously imagined to be that of the “average person” and that of the Supreme Court Justice authorized by the state to exercise the power of juridical speech over other expressions. *Jacobellis* changed the question from “what constitutes an obscenity” to “who decides what constitutes an

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393 Roth v. United States, 354 US 476 (Supreme Court 1957).
394 Ibid.
395 Ibid.
396 Jacobellis v. Ohio, 378 US 184 (Supreme Court 1964).
obscenity?” As noted in the introduction to this project, juridical conceptions of what gives language its power try to draw a clear line between the power of the sovereign prince or state, through the judiciary, and other exercises of power. The legal fiction of an “average person” and the declaration “I know it when I see it” both attempt to construct a return of what Foucault called the “transcendent singularity of Machiavelli’s prince” where the authority of state-speech, intentional and endowed with absolute agency, is the final authority on obscenity. Put another way, the power of juris-diction is what gives obscenity its power to affect by determining what counts as obscenity and who gets to do the counting, and which bodies can sense what the judge has decided is obscene. This hoped-for return of the sovereign by judges is examined in greater detail in the next chapter, but here we can see that the legal fiction of a “community standard” similarly distributes the sensible and authorizes the judge’s right to police that distribution, but imagining a community standard is also shaped by the conventions of legal writing.

Imaged “Community Standards” for ‘Women and Children’

Ong points out that the invention of writing expanded the concept of an audience from a group of people who literally gather around to listen (the *auditory* root of *audience*), to invisible members which could only be imagined by authors. Plato, the dialogic philosopher, was averse to writing primarily because a piece of text can be read without the author to explain or engage in two-way dialog with the reader.\(^{397}\) Print enabled authors to imagine reading publics and, as Anderson demonstrates, print also facilitated the process of readers imagining themselves as part of national community. We can see this, for example, in how the journalist and pamphleteer Karl Marx, with his mass producing printing press, imagined an audience which consisted of “great masses,” finding that “the great mass of the French nation is formed by the simple addition of homologous magnitudes, much as potatoes in a sack form a sack of potatoes” and ascribed to the French nation “a general will.”\(^{398}\) Rancière describes the invention of “the plebs” and “the proleterii” in Ancient Rome, “the rabble” in the Middle Ages, and in modern nation-states “the masses” and “the people” as a technique of policing which counts these multitudes as part of the social body, “those who do nothing but reproduce their own multiplicity,” those not capable of making speech and only capable of making noise.\(^{399}\)

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399 Rancière, *Disagreement*, 121.
The decisions of *Roth, Jacobellis,* and most of the obscenity cases in the U.S. deploy the same technique when describing ‘womenandchildren.’ Several scholars\(^{400}\) and judges\(^{401}\) have remarked upon the lack of any empirical evidence that reading, hearing or speaking taboo language is harmful to children. Despite this lack of evidence, the idea that taboo language is harmful to some populations persists in juridical discourse and is one of the primary means by which juridical decisions to regulate expressions are rationalized. For example, in 1968 Paul Robert Cohen was arrested for walking through a Los Angeles County Courthouse wearing a jacket emblazoned with the words “Fuck the Draft” after a judge walking past him was offended and decided to hold Cohen in contempt. Cohen was charged with disturbing the peace and was sentenced to thirty days in jail for the use of “vulgar, profane, or indecent language within the presence of or hearing of women and children in a loud and boisterous manner.”\(^{402}\)

The judge may have been more offended by Cohen’s statement regarding the Vietnam War than the use of the word *fuck,* but by deploying the argument the word was damaging to children, the judge imagined a community of vulnerable subjects and used that imagined community to justify his regulation of Cohen’s language. When the case was appealed the Supreme Court, the same arguments were repeated and the same imagined community of vulnerable ‘womenandchildren’ appears. Bob Woodward and Scott Armstrong’s inside account of the Supreme Court, *The Brethren,*\(^{403}\) provides an account of how the judges’ debated with one another about Cohen’s language. Berger referred to the case as the “screw the draft” case and Justice Black made his decision by imagining the affective response of his wife should she encounter Cohen’s jacket arguing “Why should she have to see that word?” to which Justice Harlan responded “I wouldn’t mind telling my wife, or your wife, or anyone’s wife about the slogan.”\(^{404}\)

The justices disagree over whether or not ‘womenandchildren’ are harmed by *fuck,* but they do not disagree that ‘womenandchildren’ are the subjects of legal protection or that the judiciary is justified in defending them. The judges do not need to see the impact of obscenity on vulnerable populations in order to identify obscenity, the way Cockburn defined obscenity in *Hicklin,* because that no longer identifies an obscenity. Now, Justice Black need only imagine what hearing *fuck* would do to his wife and that is justification enough to count *fuck* as obscene. There is no to need to count ‘womenandchildren’ because, as Rancière points out with regard to “the plebs” and “the people,”\(^ {405}\) they are capable of only making noise and so there is no need to ask, study, or give them the opportunity to make a different argument or disagree with


\(^{401}\) FCC v. Pacifica Foundation, 438 US 726 (Supreme Court 1978).

\(^{402}\) Fairman, *Fuck,* 106.


\(^{404}\) Ibid., 128.

the judge over obscenity. Similarly, there is no need to poll “the community” in order to determine what constitutes “community standards” when judging “the prurient interest.”

What taboo language does in juridical discourse is to condition the imagining of morally susceptible populations, authorize judges to universalize their affects and ascribe them to this imagined community, and legislate the distribution of sensations necessary for registering the event as obscene. In both legislative and judicial treatments of obscenity, law is supposed to “sort out the confusion of feeling,” or affects, that language can excite using anecdotes, hypothetical situations, and heterogeneous cases to justify a legal “opinion” and reproduce the “governmental legitimization in the form of the ‘feelings’ of the governed.” The nation-building initiative of a “common language” which Webster tried to produce with his interventions into print-capitalism have been displaced by legislative and juridical interventions into broadcast content in order to produce a “common sense” of which expressions count as discourse and which as noise. The imagined community standards and capacity of ‘women and children’ deployed in legal opinions “specifically define[s] a distribution of the sensible, an a priori distribution of the positions and capacities and incapacities attached to these positions.”

However, as Rancière points out, “the same word ‘opinion’ can define two opposing processes,” one which legitimates the juridical policing of aesthetics, and one which sets up “a scene of conflict between this play of legitimization and feelings.” In order to show how this works, I turn to two such scenes of conflict where the judges sorted the confusion of feeling prompted by obscene-comedy routines by restaging and re-contextualizing the vocal performances according to the conventions of legal writing.

Restaging and Rereading Obscene-Comic Events in the Courtroom

The obscene-comedic event provides a useful example of how these embodied perceptions might lead to different political sensations, not only because they have been the subject of intense interests for language regulators, but also because comedy performances are capable of reaffirmation official institutions of power and also challenging those institutions. However, while the performer or producer may have specific goals in mind, they have little control over how an audience will sense the performance. As noted earlier, the idea of an “audience” retains its primarily auditory origins. During

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406 Rancière, Disagreement, 120.
408 Rancière, The Emancipated Spectator, 12.
ancient and medieval performances, the audience was always understood to be participating in the events of the stage. Greek poets reciting Homer, for example, were often asked by audiences to retell certain parts of the epic or skip over other sections. Walter Ong has pointed out that oral performances often require, even vigorously demand, the participation of the audience. This can be seen in performances run in different venues where “Basically the same formulas and themes recurred, but they were stitched together or ‘rhapsodized’ differently in each rendition even by the same poet, depending on audience reaction, the mood of the poet or of the occasion, and other social and psychological factors.”

In *Performing Opposition: Modern Theater and the Scandalized Audience*, Neil Blackadder traces the development of the “modern audience” through the development of theater technologies in the late 19th and early 20th centuries, for example, finding that the use of variable lighting to dim a theater was meant to silence them and put them in the dark.

Much of Blackadder’s book challenges the assumption that audiences have been, and should be, silent and passive recipients of a performance, but standup comedy has resisted the pacification of audiences and requires audience participation in much the same way Greek audiences were encouraged to participate in the recitation of epic poems. For all the intense focus comedians and comedic performances have received by official and unofficial censors, they are still often able to get away with expressions which would not be tolerated in different contexts or social situations. However, the development of technologies which could record speech and transmit that speech across far-reaching distances has altered the conditions under which language is made taboo and how the audience is imagined. The contemporary juridical regulation of expressions and its treatment of comedic performances, especially those of Lenny Bruch and George Carlin, make this clear.

**Restaging Dirty Lenny**

I will not repeat the details of Lenny Bruce’s obscenity trials with which this chapter opened, but there are several features of the case which require further analysis. First, as noted earlier, much of the trial depended upon memories and written notes made by undercover police officers. During the final New York trial, these officers participated as witnesses and were asked to partially reconstruct Bruce’s monologues from their notes and memories. Invariably, these notes and the testimonies of the officers surrounded the taboo language Bruce had used, but took no notice of the audience’s reactions or the contexts in which Bruce used the language. Sent there to search for language which might be used to

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410 Ong, *Orality and Literacy*, 58.
make an obscene argument, the officers only recorded that language and the re-presented Bruce’s routine as a series of obscenities—obscuring any discourse Bruce might have made with the noise of his taboo language. Bruce petitioned several times to be allowed to perform his routine in court, arguing that the officers’ description of the routine misrepresented the performance, but the Court continually rejected his petitions. Similarly, the Court would not allow any recordings of Bruce’s performance to be played in the courtroom, though it did allow police officers to use the recordings to supplement their notes. During one examination of an officer, Bruce reportedly told his lawyer “This guy is bumbling and I’m going to jail. He’s not only getting it all wrong, but now he thinks he’s a comic. I’m going to be judged on his bad timing, his ego and his garbled language.”

The prosecution also presented testimony from professors, sociologists, and literary experts to comment on the community impact of Bruce’s routine. Bruce’s defense team called psychiatrists who testified that the performance was not sexually arousing, media experts who argued that the performance did not offend local community members, and several literary and art critics who argued that Bruce humor was socially important. The defense worked to classify Bruce as a social commentator whose obscenity served a useful social critique. One defense witness, for example, called Bruce “a brilliant satirist” and testified further that “Lenny Bruce, as a nightclub performer, employs these words the way James Baldwin or Tennessee Williams or playwrights employed them on the Broadway stage — for emphasis or because that is the way that people in a given situation would talk. They would use those words.” In all these instances, the Court was being asked to judge a restaged performance of Bruce’s act, one which conformed to the conventions and norms of courtroom discourse. The transcriptions of Bruce’s language, read aloud later by police officers on the witness stand, and the testimony of experts involved removing Bruce’s performance from its original context and prioritized his linguistic obscenities. This restaged performance, with its preselected obscenities, and the “meaning” of Bruce’s expressions given as expert testimony were the objects of the judicial opinion. The judges never seem to have considered the possibility that what might be sensed as obscene in one context might be sensed differently in another. Bruce, however, began restaging the courtroom proceedings by taking transcriptions from that day’s trial, and earlier trials, and reading them aloud during his comedy club performance. When read by Bruce in a comedy club, juridical discourse became funny and the judge’s interest in the obscenities a punch line.

413 “The People v Lenny Bruce: Excerpts from the Cafe Au Go Go Trial.”
414 Goldman and Schiller, Ladies and Gentlemen, Lenny Bruce!!, 322.
Another striking feature of the Bruce case is how often police officers, transcriptionists, and judges reproduce the words and encounters they deem as always obscene. In Lenny Bruce’s obscenity case, Chief Justice Murtagh’s option reproduces the words he found offensive in Bruce’s performance including “words such as ‘ass,’ ‘balls,’ ‘cock-sucker,’ ‘cunt,’ ‘fuck,’ ‘mother-fucker,’ ‘piss,’ ‘screw,’ ‘shit,’ and ‘tits’ were used about one hundred times in utter obscenity.” Reproducing obscenities in text might be less offensive to judges than reproducing obscene speech orally, but the problem of representing offense without reproducing it persists. One way legal decisions have attempted to capture the sensation of being shocked by an obscenity is to reproduce that obscenity with dampened affective power—to bowdlerize texts and still register the initial shock of an obscenity. However, the rationalized decisions and institutional records of attempts to regulate taboo expressions can themselves be far more shocking than the obscene-events they describe. A notable example is the 1986 final report of the Attorney General’s Commission on Pornography, usually referred to as the Meese Report, which is the result of a comprehensive investigation into pornography ordered by President Ronald Reagan.

The Report attempted to establish the harmful effects of pornography on citizens and tried to show connections between pornographers and organized crime, but was largely discounted as inaccurate and not credible. Ironically, the Report’s attempt to curb profanity and to create moral outrage the acts it described in graphic detail became itself a pornographic best-seller. In her juxtaposition of the Meese Report with the Marquis de Sade’s 120 Days of Sodom, Susan Stewart notes that the Report is itself a parody of pornography’s emphasis on sublimation, “In order to make their point, they use litotes and hyperbole in juxtaposition, serialism, parallelism, arrangement and display of detail, irony, parody, rhetorical climax and resolution—that is, all the traditional rhetorical devices of pornographic discourse.” In a similar way, we see Murtagh engaged in the activity he censures Bruce for deploying. In his decision, Murtagh asserts Bruce’s monologues “were merely a device to enable Bruce to exploit the use of obscene language.” We might ask Murtagh whether his written decision in the Bruce case is also merely a device to exploit the use of obscene language. Murtagh’s decision permits the invention of obscenities “so powerful and pervasive that the state itself must analogously be invented in order to suppress and control it.”

However, not all reproductions of obscenity in the courtroom or decisions have been so titillating. During the Cohen trial, for example, Supreme Court Chief Justice Burger instructed the petitioner’s lawyer against using taboo language in his oral arguments stating “[T]he Court is thoroughly familiar

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417 “The People v Lenny Bruce: Excerpts from the Cafe Au Go Go Trial.”
with the factual setting of this case and it will not be necessary for you…to dwell on the facts.”

Cohen’s lawyer replied to Burger’s coded references by expressly violating the juridical decree saying “At Mr. Chief Justice’s suggestion, I certainly will keep very brief the statement of facts…What this young man did was to walk through a courthouse corridor…wearing a jacket on which were inscribed the words ‘Fuck the Draft.’” Burger was annoyed by the statement and throughout the proceedings the judges insisted upon using euphemisms for fuck, instead continually referring to it as “that word.” In Cohen, the decision to expressly use the word fuck by the petitioner’s attorney was calculated, since censoring its usage would have proved the opposing argument about the word’s need to be banned from public discussion. Justice Burger was so concerned with reproducing the obscenity in the courtroom that he begged Harlan not to use it when announcing the court decision asking “John, you’re not going to use ‘that word’ in delivering the opinion, are you? It would be the end of the Court if you use it, John.” Harlan’s response, according to Woodward and Armstrong, was laughter. The Court’s reaction and reproduction of taboo language underscores the importance of context when sensing something as obscene, as well as the difference between a spoken obscenity and its written corollary, but in another famous case the contextualizing of a performance contributed to the decision to regulate it.

De/Re-Contextualizing Carlin

Ten years after Bruce’s conviction, in 1972, George Carlin was arrested and charged with disorderly conduct by an off-duty police officer who had attended Carlin’s Milwaukee performance with his 9 year old son. The officer, Elmer Lenz, also filed an obscenity complaint against Carlin for his use of a rapidly fired list of terms shit, piss, fuck, cunt, cocksucker, motherfucker and tits while performing his “Filthy Words” comedy routine (later retitled Seven Dirty Words You Can’t Say on Television) before a large crowd. The routine, now famous, repeatedly makes fun of Victorian language prohibitions and the irrationality of language taboos. Lenz’s main justification for the arrest was Carlin’s use of these words before an audience which included children ranging from infants to teenagers. Freed on $150 bail, Carlin unapologetically remarked in an interview at the time, “I wouldn’t have changed anything I did if I had known there were children in the audience. I think children need to hear those words the most because as yet they don’t have the hang-ups. It’s adults who are locked into certain thought patterns.” The case against Carlin was dropped a few months later, with the judge declaring that the language had been indecent, but argued that Carlin had the freedom to say it as long as he caused no disturbance. In

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419 Cohen v. California, 403 US 15 (Supreme Court 1971).
420 Cited in Fairman, Fuck, 109.
421 Woodward and Armstrong, The Brethren, 129.
422 Fairman, Fuck, 166.
1973, Carlin returned to perform in Milwaukee, adding three more to the list of not-for-TV words and warning the audience, “These three haven't even been tested in Milwaukee courts.”

A year later, Carlin’s routine was broadcast uncensored by a New York radio station. Another parent listening with his son filed a formal indecency complaint with the FCC. Under its statutory authority to restrict “any obscene, indecent, or profane language” the FCC decided that Carlin’s performance was “patently offensive” and “indecent,” but not obscene. The classification allowed the FCC to issue a fine, which the radio broadcaster appealed, and the case eventually made it to the Supreme Court where the textual transcription of Carlin’s monologue was subject to intense scrutiny. The official decision in the *FCC v. Pacifica Foundation* case included a transcript of the taboo words deemed offensive. Before hearing the case, as in *Cohen*, Chief Justice Burger instructed the FCC’s attorney not to reproduce the offensive language in his oral arguments, but this time the lawyer complied with the Chief Justice’s instructions. The Supreme Court ultimately decided that the radio station and Carlin’s First Amendment rights were less important than the FCC’s “interest in protecting children, not only from exposure to indecent language, but also from exposure to the idea that such language has official approval.”

The Supreme Court decision expanded the FCC’s ability to regulate broadcasts and, in rather strange language, the Court concluded that the FCC’s treatment of the Carlin broadcast was reasonable under the circumstances stating, “We simply hold that when the Commission finds that a pig has entered the parlor, the exercise of its regulatory power does not depend on proof that the pig is obscene.”

A curious feature not commented on by the many legal and social analyses of the *FCC v. Pacifica Foundation* case is the notations of laughter which appear in the transcript, appended to the official decision, from Carlin’s “Dirty Words” monologue. This is an exact reproduction of the official transcript:

It’s a great word, fuck, nice word, easy word, cute word, kind of. Easy word to say. One syllable, short u. (laughter) Fuck. (Murmur) You know, it's easy. Starts with a nice soft sound fuh ends with a kuh. Right? (laughter) A little something for everyone. Fuck (laughter) Good word. Kind of a proud word, too. Who are you? I am FUCK. (laughter) FUCK OF THE MOUNTAIN. (laughter) Tune in again next week to FUCK OF THE MOUNTAIN.

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424 Ibid.
425 Fairman, *Fuck*, 257.
427 Ibid.
428 Ibid.
429 Ibid.
The legal treatment of Carlin’s expressions, written as a transcript of an oral performance, was subjected to textual analysis by the Court. In their analysis, the transcription’s references to the audience’s affective response to Carlin’s routine, “(laughter),” were interpreted by the judges as either evidence the words were “patently offensive” or were entirely ignored. The judges focused their energies on categorizing the performance as obscene, indecent, or profane and whether Carlin’s monologue represents “speech” worthy of First Amendment protection. These categorizations are ostensibly made by relying upon the written decisions of other cases and statutory definitions. Chaplinsky v. New Hampshire430 was deployed by Justice Murphy, for example, to justify the interpretation that Carlin’s taboo language forms “no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.”431 When determining which language counts as discourse, and which as noise, the Court here makes the determination that only truth claims count, an assertion which appears again in legal treatments of racial slurs, but we see here again a repetition of Platonic prejudices about comedy. While the Court chose to ignore the (laughter) of the audience when deciding the case, we might also question why Carlin’s monologue was transcribed and why it was then subjected to visual inspection this way.

The legal genre in the U.S., even more than the medical genre explored in the chapter on Tourette syndrome, controls who is considered an expert and the intelligibility of their expressions by deploying Latin phrases, legal terminology, and a variety of specialized speech-acts. The medical genre typically limits Learned Latin to the naming of disease or anatomical structures and the organization of biological categories. The legal genre actively controls access to its written materials and participation in juridical textual communities by the use of Latin coding. Any Latin legal concept can be stated in its vernacular, but the legal genre insists on reproducing Latin phrases because it allows only those with sufficient training to make intelligible statements. Terms like affidavit, corpus juris, in loco parentis, pro bono, and habeas corpus could be rendered in the vernacular as written statement, body of law, in place of the parents, free of charge, and appeal for unlawful imprisonment. One reason for the retention of Learned Latin in the legal genre is that Latin helps police the intelligibility of legal claims. If legal genres were written in vernacular, lay people might be able to mimic, manipulate or weave together legal writings without the need for a specially trained expert. Thus, legal discourse’s use of Learned Latin effectively cools discourse, engenders a detached objectivity, and polices the boundaries of who can speak about legal matters. In addition to its utility for policing whose speech matters, Ong has pointed out that “Learned Latin effects even greater objectivity by establishing knowledge in a medium isolated from the

430 Chaplinsky v. New Hampshire, 315 US 568 (Supreme Court 1942).
431 FCC v. Pacifica Foundation, 438 US 726 (Supreme Court 1978).
emotion-charged depths of one’s mother tongue.” He also argues that writing created the conditions for a belief in “objectivity,” particularly the practice of reproducing Learned Latin, which has no purely oral users and also removed facial expressions or gestures from discourse, froze legal codes, and lessened the importance of memorization in education. Even in the presentation of oral arguments, as in the Bruce case, facility with textual interpretations and genre conventions are required to make intelligible juridical statements. Witness statements are compared with written affidavits and cross-examinations involves attempting to get witnesses or other parties to contradict something they have written earlier. The legal opinion is also carefully constructed as an academic document with citations, references, and textual analysis of previous cases. In the United States, juridical case law is considered to have the same authority as legislative law, but both are written down.

However, the Carlin case also complicates the idea that judges make law. Lynch points out that “Carlin made up that list of obscenities himself; when he insisted you can’t say them on television, he wasn’t reporting on the law—there was no law.” However, once the FCC made the argument that those terms constituted obscenity, that it had the authority to regulate them, and the Supreme Court decided the FCC could determine and regulate what was indecent, it was precisely Carlin’s list of seven words that the FCC began regulating. Lynch concludes that “It’s a strange paradox that a foulmouthed champion of free speech should have been instrumental in writing the law prohibiting those same words in the public airwaves.” However, rather than view this as a paradox, the FCC’s deployment of regulations against shit, piss, fuck, cunt, cocksucker, motherfucker and tits signals a limitation of the formulation of jurisprudence as the legally binding speech of the state. By selecting those words Carlin wrote the law, a function supposedly reserved for the sovereign state. If Carlin had chosen different words, those words would have been codified as law, showing not only that the exercise of power can be arbitrary, but also that the agency and sovereignty of the state is not guaranteed. This explains, in part, why judges spend so much of their legal opinions reasserting who has the authority to determine which words count as obscenity and why Potter Stewart had to define obscenity as “I know it when I see it.” What gives obscenity its power is not that the words hold content capable of shocking, offending, and injuring, but partially they have power because of juridical exercises of power over discourse. The Court and the state does not hold power, as Foucault points out, because “Power is not an institution, and not a structure;
neither is it a certain strength we are endowed with; it is the name that one attributes to a complex strategical situation in a particular society.”

Since *Pacifica*, there have been several strategical situations which the Court has used to exercise or reactivate the state’s power to regulate language.

**Juridical Decision Support Systems: Dictionaries and Case Law**

One such strategy has been to codify the meaning of an expression as obscene, no matter the contexts or conditions under which it is used, sometimes thinking like a dictionary and sometimes mobilizing a dictionary for support. For example, in 2003 during an acceptance speech at the Golden Globes, the British musician Bono declared “this is really, really, fucking brilliant” on live television. The FCC does not monitor every broadcast, but instead relies upon consumers to file complaints before investigating an incident and in Bono’s case, no complaints were immediately filed. However, following the now infamous 2004 Super Bowl Halftime Show in which Janet Jackson’s breast was exposed (the nipple covered by a sticker), an interest group formed to facilitate FCC indecency complaints, the Parents Television Council (PTC), complained about Bono’s use of the term *fucking* on live television the year before. In his study of the PTC, a group now responsible for nearly 99% of the indecency complaints filed with the FCC, Fairman found that the group uses inflationary tactics to pressure the FCC to issue a fine, for example filing a handful of complaints from parents repeatedly with different titles in order to make it appear as though thousands of complaints have been received and then reporting the “public outcry” to news media organizations. The PTC did this with complaints against Fox for airing Bono’s language and the FCC issued a fine, which Fox unsuccessfully appealed to the Supreme Court.

In the Court decision, written by Justice Antonin Scalia, the Court begins by finding “It was certainly reasonable to determine that it made no sense to distinguish between literal and nonliteral uses of offensive words, requiring repetitive use to render only the latter indecent. As the Commission said with regard to the expletive use of the F-Word, the word’s power to insult and offend derives from its sexual meaning.” The “literal” and “nonliteral” meanings of the word, which Scalia dismisses as irrelevant, again refers to the difference between written and nonwritten usages (apparently unaware of the “F-Word” as a literal artifact), but asserts that the difference is irrelevant. Scalia begins his explanation by abstracting the meaning of a word from different contexts, written and nonwritten, and

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440 *FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800 (Supreme Court 2009).
442 Ibid., 175.
443 *FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800 (Supreme Court 2009).
then decides that the meaning, or content, of *fuck* is a sexual message. Whether or not Bono meant “fucking brilliant” as reference to sex, or if the audience interpreted it as a reference to sex, or even if others were offended by Bono’s statement is irrelevant. Scalia assumes Bono’s use of *fuck* was offensive because he assumes the expression is either communicating an idea or waging an ideological war in much the same way Giuliani assumed the painting discussed at the beginning of this chapter was communicating an idea. Scalia discounts Bono’s obvious use of *fucking* as an intensifying adjective for the common British colloquial *brilliant*. Scalia and the FCC’s decisions are arbitrary. Indeed, the next year an unedited version of *Saving Private Ryan* by ABC in which *fuck* was broadcast 21 times and the FCC refused to issue a fine because it argued *fuck* in “light of the overall context of the film” was not indecent because the film “is designed to show the horrors of war” and because it aired “to honor American veterans on the national holiday specifically designated for that purpose.”

However, more than simply arbitrary, Scalia’s decision shows how juridical definition, now case law, is used to sort out the confusion of affects language can excite. In juridical discourse, after Scalia, *fuck* is a sexual message and is indecent.

Additionally, Scalia is famous for using historical dictionaries to determine the “intended meaning” of a word and codifying that in his decisions. A 1994 case, for example, depended upon the reach of the FCC’s power to “modify any requirement” and Scalia, writing the decision, wrote “The word ‘modify’—like a number of other English words employing the root ‘mod-‘ (deriving from the Latin word for ‘measure’), such as ‘moderate,’ ‘modulate,’ ‘modest,’ and ‘modium’—has a connotation of increment or limitation” and cited several dictionaries in the decision. Ambiguity in definitions between dictionaries can be a problem because, as Scalia argues in the decision, “When the word ‘modify’ has come to mean both ‘to change in some respects’ and ‘to change fundamentally,’ it will in fact mean neither of those things. It will simply mean ‘to change,’ and some adverb will have to be called into service to indicate the great or small degree of the change.” As famous as Scalia has become for using dictionaries, in fact recently publishing an article describing how judges should use them in writing opinions, he also often misinterprets them and is denounced in the news by lexicographers. By mobilizing the dictionary, Scalia is attempting “to displace politics with moral certainty.”

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444 In the Matter of Complaints Against Various File Television Licensees Regarding Their Broadcast on November 11, 2004, of the ABC Television Network’s Presentation of the Film “Saving Private Ryan,” accessed March 26, 2015.
446 Ibid.
same ambiguity which allowed Carlin to write the law and decide which language is indecent appears here too. If the 1975 edition of the Merriam-Webster dictionary Scalia cites had chosen a different definition, the Court might have made a different decision, making the agency and sovereignty of Scalia’s jurisdiction ambiguous. However, it may also be that Scalia would have made the same decision, regardless of how the dictionary defined “modify.” If that is the case, than the convention of citing other texts and case law is a different kind of strategy.

The problem legal discourse has grappled with in terms of obscenity is how exactly to capture the sensation or record the fact of offense in a way which follows the legal conventions of writing. In the United States, the importance of precedent in legal rulings cannot be understated. The concept of “Stare decisis et non quieta movere” encourages rulings “to stand by decisions and not disturb the undisturbed.” According to this principle, judges are supposed to use the accumulated decisions of similar cases decided by other judges and make decisions which the case law indicates is the general thinking of the judicial community, a community held together by “common law,” so that judicial decisions are based on precedent. However, I found in my study of obscenity cases very little consistency in the case law and other texts judges cited when making decisions. The numerous citations of Regina v. Hicklin, a 19th century British case, in U.S. cases from the early 20th century and even after Hicklin was supposedly “overthrown” by Roth v. United States is a good example. In 2014, the Supreme Court of Indiana cites Hicklin in a decision regarding obscenity, quoting it at length before discussing its replacement with Roth. A similar reproduction of Hicklin appears in a 2008 child pornography decision made by the U.S. District Court, with Hicklin being quoted and then followed in the next paragraph by a discussion of its replacement by Roth. However, in a 1998 decision made by the Nebraska Court of appeals and in a 1990 Supreme Court of Louisiana decision Hicklin is discussed, and quoted, after both documents explore Roth. While the citations are not random or arbitrary, all the cases deal with obscenity and all say nearly the same thing about both cases, the order in which the cases are cited in the decision demonstrates more than stylistic or argumentative differences between judges. Why reproduce this history every time? Why cite a case only to note its replacement? Why cite a British case in a U.S. Court? How can heterogeneous cases be assembled into a homogenous system of precedents and common law?

450 Morgan v. State (Supreme Court 2014).
452 State v. Harrold, 585 NW 2d 532 (Court of Appeals 1998).
453 State v. Russland Enterprises, 555 So. 2d 1365 (Supreme Court 1990).
In my study of obscenity cases, I found that the secondary literature and U.S. Supreme Court Decisions seem to be what assembles cases together such that they seem to follow a systematic deployment of application like precedent. Even identifying “obscenity” cases could be difficult without the secondary literature and Supreme Court organizing them into a legal history. The reason so many cases give the same legal history is not because the judges in Nebraska, Louisiana, and Washington D.C. share a common idea about obscenity, law, or justice but because they simply reproduce the history made in a Supreme Court Decision or in the secondary literature. The first obscenity case brought to the Supreme Court, for example, borrowed the phrase “obscene, lewd, lascivious, and indecent matter” directly from the language Comstock used for the Act named after him without citing the Comstock Act or referencing *Hicklin* at all.\(^{454}\) Obscenity cases also exaggerate a feature of case law which might be difficult to distinguish in other cases—judges often make decisions about obscenity and then mobilize case law to support that decision. Following Matthew Fuller and Andrew Goffey’s study of “gray media,” case law seems to operate as a “decision support system” which allows judges to justify a decision based upon affect, not legal history, and then “mythologize decision making.”\(^{455}\) The legal invention of an “average person” by Brennan in *Roth* is one such myth designed to support a decision which some judges, like Murtagh in the Bruce case, use and others reject in favor of mythologizing other decision-making processes. Potter Stewart’s claim in *Jacobellis* to “I know it [obscenity] when I see it” mystifies how Stewart knows and his authority to declare what he knows as a Supreme Court Justice. Similarly, Scalia mobilizes a dictionary to support his decision’s interpretation of the word “modify” as having a “connotation of increment or limitation” and dismisses lexicographers who argue with his application of what he calls “textualism.”\(^{456}\) The use of dictionaries as part of a decision support system seems to be a popular technique of conservative officials. During his tenure at the Pentagon, for example, Donald Rumsfeld sent thousands of memos, so many he called them “snowflakes,” engaging with colleagues planning and executing the 2003 invasion of Iraq with etymologies and definitions taken from the Oxford English Dictionary. In an interview with the documentarian Errol Morris, Rumsfeld repeatedly called upon the OED to support his argument, for instance, that the U.S. was not conducting “torture” because the OED defines torture as “inflicting severe pain” and “enhanced interrogations” inflicted some pain, but not severe pain.\(^{457}\) Case law and citations as a decision support system also explains, as will be demonstrated in more detail in the next section, why regulating the power of obscenity with the power of

\(^{454}\) “Dunlop v. United States 165 U.S. 486 (1897).”


\(^{456}\) Scalia and another lawyer famous for writing a dictionary teamed up to produce a series of essays concerned with reading dictionaries in order to apply them to readings of the law. See Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 1 edition (St. Paul, MN: West, 2012).

law never settles the question of what counts as obscenity even if it tries to tell us who has the right to do
the counting. Following Rancière, we can see that a legal “opinion” is used to “the reproduction of
governmental legitimizations in the form of the ‘feelings’ of the governed or the setting up of a scene of
conflict between this play of legitimization and feelings; choosing from among responses proposed or the
invention of a question that no one was asking themselves until then.”458 One such scene of conflict, and
redistribution of sensations which resists legal accounts for what gives obscenity its power, can be seen in
the popular treatment of comedy and obscenity following the events of 9/11.

**Redistributing What Counts as Obscene in Comedy after 9/11**

In her book on traumatic visual art, Jill Bennett argues that aesthetics can contribute to political
thought by focusing on what images can do rather than what they represent. Bennett concludes that
embodied perception requires a kind of “thinking through the body” in order to be politically useful.459
Sensing obscenity, and where the line between good and offensive language, similarly requires a kind of
thinking through the body which standup comedians have to be attentive to. Knowing how to shock and
illicit laughter rather than moral outrage is a difficult task. A performer must continually test the affective
registers of their audience in order to discover what can be sensed as obscene. The temporality of events
informs what can be sensed as obscene or as funny, sometimes given as the formula “Comedy is tragedy
plus time.” A recent psychological study, for example, attempted to figure out how long before a tragic
event can be joked about without causing people to be offended concluded “Moral violations are amusing
when another norm suggests that the behavior is acceptable, when one is weakly committed to the
violated norm, or when one feels psychologically distant from the violation.”460 The lead researcher also
noted that comedic events must be somewhere between “too soon” and “too late” in order to evoke
laughter, “Having some distance from tragedy helps to create a benign violation, which facilitates
comedy…But when you become too distant from a mild violation, it's just not funny anymore.”461 Some
comediennes are more willing than others to make risky jokes about recent events. Shortly after President
John F. Kennedy was assassinated, Lenny Bruce told an audience “Vaughn Meader is screwed!,”

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459 Bennett, *Empathic Vision*, 152.
referring to a then-popular impersonator whose entire career was based on doing Kennedy. Bruce is also said to have joked that two graves had been dug at Arlington National Cemetery, one for Kennedy and one for Meader. Bruce’s jokes were temporally close to the traumatic event of Kennedy’s assassination, but did not joke about the assassination itself and so managed being sensed as obscene. The comedic events following the attacks of September 11, 2001 also demonstrate how comedy can be used to sense the distribution of sensation and how a politics of aesthetics can contribute to political thought by looking at what taboo language does after a “national” tragedy.

Immediately following the events of September 11, 2001, “a moratorium on joking...[had] been declared.” In the U.S., comedy clubs were closed, late night comedians Jay Leno and David Letterman went off the air, The Daily Show with Jon Stewart showed reruns for two weeks, the satirical newspaper The Onion was suspended, the New Yorker ran without its famous political cartoons, and the comedian Bill Maher warned all Americans “to watch what they say.” Stock images from the attacks on the towers, speeches at memorials, and videos of people running from the destruction were continually replayed by the American news media. Slavoj Žižek has argued that the 9/11 attacks became a “theatrical spectacle” and that the coverage of events were used for the spectacular effect of it and for mobilizing public opinion in favor of military action. A recent psychological study, for example, attempted to figure out how long before a tragic event can be joked about without causing people to be offended concluded, “Moral violations are amusing when another norm suggests that the behavior is acceptable, when one is weakly committed to the violated norm, or when one feels psychologically distant from the violation.” The lead researcher also noted that comedic events must be somewhere between “too soon” and “too late” in order to evoke laughter, “Having some distance from tragedy helps to create a benign violation, which facilitates comedy...But when you become too distant from a mild violation, it's just not funny anymore.” Knowing how soon is too soon and how late is too late, like Brennan’s dilemma of knowing how much interest in sex is too much interest, was determined by Carlin and Gilbert Gottfried by thinking through their bodies during a comedic performance.

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467 Wrenn, “Take Note, Frankie Boyle.”
Carlin’s Critique and Gottfried’s Aristocrats

Just before 9/11, Carlin had been scheduled to perform an HBO special in New York titled *I Kinda Like It When a Lot of People Die*, but following the attacks it was renamed to *Complaints & Grievances* and finally aired on November 17, 2001. Much like Bruce following the Kennedy assassination, Carlin made jokes about subjects related to the tragic event without making jokes about the event itself. Instead, Carlin began his monologue with a critique of how the terrorist attacks were being used to promote conspicuous consumption. Carlin’s monologue and social commentary are peppered with taboo language and begins:

> Before we get too far along here tonight, there's something we got to talk about. Everybody knows what it is. It’s in the air, it’s in the city, and naturally I’m talking about the events of September 11 and everything that’s happened since that time. And the reason we have to talk about it is otherwise it's like the elephant in the living room that nobody mentions. I mean, yeah, there it is. Sitting on the fucking couch and nobody says a word. It’s like, if you’re at a formal garden party and you go over to the punchbowl and you notice floating around there's a big turd and nobody says a word about it, you know. Nobody says, lovely party, Jeffrey, but there’s a turd in the punchbowl. So we got to talk about it. If nothing else just to get it out of our way so we can have a little fun here tonight, because otherwise the terrorists win. Don’t you love that stuff? Yeah. That’s our latest mindless cliché. Go out and buy some jewelry and a new car, otherwise the terrorists win. Those business assholes really know how to take advantage, don’t they?  

What Carlin’s taboo language does here is to provide moments of comic relief to his social critique of the imperative to continue consumption as a means of fighting terrorism. His routine acknowledges the events of 9/11, but his taboo language makes it acceptable to joke about the reactions to the events. Carlin’s critiques, wrapped in comedic performances, was a comic relief for audiences in shock following 9/11, but his use of obscenities also provide moments of comic relief in between the seriousness of his social critique.

If we contrast Carlin’s performance with Gilbert Gottfried’s comedy routine on the same subject, delivered a month after 9/11, we see a different kind of sensible comedic event. Gottfried began his performance by joking that he had to catch a late flight out of town but was worried because his flight “had a connection at the Empire State Building.” The audience responded to Gottfried’s reference to 9/11 with boos and cries of “too soon.” The temporal distance between a tragic event and a comedic event is sometimes too close, which might result in an obscene-comedic event. Gottfried responded to the cries of “too soon” by abandoning his set performance and he began telling an improvisational joke instead called “The Aristocrats.” This joke, which has been told by numerous stand-up comedians, makes obscenity and shock-for-laugher its primary goal. Gottfried began with the usual conventions of the joke by starting “A

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talent agent is sitting in his office. A family walks in - a man, woman, two kids, and their little dog. And the talent agent goes, ‘What kind of an act do you do?’.” Gottfried then launches into a description of the vaudevillian act which is a purposefully obscene as possible:

The father starts fucking his wife, the wife starts jerking off the son, the son starts going down on the sister, the sister starts fingering the dog's asshole. Then the son starts blowing his father. Do you want me to start at the beginning? If you missed any portion, I'll repeat it. Then the daughter starts licking out the father's asshole, then the father shits on the floor, the mother shits on the floor, the dog pisses and shits on the floor, they all jump down into the shit and piss and cum and they start fucking and sucking each other. And then they take a bow...and the talent agent says “well, that's an interesting act,” which is kind of an understatement…He says “now what do you call yourself?” and they go “The Aristocrats!”

Many have commented that Gottfried’s performance was mere escapism and have “now given credit [to Gottfried] for being the first comedian after 9/11 to deliver a hugely cathartic laugh” that America needed. However, more than a simple release of pent up anxieties, it is better to consider Gottfried’s performance as one which tests what can be sensed as obscene. Three weeks after the attacks of 9/11, jokes about the attacks were too obscene to be performed but The Aristocrats, which had been too obscene to perform before, now became sensible as something different. While Comedy Central never aired Gottfried’s performance of The Aristocrats routine on television, the laughter of his audience, the considerable admiration many expressed for his performance demonstrate that his audience was not offended by his joke. The juxtaposition of Carlin and Gottfried’s standup routines following 9/11 demonstrate how the sensation of obscenity is open to redistribution and how the positions or capacities of participants are changed following a traumatic event.

The vast majority of the literature on obscenity takes for granted the idea that certain language is shocking, offensive, and otherwise obscene without taking seriously the alternative aesthetic responses obscenity can inspire; such as laughter. Carlin’s performance while funny, is pedagogic, giving audiences an education about the social conditions which oppress them and deploying taboo language occasionally as a relief for the seriousness of his critique. If subjected to judicial decision making processes today, Carlin’s performance would likely have been counted as making politically eligible expressions which, even if using taboo language, would probably still qualify as dissent protected by the First Amendment. Gottfried’s performance, by contrast, would likely be considered obscene or, using the decision from Chaplinsky, found form “no essential part of any exposition of ideas, and are of such slight social value as

a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.”

Carlin make some truth claims while Gottfried did not, but Gottfried may have made a larger contribution to the “social interest” than any exposition on truth.

Obscene Language and American Cultural Governance

This chapter has considered several different answers to what gives obscenity its power to shock, offend, or injure and examined the conditions and institutions which give obscenity its power to do that. In almost all of the accounts I found, that disagreements over obscene language centered around the affects of those who encountered them and who should be protected from those sensations. I argued that to some extent we must learn to be affected and that the language of comedies have attracted considerable interests from legislatures and judges. The relationship between affect, learning how to be affected, and comedy may not be coincidental. There is, after all, a close connection between expression of pain and expressions of pleasure and it can be easy to mistake laughing for crying. However, in juridical discourse especially, the ambiguities of aesthetics are identified as part of the problem and law, or juridical decisions, are employed as a remedy for sorting out the confusion of feelings obscenity can inspire. Thus, I found that the technology of writing and the conventions of the legal genre are mobilized in the politics of obscene aesthetics, appearing in the transcription of comedic performances so they can be subjected to textual analysis and restaged in the courtroom. Definitions, dictionaries, case law, and other texts were also used in justifying a decision. I also discovered, supplementing Anderson’s theory about imagined communities, that judicial regulations of taboo language have imagined “community standards” and a community of vulnerable subjects, ‘womenandchildren,’ in need of protection.

These imagined communities, both in need of protection, are still a prominent feature of American cultural governance. In fact, as content on the Internet and the “war on terror” progresses, the institutional imaging of communities in need of protection is becoming more pervasive in the United States. In 2000, for example, the FCC received 111 indecency complaints, but following 9/11 the number of complaints has risen sharply. In 2004, under the stewardship of Michael Powell (Colin Powell’s son) the FCC reported receiving 1,068,802 complaints, levied 48,000 fines totaling $7,928,080. In 2005, Congress passed the Broadcast Indecency Enforcement Act, raising the fine per incident from $32,500 to $325,000 per incident (some members of Congress tried to include jail time as well as a fine). By 2013, the FCC was receiving so many indecency complaints it had to simply throw away 1 million of them and

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471 FCC v. Pacifica Foundation, 438 US 726 (Supreme Court 1978).
began “modernizing” its system to process complaints more quickly.\textsuperscript{473} On February 26, 2015, the FCC announced its “Open Internet” decision “designed to protect free expression and innovation on the Internet and promote investment in the nation’s broadband network.”\textsuperscript{474} While the FCC, legislators, and judges have generally been in favor of letting the Internet self-regulate as a market when it comes to content, these recent developments and the history of electronic communication regulation in the U.S. may mean we will soon see more state-sponsored language regulation initiatives. Similarly, the juridical imagining of communities, especially those it authorizes the state to protect, have become a bigger political issue for judge regulating racial slurs—now imagining different racial communities within, or beside, the dominant community held together by their identification as Americans. However, the ambiguities of law attempting to sort out the aesthetics of obscenity have also conditioned the possibility of a new challenge to the question what counts as an obscenity and who gets to do the counting.

In 2013, George Washington University law professor John Banzhaf III filed a petition asking that the term redskins be regulated under the FCC’s broadcast indecency policies in an attempt to force the Washington Redskins to change their team name. In the filing, Banzhaf argues “Despite whatever the origins of the word ‘R*skins’ may be, or the original intent of the owner who first gave the team its name, the evidence is now overwhelming that the current meaning is an offensive demeaning racial swear word, not only to many Indians, but also others.”\textsuperscript{475} Immediately after the filing, former FCC Chairman Reed Hundt and two former Commissioners, Jonathan Adelstein and Nicholas Johnson, published a letter to the Washington Redskins’ owner in the Washington Post where they asserted that television “uses government owned airwaves in exchange for an understanding that it will promote the public interest” and argued redskins should be classified as indecent because “XXXskin is the most derogatory name a Native American can be called. It is an unequivocal racial slur.”\textsuperscript{476} The FCC denied the petition, concluding that its language regulations are limited to “profanity as sexual or excretory in nature,” but three similar petitions regarding redskins have yet to be decided. The regulation of taboo language using textual conventions, Banzhaf’s “R*skins and Hudt’s “XXXskins, are techniques developed during the 19th and 20th century to regulate graphic language and also make readers aware of what was censored. The idea that specific words are harmful to vulnerable subjects and communities which the state should protect—Banzhaf’s petition for FCC regulation of redskins and Hundt’s argument that the government

\textsuperscript{473} "FCC Cuts Indecency Complaints By 1 Million; Seeks Comment on Policy,” accessed March 26, 2015, http://www.fcc.gov/document/fcc-cuts-indecency-complaints-1-million-seeks-comment-policy More recent statistics on the number of complaints received are currently unavialable as the FCC transitions to a new system for managing the huge increase volume.
\textsuperscript{474} "Open Internet,” March 12, 2015, http://www.fcc.gov/openinternet.
\textsuperscript{475} John Banzhaf, In the Matter of Broadcast Stateion WWXX, 94.3 FM (2014).
should ensure content which promotes the “public interest”—are similar to the justifications given by judges when deciding to regulate obscene comedic events to protect “community standards.” The regulation of racial slurs as a tool of American multi-cultural governance is where I turn next.
Chapter 3. How States Do Things with Slurs

Language is not merely a medium of communication—however important that medium is—but the unifying factor of a particular culture and often a prerequisite for its survival. No other factor is as powerful as language in maintaining the genuine and lasting distinctiveness of an ethnic people.

- Howard Giles and B. Saint-Jacques

We are not safe when these violent words are among us.

-Mari Matsuda

In April 2014, Donald Sterling was banned from the National Basketball League for life, fined $2.5 million dollars, and forced to sell the Los Angeles Lakers after his girlfriend posted recordings of Sterling saying “It bothers me a lot that you want to broadcast that you’re associating with black people. You can sleep with [black people]. You can bring them in, you can do whatever you want,” but “the little I ask you is ... not to bring them to my games.” When asked about his recorded statement in an apology interview on CNN, Sterling replied “I want to show all of the people that are associated with basketball and the world I’m not a racist,” citing that he did not use any racial epithets in his recording, but also commented on racism in America by asserting “I think America has worked well with that. Maybe not as well as the African-Americans would like, but I’m a Jew. I watch what's going on with us, too.” A few months later, after a grand jury announced its decision not to indict NYPD police officer Daniel Paletto for choking to death an unarmed black man, Eric Garner, New York Congressman Peter King was interviewed on CNN about the role of race in the killing. In the interview, King made the statement “People are saying very casually that this was done out of racial motives or violation of civil rights. There’s not a hint there that anyone used any racial epithet.” In 2013, the popular television cooking show host Paula Deen was sued by an employee for racial discrimination and Deen’s deposition focused intensely on her language. Deen admitted to using the “N-word” in the past and when asked if she had

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477 Giles and Saint-Jacques, Language and Ethnic Relations.
478 Matsuda et al., Words That Wound, 38.
479 Cacciola and Witz, “N.B.A. Investigating Racial Remarks Tied to Clippers Owner.”
480 Almasy, “Donald Sterling in CNN Exclusive.”
481 Blitzer, “The Situation Room-Transcripts.”
used it since then, she replied “I’m sure I have, but it’s been a very long time…maybe in repeating something that was said to me…probably a conversation between blacks…But that’s just not a word that we use as time has gone on. Things have changed since the 60’s in the south.” Immediately after Deen’s deposition was published online, her television programs and endorsement contracts with the Food Network, Wal-Mart, Target, Home Depot, Sears, and several other companies were cancelled. At the same time, sales of her cookbooks surged and became Amazon best sellers.

In contemporary American culture, no language excites more discourse or calls for regulation than racial slurs. Despite often asserting that racial slurs are the most offensive language in the U.S., the literature on taboo language has tended to avoid examining racial slurs in detail. Timothy Jay, for example, has conducted several psychological experiments concerned with taboo language, but only discusses racial slurs as insults designed to hurt their target and, while Jay also notes that racial slurs are the most taboo in America today, he then virtually ignores them in favor of sexual terms. Geoffrey Hughes, in the comprehensive Swearing: A Social History of Foul Language, Oaths and Profanity in English, notes that taboo language regulation has moved in a kind of progression from a concern with blasphemies against religion, then toward terms for excrement, to the sexual act, to gender-based insults, and now racial slurs. However, Hughes’ historical survey of taboo language reserves a scant five pages to an explanation of racial slurs. Another curious feature, aside from the irony that racial slurs are taboo in the literature on taboo language, is that studies of racial slurs have been intensely focused on the individual words themselves and the intentions of individuals who use them. As we saw in the chapter on graphic language, Webster’s interventions were designed to prevent “numerous diversities” of Englishes which “perplexes the mass of a nation.” The national community Webster imagined was a “mass” or “the people.” Similarly, judges concerned with regulating obscenity imagined national “community standards” and vulnerable populations of ‘women and children’ in need of protection from the dangers of broadcast media. In both print and broadcast interventions, interventions were aimed at regulating the content of messages. With racial slurs however, the imagined community in need of protection is typically a racial community and the medium of communication, rather than the content of the message, is the suggested point of intervention. Juridical treatments of racial slurs, for example, hope to regulate what

482 Carter and Sung, “Official.”
483 Chasmar, “Paula Deen Cookbooks Surge to Top Spots on Amazon Best Sellers.”
484 Jay, Cursing in America.
485 Hughes, Swearing.
486 Webster, A Compendious Dictionary of the English Language in Which Five Thousand Words Are Added to the Number Found in the Best English Compends ... , x.
J.L. Austin described in his famous lecture series *How to Do Things with Words* as the “total speech situation” or the context and participants involved in a linguistic exchange.

This concern with the vehicle of expression, rather than the content, might also help explain why when racial slurs do appear in the literature on taboo language, they are almost universally explained as a product of “xenophobia” or evidence of racist ideology and then quickly passed over in favor of blasphemous or sexual taboos, which can be more easily explained as part of the Victorian language prohibition. The incidents with which I opened this chapter are not isolated, indeed similar events occur so often in news and the daily lives of many Americans that it would be impossible to catalog them all, but one reason why they are debated as isolated incidents, as we will see, is that these dominant narratives and state control over language encourages racism to be explained as an ahistorical, and apolitical, scene of events between individual citizens. It is in the literature devoted to the legal treatment of racial slurs as “hate speech,” most of which was produced during the 1990s, where the most detailed and clearly articulated treatment of racial slurs as isolated linguistic events. The most influential of these treatments is an edited volume, *Words That Wound,* featuring essays by Mari J. Matsuda, Charles R. Lawrence III, Richard Delgado, and Kimberle Williams Crenshaw and the critical reply to their arguments made by Judith Butler in her book *Excitable Speech* and Randall Kennedy in his book *Nigger.* While this chapter is indebted to texts, and they are the primary source material for much of this study, my approach to racial slurs is driven by a different concern. Kennedy begins his study of racial slurs by asking: “How should nigger be defined? Is it part of the American cultural inheritance that warrants preservation? Why does nigger generate such powerful reactions?” Instead, this study asks: Under what conditions do racial slurs become the objects of American culture and what gives racial slurs like nigger the power to provoke reactions? In his essay arguing for the regulation of racial slurs as hate speech because of their power to injure, Lawrence begins by asserting that “At the center of the controversy is a tension between the constitutional values of free speech and equality.” My alternative is to ask what gives racial slurs their power to injure and how does this linguistic injury become the subject of constitutional values of free speech and equality?

To answer these questions, this chapter begins by looking at how the dominant narratives of scholarly and popular explanations for what gives racial slurs their power to injure—the history of specific words, the pronunciation of specific words, mischaracterizations specific words seem to

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487 Austin, *How to Do Things With Words.*
488 Matsuda et al., *Words That Wound.*
489 Butler, *Excitable Speech.*
490 Kennedy, *Nigger.*
491 Matsuda et al., *Words That Wound,* 56.
reference, and the bad thoughts or beliefs users seem to hold—and the types of psychological and legal interventions these explanations excite. This chapter will primarily focus on treatments of racial slurs directed at black Americans because there is a general agreement in the literature on taboo language and in popular debates that nigger constitutes the “filthiest, dirtiest, nastiest word in the English language”\(^{492}\) or “the all-American trump card, the nuclear bomb of racial epithets.”\(^{493}\) Additionally, recurring moral panics over “Black English,” most notably in recent years the controversy over whether it is appropriate to teach “Ebonics” in American classrooms with large numbers of black students, threaten Noah Webster’s pedagogical project to create a homogenous nation with good American English, which excluded “black talk,” and also reanimate old cultural governance techniques which counted literacy as a necessary condition for being counted as a politically eligible member of the American nation.

However, I argue that where earlier forms of language regulation were aimed at establishing a homogeneous American nation, the regulation of racial slurs and “identity politics” demonstrates a shift towards American multi-cultural governance which produces, maintains, and manages diverse national cultures and authorizes the state to hold these heterogeneous nations together as a legitimate nation(s)-state. Strategies devised as part of progressive social or legal movements, as we will see, often expand the authority of the state, especially legal power, over issues in question and can empower the state to dismantle the social and legal movements that championed their adoption into legal policy. Finally, I end with a political theory of racial slurs which finds that part of what gives them their power to injure is the way in which the state has used racial slurs to determine the racial distribution of subject positions from which expressions about “wrongs” can be, and often must be, made in order to count as politically eligible discourse. As a technique of American multi-cultural governance, the regulation of racial slurs shifts the terms of violence way from the state, and the historically destructive effects of its cultural governance initiatives, towards the violence of citizens against minority groups.

**The Power of Words: Bad Etymologies, Bad Sounds, and Bad Ideologies**

As examined in earlier chapters, debates about what gives taboo language its power and how best to regulate that power are often focused on the words themselves. Much of the literature on taboo language is concerned with the etymology of specific words, usually interested in how they went from being innocuous to offensive, and then extracting from that word history a reason for why they are taboo.

\(^{492}\) This statement was made by Christopher Darden, the prosecutor assigned to the famous O.J. Simpson murder trial, and it quoted in Kennedy, *Nigger*, 28.

today. This same convention exists in the literature on racial slurs, but with racial slurs the focus on the words themselves is especially problematic. First, determining when specific words acquired their power to offend or injure is heavily dependent upon writing and problematic documented accounts of historical responses to their use. Second, these histories of specific offensive words often dehistoricize the social conditions under which they became a political problem, and instead focus on the way offensive words are expressed and to what things the words seem to refer.

Many treatments of racial slurs, especially those made by linguists, begin with an etymology of specific racial slurs. This linguistic emphasis on word histories also spills over into psychological and legal treatments of racial slurs. Randall Kennedy, for example, begins his legal history of nigger by reproducing an etymology which also appears, with some variation, in much of the literature on racial slurs:

*Nigger* is derived from the latin word for the color black, *niger*...it did not originate as a slur but took on a derogatory connotation over time. *Nigger* and other words related to it have been spelled in a variety of ways, including niggah, nigguh, niggar, and niggar...No one knows precisely when or how *niger* turned derisively into *nigger* and attained a pejorative meaning. We do know, however, that by the end of the first third of the nineteenth century, *nigger* had already become a familiar and influential insult.

For Kennedy, an etymology shows how the meaning of a word has changed over time, in this case from an innocuous term with Latin roots to an insult. The temptation when studying racial slurs, as with all taboo language, is to argue that the term’s past meanings continue to determine, or at least inflect, its current meaning. As Frederic Jameson has pointed out, “that sounds have their own history and that meanings change” only confirms that “at any moment in the history of the language, one meaning alone exists, the current one: words have no memory.” Rather than giving individual words a history, Jameson draws attention to the value of such histories and why they appear. Words have no history, but “etymology, as it is used in daily life, is to be considered not so much a scientific fact as a rhetorical form, the illicit use of historical causality to support the drawing of logical consequences.”

By beginning with etymology, Kennedy is deploying a rhetorical strategy for arguing against the idea that *nigger* should always be understood as an injurious term. As a rhetorical tool, etymology can be effective for complicating claims, such as the one made by Richard Delgado, that “Most people today know that certain words are offensive and only calculated to wound. No other use remains for words such as

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494 Kennedy, *Nigger*.
495 Motley and Craig-Henderson, “Epithet or Endearment?”; Hughes, *Swearing; Jay, Cursing in America; Jay, Why We Curse: A Neuro-Psycho-Social Theory of Speech*.
498 Ibid.
‘nigger,’ ‘wop,’ ‘spick,’ or ‘kike’” or that the meaning of nigger is the intentional speech act which is “only calculated to wound” because “Words such as ‘nigger’ and ‘spick’ are badges of degradation even when used between friends; these words have no other connotation.” Kennedy’s etymology is not a statement of fact, but an argument—one which shows how the varied history of a word makes possible varied current meanings or make different speech acts.

Privileged Etymologies

However, an etymology of the term nigger, or of any term which depends upon its appearance and usage in texts, will therefore privilege the meanings given by literate elites. What is selected for recording and preservation is always a determination of what can be recorded and preserved. Following Jacques Derrida’s observation that “Archives are only kept and classified under the title of the archive by virtue of a privileged topology,” it is important to remember that recordings of racial slurs (and of all taboo words) are the result of power and privilege. Kennedy notes that we do not know precisely when nigger became an insult or a racial slur. The Oxford English Dictionary etymology of nigger cites the first written usage from Thomas Hacket’s 1568 New found worlde, or Antarctike, “Also ye Neigers eat these Lezards, so do the Indians of America.” In 1619, John Rolfe described the first shipment of Africans to Virginia as “negers” and a 1689 inventory of a Brooklyn estate included an enslaved “niggor” boy. Samuel Sewall’s The Selling of Joseph, the first anti-slavery tract published in New England in 1700, uses the term “niger” in a plea against the enslavement of blacks. Webster referred to black Americans as “neggers,” though it is unclear if he identified nigger as a term in need of spelling reform to make its written form correspond more closely with its spoken use in America or if he used it, as Smitherman asserts, in contrast to nigger as a friendly salutation.

However, the first text published in the United States by a black American was a broadside poem titled “An Evening Thought. Salvation by Christ with Penitential Crienies: Composed by Jupiter Hammon, a Negro belonging to Mr. Lloyd of Queen’s Village, on Long Island, the 25th of December, 1760,” which refers to the condition of slavery and chooses Negro rather than nigger to describe the author, complicating Hughes’ argument that nigger was first “a descriptive term not always intended to offend,

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499 Matsuda et al., Words That Wound, 94.
500 Ibid., 107.
501 Derrida, Archive Fever, 3.
502 “Neger, N. and adj.2.”
503 Kennedy, Nigger, 4.
504 Sewall, The Selling of Joseph.
505 Smitherman, Black Talk, 210.
Hughes argument represents the limitations of etymologies for determining when a specific term became taboo or offensive since the practice of writing and selecting what is worth preserving has historically been a matter of privilege. Thus, etymologies of taboo words like *nigger* tend to be what I call “privileged etymons:” word histories which assert a coherent word-meaning over time or assert a contemporary meaning based upon past written records of its usage are already pre-selected as eligible expressions worthy of recording and preserving.

While an etymology of a term can show how its use has changed over time, the passage of laws against slave education—North Carolina (1740), Georgia (1758), Louisiana (1830), Alabama (1832), even “free negroes” or “mulattoes” in Virginia (1831)—and the added difficulties of poverty, poorly equipped literacy education programs, and the decreased likelihood that black American literature would be preserved makes the dependence upon written records for determining when a term acquired its power to injure problematic. Indeed, many histories of *nigger* like Kennedy’s find that it was not clearly offensive until 1837 when the black American Congregationalist minister Hosea Easton wrote that *nigger* “is an opprobrious term, employed to impose contempt upon [blacks] as an inferior race…The term in itself would be perfectly harmless were to distinguish one class of society from another; but it is not used with that intent…[I]t flows from the fountain of purpose to injure.”

To argue, as Kennedy does, that *nigger* “did not originate as a slur but took on a derogatory connotation over time” is to depend upon accounts made from the privileged topology already determines whose expressions count and how they are counted. *Nigger* was probably understood as injurious, and as a political problem, by black Americans long before Anglo Europeans and Easton recorded them as having injurious power.

This privileged topology is still invoked in contemporary debates about the intelligibility of “Black English.” The exclusion of black Americans from political eligibility has depended upon literacy, both by managing who could learn to read and write, and in determining whose language counts as part of the official national language. In the founding document of the United States, black Americans and Native Americans were the part of the U.S. which had no legitimate part of the social body. This can be clearly seen in the treatment of blacks made in the U.S. Constitution where slaves were counted, but counted only as “life itself, reduced to its reproductive function,” and then counted only as “three fifths of all other Persons.” Webster dismissed black American words, grammars, and dialects as bad English and excluded them from his pedagogical instruments. In the 1920s George Philip Krapp argued that Black

English comes from imperfect imitations of European English.\textsuperscript{509} Walter Ong has speculated that black Americans, often denied literacy and coming from African oral cultures, have always spoken differently than what Webster would have counted as good American English.\textsuperscript{510} Shapiro points out that the resistance to musical grammar of black American jazz, which complicates the temporality of modernity, was partially a product of “the necessarily coded form of discourse that developed among people who have not, in varying degrees and at different historical moments, been free to express themselves directly and, as a result, have been often excluded from participation in mainstream forms of Euro American civic expression.”\textsuperscript{511} Another response to racial and linguistic exclusion has been mastering Euro American English, exemplified by Frederick Douglass. Malcolm X spent his time in Norfolk Prison copying the prison dictionary by hand,\textsuperscript{512} which also complicates the homogeneity of black culture.

The linkage between good English and success entered legal discourse in 1977 after black American parents sued the Ann Arbor school board for holding their children back at Martin Luther King, Jr. Elementary School for failing to master Webster’s good American English. After hearing testimony from prominent linguists like Geneva Smitherman and J.L. Dillard, the judge determined “that black children who succeed, and many do, learn to be bilingual. They retain fluency in ‘black English’ to maintain status in the community and they become fluent in standard English to succeed in general society.”\textsuperscript{513} The *King School* decision also exemplifies a turn away from projects of cultural governance designed to build a homogenous nation towards projects designed to foster multiculturalism within the nation-state, as articulated in the Court’s order that the school “recognize the home language of the students.”\textsuperscript{514} Rather than imagine a separate black community excluded from the American nation, the Court imagines a community which must be included in the American nation. Indeed, the Court suggests that the school “use its knowledge” of black English “in their attempts to teach reading skills in standard English.”\textsuperscript{515} Similarly, Smitherman, who had testified in *King School* decision, argues in the introduction to her book *Black Talk*, that “In order to understand idioms like EUROPEAN NEGRO, ARE YOU RIGHT?, and HIGH YELLUH and words like HOODO, BAD and HONKY, you need to understand how and why this nation within a nation developed its unique way of using the English language.”\textsuperscript{516} Thus,

\textsuperscript{510} Ong, *Orality and Literacy*, 22.
\textsuperscript{511} Shapiro, *Methods and Nations*, 81.
\textsuperscript{513} Cited in Battistella, *Bad Language*, 142–143.
\textsuperscript{514} Martin Luther King Junior Elementary School Children v. Ann Arbor School District Board, Civil Action No. 7-71861, 451 1324 (1978).
\textsuperscript{515} Ibid.
\textsuperscript{516} Smitherman, *Black Talk*. 116
both the legal and academic linguistic treatment of black English imagine a separate black community, with its own distinct language, which nevertheless is included in the American nation.

The cultural governance of Native Americans has followed a different trajectory than black Americans, though now both are managed as members of the multi-cultural nation(s)-state represented by the United States. When Europeans first began colonizing the North American continent, “the constructed category ‘Indian’ occupied the space of the quintessentially ‘foreign’” and settlers focused on Christianizing and civilizing Native Americans, in part by forcing them to learn English. The U.S. Constitution, just before describing how to count black slave bodies, proposed to count Native American bodies as members of the nation according to their economic contributions, “excluding Indians not taxed,” but Native Americans were not counted in the census until 1840, and even then only few were counted until 1900 when the U.S. adopted assimilationist policies towards Native Americans.

However, by the 19th century, “the European concept of a ‘polity, organized by a sovereign, territorial state was juxtaposed to the Indian’s lack of territorial organization, which, in turn, made Indians, in the words of Chief Justice John Marshall in 1831, into a ‘domestically dependent nation.’ as opposed to a foreign state.” In 1871, after Congress ended treaty making, relocation was replaced with assimilation as the guiding policy for the United States as the new representative of the Indian nation. The U.S. government became involved in managing Indian schools; children were removed from reservations and their parents, and sent to boarding schools were in Virginia and Pennsylvania. Assimilating Indians into the American nation remained the main policy. Indigenous people in the U.S. where encouraged to be become citizens by joining the armed forces, giving up tribal affiliation, or assimilating by relocating into cities. In 1924, the Indian Citizenship Act declared 125,000-300,000 indigenous people in the United States official citizens, though the Act did not include Native Americans born before 1924 or born outside the U.S. until the Nationality Act of 1940 declared all Native Americans members of the nation-state. Although the Indian Reorganization Act of 1934 promoted cultural pluralism, after WWII Native Americans were still encouraged to leave reservations and assimilate into newly urbanizing cities. The United States has attempted to destroy Native American culture through genocidal policies, dispossession from the land, compulsive English and literacy

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517 Borneman, “American Anthropology as Foreign Policy,” 665.
518 Ibid., 666.
520 Peterson, “American Indian Political Participation,” 116–121.
521 Battistella, Bad Language, 106.
522 Indeed, a recent study published in Nature suggests the death of 50 million indigenous people in the Americas, before the industrial revolution, changed the climate enough to alter the Earth’s geology, making the beginning of
education, and legislative blood quantum qualifications. However, after WWII, multi-cultural governance dehistoricizes these projects of nation-killing by encouraging “minority” groups to celebrate the “essential” cultural characteristics of their racially defined identity. The deployment of Navajo males in WWII as “code talkers,” men educated in English since childhood but still able to speak Navajo and therefore confuse Japanese cryptographers, were seen as a significant contribution to the winning of the war. Racial slurs for Native Americans also complicate the idea that racial slurs acquire their power to injure by the way they are express or as mischaracterizations of stereotypes.

Offensive Pronunciations and Characterizations

The linguist Robin Tolmach Lakoff has argued that nigger became a racial slur after users became aware of the term as a mispronunciation of Negro and continued to reproduce the mispronunciation to communicate scorn, similar to the way children sometimes insult each other by, for example, feminizing the masculine name Patrick for a boy as Patricia. The Random House Historical Dictionary of American Slang contests Lakoff’s interpretation and agrees with Kennedy’s etymology that it is an independent term derived from the Latin niger. However, it is again important to consider the influence of privileged topologies at play when determining which expressions count and how they are counted. Lakoff’s argument reactivates the authority of literate elites much as Kennedy’s argument (and the Random House Dictionary) does by relying upon etymologies. Lakoff’s explanation fails to account for what gives nigger its power to injure or why having the word black mispronounced in Latin or Spanish should be offensive to black Americans.

Hughes gives a very brief examination of racial slurs in his history of swearing and concludes that “Racial or ethnic insults cover numerous categories, but have at their base some humorous, ironic or malicious distortion of the target group’s identity or ‘otherness.” Accordingly, Hughes lists the categories for black Americans as:

- the name (as in niggra, nigrah or nigger for negro);
- physical characteristics (as in thicklips);
- traditionally attributed names (as in rastus or Uncle Tom);
- occupational stereotypes (as in cottonpicker);
- animal metaphors (as in coon);
- distinctive food (as in

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523 The same time, the U.S.’s decision to assemble and test its first nuclear bombs in the Southwest, and the discovery of large deposits of uranium near the Navajo Reservation, meant that Navajo and other indigenous groups, “downwinders,” were exposed to radiation throughout the Cold War.


525 Hughes, Swearing, 134.
Like Lackoff, Hughes treats racial slurs as mere insults, but Hughes locates their power to offend in references to physical appearance, character preferences, and identity without considering how or why linguistic references might offend or injure. Similarly, the linguist Adam Coom has recently argued “that a slur such as nigger really means something like African American and despicable because of it or African American and a fit object for derision because of it.” Croom suggests a “literal meaning of slurs” grounded in the speaker’s decision to choose “to use the slur nigger instead of a neutrally descriptive term such as African American” by which “the speaker intends to express (i) their endorsement of a (usually negative) attitude (ii) towards the descriptive properties possessed by the target of their utterance.” Croom’s assertion that African American is a neutrally descriptive term is highly problematic. Indeed, when Jesse Jackson and others began calling for the use of African American rather than Blacks in the late 1980s, they did not imagine it as a neutral term but as a direct challenge to the authority of white American racial descriptions based on skin color rather than ancestral origins. Additionally, Croom’s explanations also fail to explain the use of nigger as a slur for other racial groups, for example the use of sand niggers by American soldiers to describe Iraqis or squint niggers to describe the Vietnamese. Sand might refer to living in the desert and squint to eye shape, but in these cases nigger refers to something besides the “descriptive properties possessed” by Iraqis and Vietnamese. Additionally, the numerous racial slurs for Native Americans, for example, which include variations on nigger—bushnigger, cherry nigger, prairie nigger, red nigger, timber nigger, and trail nigger—demonstrate that the term has a certain amount of cultural capital which allows it to be converted and used independently across a wide spectrum of heterogeneous people without necessarily referencing descriptive properties. Croom’s argument also does not address how people become linguistic “targets” or how targets come to possess “descriptive properties.”

The subjective agency assumed by reference, and reactions to, a mischaracterization of political or cultural “preferences” articulated by Lackoff, Hughes, and Croom presents an unproblematic accounting for how people come to have preferences or racial and cultural “characteristics.” In terms of American cultural governance, this account for what gives racial slurs their power rests on a privileged topology, like the etymologies used to explain what gives racial slurs their power to injure ignoring the
historical exercise of power over literacy, which does not address the hegemonic policing of language “which constitutes what a ‘preference’ can be and determines which subjects’ noises constitute politically relevant expression.”

Understanding how terms like *cottonpicker*, *hard-head*, and *boy* can become “Racial or ethnic insults” requires a consideration of, as Shapiro pointed puts it, the ways in which “preferences have people.” In this case, what gives *cottonpicker* its power to injure is the historical distribution of bodies in the U.S. which has marks some bodies as eligible for enslavement and other forms of legitimated violence. Similarly, Croom’s “literal meaning of slurs” employs a privileged topology of literacy and fails to address how, reversing his formula “descriptive properties” possess targets. In other words, Croom’s account makes inaccessible the historical exercise of power identifies which descriptive properties mark a body as eligible for targeting.

Thus, the literature’s account for what gives racial slurs their power as a function of their word histories, pronunciation, and mischaracterizations of racial “character” or “preferences” to what Shapiro identifies as the “racial state,” and its public policies for “managing racial diversity,” which have been “involved in [the] inter-articulating ‘character’ with national-racial boundaries.” When viewed from this perspective, we see that what matters about race is constructed and racial properties are part of the process by which, as Kendal Thomas puts it, “We are raced.” Anderson provides a similar critical study of how the census, as a technology of states building nations, requires subjects to declare and unambiguously “identify” to race to which they belong. Until recently, the U.S. census only allowed subjects to select one race, from a list of races the state decided to count, encouraging subjects to simultaneously identify with a single, homogenous, racial category and also think of themselves as members of the race as the state presented it in its official counting survey. Anderson and Shapiro’s critical approaches to race and nation correspond with Anthony Marx’s assertion that “selective exclusion was not tangential to nation-state building, as liberals argue, but was instead central to how social order was maintained.” For Shapiro, the racial state involves two modes of politics, one “associated with opposing unfair racial preferences, a politics that responds to the ‘exclusion’ to which Marx refers” and “a historically informed politics associated with the biopolitical predicates of nation building and a recognition of the grievances of those whose racialization has amounted to political disenfranchisement.” A useful strategy the racial state has deployed to depoliticize its projects of

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533 Ibid.
534 Ibid., 21.
535 Charles Lawrence attributes this phrase to Kendall Thomas Matsuda et al., *Words That Wound*, 61.
536 Anderson, *Imagined Communities*, 166.
cultural governance has been to encourage a discourse which describes racism as an ideology held by individuals, another “characteristic” or “preference,” rather than an institutional tool for maintaining social order.

Irrational “Xenophobia” and Taboo Thoughts

Where linguistic studies of racial slurs have tended to focus on the history, spelling, pronunciation, and referential meanings specific words, psychological and historical studies of racial slurs have tended to focus on their use as evidence of an irrational racist ideology held by the user. Hughes, for example, claims “that in the warrior-migration stage of a culture, visitors are likely to be hostile in their intentions, bearing swords rather than gifts. Martial and religious rivalry are the principle forces in the early generation of xenophobic attitudes. In time they become superseded by economic competition and the problems of assimilation…In both cases, the terms for the ‘outsider’ or ‘stranger’ develop hostile overtones of opprobrium and abuse.”539 Similarly, in The Language of Ethnic Conflict, Irving Lewis Allen argues that “both prejudice and verbal abuse heap in relation to the history of a group’s conflictful contacts with other groups…The words also show something of the dynamism of ethnic diversity and document the strains of assimilation.”540 According to this line of reasoning, racial slurs are linguistic artifacts produced after shocking encounters with the foreign and unfamiliar “other.” There is some evidence to suggest that conflicts encourage the production of new racial slurs for the enemy other. The term gook, for example, was first documented in 1935 during the American conflict in the Philippines, used again in 1947 as a slur for Koreans, again in 1959 as a slur for the Japanese, and was commonly used slur during the Viet Nam conflict to describe the Vietnamese.541 While these instances are often described as efforts to “dehumanize” the enemy, they also complicate Allen’s framing of the conditions under which racial slurs are created. There is a gap, in other words, between xenophobia and racism which the literature attributing racial slurs to xenophobia ignores.

Gook was not simply invented and maintained as a result of an encounter with an “other,” but are the product of U.S. foreign policy and military interventions in the Philippines, Korea, Japan, and Vietnam—not the result of “the dynamism of ethnic diversity” but attempts to extinguish that diversity—marking certain bodies as inhuman and eligible for destruction. In 1947, being the target of gook in Korea meant being the target of a weapon ready to kill. The term gook as an injurious racial slur also the product of American cultural governance, this time a foreign project of nation-building, in which the U.S. was

539 Hughes, Swearing, 126.
541 Hughes, Swearing, 137.
attempting to enforce a cultural and political unity between the Viet Minh and Viet Cong, and South Koreans and North Koreans. Just as Kennedy’s etymology ignores the condition of being enslaved when he attributes the power of nigger to a mispronunciation in Spanish, Hughes and Allen’s explanation of racial slurs as the result of xenophobia ignores the conditions, this time military conflict, under which a racial slur becomes injurious. The power of a racial slur to injure is dependent upon a particular distribution of bodies which marks some bodies as eligible for destruction, enslavement, or other forms of legitimated violence.

How bodies are distributed and violence legitimated need not be based on race. In the ancient world, for example in Rome, slavery was a condition to which any body could be subjected. Similarly, in the North American colonies, slavery was at first not racially defined. Growing demand for labor intensive crops like tobacco and cotton, and the high mortality of indigenous populations due to plague and European genocidal campaigns, stimulated the importation of European and African workers, but these workers were treated as indentured servants, not slaves. One estimate is that nearly half of the white immigrants from Europe from the 1600s to the 1700s came to America as indentured servants, with more in the South than the North. Later in the 18th century, especially between the 1680s and 1700, European migration slowed and planters began importing more slaves from Africa as the European economies began to improve and it became harder to acquire indentured servants. During this period, slavery was racialized black skin in North America. Massachusetts became the first colony to legalize slavery in 1641 and in 1662 the Virginia colony decided that children born to a slave mother were legally enslaved, making slavery an inherited lifelong condition like skin color. Virginia was the first colony to codify racialized slavery, declaring in 1705 that “All servants imported and brought in this County...who were not Christians in their Native Country... shall be slaves. A Negro, mulatto and Indian slaves...shall be held to be real estate,” Additionally, the U.S. Constitution solidified slavery, euphemistically referring to both the condition of slavery and racialized subjects as “other persons,” and several landmark Supreme Court cases further institutionalized slavery as a racial condition in the U.S. By the time Dred Scott v. Sanford was decided, many states had outlawed slavery and had recognized former slaves as citizens, but Chief Justice Roger B. Taney stripped black Americans of their citizenship—a decision which would contribute to the Civil War, require an act of Congress to overturn, and catalyze the adoption of the Fourteenth Amendment. While encountering a human being doing their “being” differently might inspire surprise, and even revulsion, xenophobia is not a regime which distributes bodies and legitimates violence against some of those bodies. The U.S. government, which institutionalized the marking of some bodies

542 Hofstadter, America at 1750: A Social Portrait.  
543 Ibid.  
544 “Virginia Law on Indentured Servitude (1705).”
as eligible for slavery and policing the legitimacy of violence according to race, however, is one such regime. So while xenophobia might be a mental condition, racism and the power of racial slurs to injure cannot simply be explained an individual’s idea or belief, and treating racism as a mental illness does little to address the violence of an institutionalized distribution of racialized bodies.

For example, Allen’s assertion that in “what seems a paradox, the stereotypes generated by the plural society underscore its great diversity” \(^{545}\) becomes less a paradox and more a feature of the racial state when we consider the apparent contradictory responses to Sterling and Paletto’s language described in the beginning of this chapter. The lack of racial slurs in both events demonstrates how the multicultural nation(s)-state distributes and polices the intelligibility of discourse concerned with racism. Sterling’s comments, without racial slurs, are understood as racist whereas claims that Paletto’s killing was racially motivated are dismissed as unintelligible for the same lack of slurs. The state presents itself as a “neutral instrument of legal enforcement” \(^{546}\) (Officer Paletto and the judicial system which refused to indict him) working to curtail the “verbal abuse” of individual citizens (Sterling and Deen) as diverse cultures confront the “strains of assimilation” (Sterling the Jew and Deen the Southerner) required for inclusion in the “plural society” of the contemporary nation(s)-state. As Shapiro points out, “the existence of diverse ‘racial’ minorities within the state was something the state created.” \(^{547}\) Rather than products of conflictual interactions between ethnic groups, racial slurs are objects which the state uses to manage the intelligibility of subjects and the responses their use provokes is the result of the state exercise of power over discourse. This state-sanctioned discourse and state-sanctioned racism will be examined in more detail in the next section, but it is important to note here that the construction of racism here is one in which individual citizens enact violence against minority groups. American multi-cultural governance excites a discourse about racism which focuses on the behaviors and expressions of individual citizens, rather than the violence of the racial state and institutionalized racism, and promotes interventions designed to change the “hearts and minds” of racist individuals.

The understanding of racial slurs as evidence of mental states, irrational thoughts, and ideology thus inspire interventions which focus on individual psychology. Many of the techniques used to regulate the taboo expressions of individuals were developed by mental health experts treating patients with Tourette syndrome (the subject of the next chapter). While I have argued that xenophobia is not the same as racism, psychological treatments of racism as an individual’s mental state are bound up with the psychiatric discourses on xenophobia. The term “xenophobia” is an outgrowth of the psychiatric


\(^{547}\) Shapiro, *Methods and Nations*, 19.
obsession with phobias and uncontrollable cursing. Like all other phobias, for example, xenophobia is argued by psychiatrists to be caused by an invisible defect, or irrationality, buried under rational explanations. As irrational thoughts, phobias are not treatable by providing rational explanations or by simply convincing a patient there is no reason to fear the object of their terror. One of the primary techniques for treating irrationality has long been confrontation, or what Foucault describes as “the form of scenes and a battle” in which a contest between realities takes place. The job of the mental health expert is not to convince the patient of their madness, but to impress upon the patient the expert’s superior reality. As will be explored in the next chapter, mental health experts treat their patients as a form of media upon which new thoughts and behavior instructions can be written, often by circumventing the patient’s resistance through confinement, torture, hypnosis, rhetorical sophistry, and lately with drugs. While racism is often not a primary condition treated by mental health experts, it is often linked with psychological disorders and a contagion capable of transmitting mental disease. Delgado, for example, asserts that the “psychological effects of racism may also result in mental illness and psychosomatic disease.” Additionally, the same contest often takes place between the mental patient and mental health expert as the contest between an irrational racist and an opponent of racism. In both cases, irrational madness and racism are “basically characterized by its system of belief.” In order to say someone is racist, to ascribe racism to them, is always to say they are mistaken and to say in what way, on what points, and within what limits the racist is mistaken.

In terms of racism, misidentified as xenophobia or another mental disorder, psychiatric treatments involve confronting the patient’s mistaken beliefs by applying “exposure therapy” or “systematic desensitization” until the patient is no longer irrationally afraid of the object which before terrified them. “Ophidiophobia,” or the fear of snakes for example, is treated by locking the patient in a room with snakes, restraining the patient while snakes crawl over their bodies, and stage other encounters with snakes with they hope they will eventually become desensitized to the phobia and react to future encounters with a state of relaxation. Similarly, the irrationality of racism is often attributed to lack of contact with people from other races and, in line with mental health interventions, is therefore treatable by staging an overwhelming series of encounters with racial diversity until the racist becomes desensitized to the shock of encountering difference. Sometimes the racist is separated from the rest of society and treated with “sensitivity training.” In other cases, public shaming is the instrument through which the racist is confronted about the truth of their irrationality, much like Jean Marc Gaspard Itard’s treatment.

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548 Onah, “The Politics Of Xenophobia.”
552 McGlynn, Smitherman, and Gothard, “Comment on the Status of Systematic Desensitization.”
for uncontrollable cursing which involved forcing his patient into social situations where an outburst would be particularly embarrassing.\textsuperscript{553}

However, a significant feature of these treatments is their emphasis on language and behavior as a countersign of thought. Hate speech initiatives often conflate thought with action, treating racial slurs as both evidence of racist thinking and immediate precursors to violent action, thus justifying their legal regulation. Controversies over the decision to include, and the definition given, in official language dictionaries often assert a direct correlation between words and thought. The 1997 movement to boycott the tenth edition of the \textit{Merriam-Webster’s Collegiate Dictionary} centered on its definition of \textit{nigger}: “a black person, usually offensive…a member of any dark-skinned race; a member of a socially disadvantaged class of persons. It now ranks as perhaps the most offensive and inflammatory racial slur in English.”\textsuperscript{554} The proposed interventions were primarily focused on erasing the word from the dictionary completely because, as explained by one protester, “If the word is not there, you can’t use it.”\textsuperscript{555} The conservative ridicule of “political correctness” as a form of “thought control” deploys a similar theory for the direct relationship between words and thoughts, exemplified in John Leo’s diatribe against overly sensitive language as part of the “steady debasement”\textsuperscript{556} of English and the sacrifice of precise language in favor of “meaningless self-esteem.”\textsuperscript{557} Edwin Battistella’s examination of political correctness and the critique of it underscores this supposed direct connection between words and thoughts. The adoption of the term itself, Battistella points out, it taken from prescriptive programs of authoritarian regimes, for example the “thought police” of George Orwell’s \textit{1984},\textsuperscript{558} and “In exploiting this usage, critics of political correctness themselves use language to shape the debate. This is unintentionally ironic since the objection to political correctness is that it manipulates language in order to shape attitudes and behavior.”\textsuperscript{559} Similarly, those arguing for the regulation of racial slurs worry that their use will encourage people to develop racist thoughts. Kennedy describes the fear that the use of the word \textit{nigger} by black Americans is “symptomatic of racial self-hatred or the internalization of white racism, thus the rhetorical equivalent of black-on-black crime.”\textsuperscript{560} Delgado, for example, asserts that “Words such as ‘nigger’ and ‘spick’ are badges of degradation even when used between friends.”\textsuperscript{561} Bill Cosby has often admonished black comedians for using the term \textit{nigger} because he fears it will spread racism, “When you watch, you hear a

\textsuperscript{553} Itard, “‘Study of Several Involuntary Functions of the Apparatus of Movement, Gripping, and Voice,’” 349.
\textsuperscript{554} Merriam-Webster, \textit{Merriam-Webster’s Collegiate Dictionary}, 456.
\textsuperscript{555} DeBerry, “Keeping a Hateful Word inside a Dictionary.”
\textsuperscript{556} Leo, \textit{Two Steps Ahead of the Thought Police}, 40.
\textsuperscript{557} Battistella, \textit{Bad Language}, 93.
\textsuperscript{558} Orwell and Fromm, \textit{1984}.
\textsuperscript{559} Battistella, \textit{Bad Language}, 94.
\textsuperscript{560} Kennedy, \textit{Nigger}, 45.
\textsuperscript{561} Matsuda et al., \textit{Words That Wound}, 107.
statement or a joke and it says ‘niggers.’ And we are laughing...But we don’t realize that there are people watching who know nothing about us. This is the only picture they have of us...And they say, ‘Yeah, that’s them. Just like we thought’. The reply from many entertainers has been to satirize Cosby (especially Eddie Murphy) or use nigger anyway because they feel white perceptions of blacks are not likely to change or they do not care whether whites misunderstand them.

Another proposed intervention aimed at rewriting the racist’s thoughts and behaviors is the development and imposition of language codes, or law, imagined to serve as a kind of moral code for those who lack one. Delgado, for example, argues that legal norms can serve as a kind of mentoring conscious, with the state as moral educator, for racists using taboo language until they learn how to conform. Delgado’s proposed legal intervention is based on Pier van de Berghe’s psychological argument that racism “is merely a special kind of convenient rationalization for rewarding behavior,” corresponding with the mental health expert’s description of madness as an irrational system of thought explained rationally, and “when social pressures and rewards for racism are absent, racial bigotry is more likely to be restricted to people for whom prejudice fulfills a psychological ‘need.’” Thus, Delgado suggests that hate speech “Legislation aims first at controlling only the acts that express undesired attitudes” like the use of racial slurs, because “when expression changes, thoughts too in the long run are likely to fall in line.” For Delgado, law is the appropriate coercive force because “racial attitudes of white Americans” are backward and “typically follow rather than precede actual institutional [or legal] alternation.” Delgado’s understanding of law, and the judiciary especially, as being “ahead” of the “racial attitudes of white Americans” is rather surprising when measured against the role of law in racializing slavery and supporting racism discussed earlier. Indeed, Delgado’s argument in favor of hate speech initiatives, and most hate speech arguments, makes considerable use of the Fourteenth Amendment’s equal protection clause which is the product of the need to overturn an outdated, and racist, juridical decision.

Despite this evidence, Delgado concludes that “a tort for racial slurs is a promising vehicle for the eradication of racism.” The creation of a hate speech legal norm is another technique of American multi-cultural governance and example of state control over discourse. However, where the accounts of what gives racial slurs their power to injure examined so far have focused on the words themselves and how their use is taken as evidence of racist thought, hate speech initiatives conceive of the power of racial

562 Company, Ebony.
563 Van den Berghe, Race and Racism, 20.
564 Matsuda et al., Words That Wound, 96.
566 Matsuda et al., Words That Wound, 96.
567 Ibid.
slurs as the power to deny rights guaranteed by the U.S. Constitution. Determining how racial slurs become a matter of law, something for a judge to decide, and how racism becomes framed as an issue of free speech and equal protection is where I turn next.

**Hate Speech/State Speech: Regulating Context and Fixing “Wrongs” with “Rights”**

After the Civil War, between 1890 and 1910, the Southern states codified laws which segregated public spaces and prevented black males from voting. These laws were supported by the U.S. Supreme Court, especially in *Plessy v. Ferguson* in which the Court argued “Our Constitution is color-blind, and neither knows nor tolerates classes among citizens.” Yet, as Lawrence points out, “The same Constitution that established rights for others endorsed a story that proclaimed our [black American] inferiority.”

There are numerous examples of *nigger* being used in court by officers, lawyers, judges and witnesses without the use of the word itself being considered significant in the application of justice. *Nigger* first appears in U.S. Supreme Court reports as witness testimony from a 1871 case, *Blyew v. United States*, in which a defendant had declared “there would soon be another war about the niggers” and that when it came, he “intended to go to killing niggers.” In 1911, during a Mississippi trial the prosecutor told the jury “This bad nigger killed a good nigger. The dead nigger was a white man’s nigger and these bad niggers like to kill that kind. The only way you can break up this pistol toting among these niggers is to have a necktie party.”

World War Two marks a sea change in legal and popular theories of how words can transmit hate or intent to injure. In his study of racial slurs, Hughes argues that “As a consequence of imperialism and nazism, which were based on a pernicious ideology of racial superiority, *racist* has become, like *fascist*, a swear-word in its own right.” Indeed, two landmark Supreme Court cases decided during WWII clearly demonstrate a radical rearticulation of what the words *racist* and *fascist* can do, and how best to legally regulate their affective power. In 1944, Associate Justice Frank Murphy introduced the term *racism* into legal discourse by writing in his opinion to *Korematsu v. United States* that the Supreme Court was sinking into “the ugly abyss of racism” by placing Japanese Americans into internment camps. Two years

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568 *Plessy v. Ferguson*, 163 US 537 (Supreme Court 1896).
569 Davis, “Creating Jim Crow.”
570 Matsuda et al., *Words That Wound*, 56.
571 *Blyew v. United States* 80 U.S. 581 (1871).
572 “Collins v State.”
573 Hughes, *Swearing*, 134.
574 *Korematsu v. United States*, 323 US 214 (Supreme Court 1944).
earlier, Murphy articulated what would become the “fighting words” doctrine in *Chaplinsky v. New Hampshire*,\(^575\) upholding the conviction of a man for calling a town marshal “a damned Fascist.”

Though it took several years before judges would link racial slurs with fighting words, the legal creation of fighting words articulated a radically new approach for separating discourse from noise and institutional regulations over taboo language. In *Chaplinsky*, Murphy wrote:

There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or ‘fighting’ words those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.\(^576\)

The chapter on obscene comedy examined the regime of language regulation judges have constructed by counting expressions as discourse only if they contribute to the “exposition of ideas” with “social value” in the interest of “order and morality,” but the argument that certain words can “by their very utterance inflict injury” does not simply dismiss these expressions as unintelligible or as noise. The *Chaplinsky* decision is a revaluation of the relationship between what Austin described as the “illocutionary” force—what an actor is doing by saying something (“I now pronounce you man and wife”)—and the “perlocutionary” force—speech which produces an effect by being said (shouting “fire!” in a crowded theater).\(^577\) In the obscene comedy cases, judges privileged the illocutionary force of taboo language over their perlocutionary force—finding that taboo language transmitted obscene messages. Scalia’s insistence that Bono’s statement “fucking brilliant” is obscene because “the F-Word’s power to insult and offend derives from its sexual meaning,”\(^578\) and therefore prescribed regulations over the broadcast of obscene content, clearly demonstrates this emphasis on illocutionary force. In *Chaplinsky*, the Court privileges the perlocutionary force over illocutionary force, arguing that by calling the town marshal “a damn fascist” Chaplinsky was not so much referencing an unpopular ideology as he was transmitting a directed injurious force at the marshal.

The fighting words doctrine, like the broadcast obscenity cases, works by separating the content of an expression from the vehicle of the expression, but this time proscribes regulations for the vehicles of expressions rather than their content. This difference becomes more apparent when Scalia’s interpretation

\(^{575}\) *Chaplinsky v. New Hampshire*, 315 US 568 (Supreme Court 1942).
\(^{576}\) Ibid.
\(^{577}\) Austin, *How to Do Things With Words*, 99–119.
\(^{578}\) *FCC v. Fox Television Stations*, Inc., 129 S. Ct. 1800 (Supreme Court 2009).
of *fuck* is juxtaposed with his argument in case concerning the burning of a cross in a black family’s yard in *R.A.V. v. St. Paul* and whether or not that act constituted fighting words. According to Scalia, “Fighting words are thus analogous to a noisy sound truck,” while both the message and vehicle constitute “a ‘mode of speech’…[and] both can be used to convey an idea…The government may not regulate use based on hostility—or favoritism—towards the underlying message expressed.” The Court’s decision struck down an anti-discrimination ordinance in St. Paul, Minnesota making it disorderly conduct and a misdemeanor for anyone who “places on public or private property, a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender.” For Scalia, the ordinance violated the First Amendment because, among other things, “it imposes special prohibitions on those speakers who express views on the disfavored subjects of ‘race, color, creed, religion or gender’,” prohibiting expressions otherwise permitted solely on the basis of the subjects the speech addressed or in Scalia’s wording “it permits displays containing abusive invective if they are not addressed to those topics.”

Setting aside the distinction between a vocal expression and a symbol that might communicate a “message” or a “point of view” which might count as protected dissent, in contrast to Scalia’s treatment of *fuck* as indecent, he finds that hate speech as fighting words are eligible for regulation because of the injurious noise made by a vehicle which transmits them, but only if the laws regulating hate speech does not impose “special prohibitions on those speakers who express views” or ideas “on the disfavored subjects.” Thus, Scalia renders the burning of a cross, and by extension limits the intelligibility of a racial slur as hate speech, to the expression of a “view” or “preference” which, even if the state does not like, is protected by the First Amendment. Similarly, Scalia finds that “St. Paul has determined – reasonably in my judgment—that fighting-word injuries “based on race, color, creed, religion or gender” are qualitatively different and more severe than fighting-word injuries based on other characteristics.”

Similar to Hughes, Lackoff, and Croom’s accounting of racial slurs discussed above, Scalia’s articulation of categories like race, color, creed, religion or gender as “characteristics” removes from political contestation the historical exercise of power which mark bodies as having these “characteristics” and making “fighting-word injuries” based on them “more severe.” Scalia’s decision to separate the content of a message from the vehicle of its communication in this case changes the question, as Butler puts it in her analysis of the decision, “of whether or not the black family in Minnesota is entitled to protection from

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2 Quoted in ibid.
3 Quoted in ibid.
4 Quoted in ibid.
5 Quoted in ibid.
6 Quoted in ibid.
public displays such as cross-burnings is displaced onto the question of whether or not the ‘content’ of free speech is protected from those who would burn it.”

Thus, Scalia restages the event and the question of injure as one in which the regulation of hate speech, in this case, would endanger or injure the concept of free expression.

The legal construction of fighting words, and juridical treatments of racial slurs, articulate a relationship between bodies and speech, and relationship between speech and effects, which privileges the effect of taboo language over the meaning of taboo language. This theory of speech situations also spills over into public discourse, for example Deen’s assertion that she was only repeating the “N-word” the way she had heard in “a conversation between blacks” or, in other words, she was reproducing the content of the message without the intentional injurious force. Additionally, as will be discussed later, Scalia’s decision exercises a juridical assumption of privilege by which the justices are able to imagine themselves as capable of assuming a different subject position, this time that of the black family, and as Butler puts it, “identify with the black family who sees the cross burning and takes it as a threat, but they substitute themselves for that family, and reposition blackness as the agency behind the threat itself.”

In other words, this separation of content from the vehicle of content and the decision to remain content neutral while regulating the vehicle of content, further entrenches the discursive terrain which describes black Americans as threatening, but never threatened, and shifts the of violence way from the state, and the historically destructive effects of its cultural governance initiatives, towards the violence of citizens.

However, where later hate speech cases and the secondary literature in favor of hate speech legislation attempt to shift the terms of violence away from the state and towards the violence of citizens against minority groups, R.A.V. attempts to shift the terms of violence towards citizens against the state and the state’s ability to protect against, as Scalia puts it, the “censorship of ideas.”

Thus, the most important factors judges must consider when deciding whether or not an expression constitutes fighting words is not the meaning of the message, but the “properties” and “characteristics” held by the bodies present during their expression. As such, the fighting words theory also suggests where regulator interventions should be applied, namely the organization of participants and contexts under which language can injure or what Austin called the “total speech situation.”

State-Sanctioned Racism: Regulating Total Speech Situations

584 Butler, Excitable Speech, 59.
585 Ibid., 60.
587 Austin, How to Do Things With Words, 147.
Kennedy provides a comprehensive summary of the different ways judges have sorted the affective power of racial slurs according to the contexts in which they are uttered and the status of those involved. The first are “cases in which a party seeks relief after it is revealed that officials within the criminal justice system—jurors, lawyers, or judges—have referred to blacks as niggers”588 and “cases in which an individual who kills another seeks to have his culpability diminished on the grounds that he was provoked when the other party called him a nigger.”589 These cases typically deal with applications of the fighting words doctrine. The remaining cases are those which involve “controversies surrounding targets of racial invective who sue for damages under tort law or antidiscrimination statues” and cases “in which a judge must decide whether or not to permit jurors to be told about the linguistic habits of witnesses or litigants.”590 These cases typically cite the need for “equal protection under the law,” either by calculating a repayment for the damage caused by the racial slur needed to pay back the offense or by ensuring that criminal procedures are unbiased.

However, some cases blur the distinction between these categories and demonstrate how juridical treatments of racial slurs count, and design interventions for, the total speech situation in which the slurs are uttered. Perhaps the best example of this in action comes from a 1995 case in which several lawyers petitioned a judge to remove an elected district attorney from office, Jerry Spivey, after the drunken D.A. referred to Ray Jacobs, a player for the Denver Broncos, as a nigger in a local bar where Jacobs was present. The judge held a hearing, which featured expert testimony from the historian John Hope Franklin, regarding the history of the word nigger and lay testimony from local black Americans describing their affective experiences in response to hearing the word in different contexts.591 The judge removed Spivey and the case was appealed on First Amendment grounds, despite Spivey publicly apologizing for his use of the word, but the North Carolina Supreme Court upheld the decision to remove Spivey finding that his language constituted a “classic” case of fighting words. More importantly for this study, the Court asserted that no hearings were needed to show that nigger was injurious to black targets, concluding that “No fact is more generally known than that a white man who calls a black man a ‘nigger’ within his hearing will hurt and anger the black man and often provoke him to confront the white man and retaliate.”592 Just as graphic language regulation and obscene broadcast regulation imagined vulnerable populations of ‘women and children’ in need of protection, without any effort to actually measure whether

588 Kennedy, Nigger, 58.
589 Ibid.
590 Ibid.
591 Kennedy deposited the transcript of the trial judge’s hearing used by the Supreme Court which details this account and can be found in the Harvard Law School Library “Historical & Special Collections” archive as of June 8, 2014 in “In Re Spivey, Transcript Volume I.”
592 In re Jerry L. Spivey, District Attorney, 480 SE 2d 693 (Supreme Court 1997).
or not taboo language was harmful to ‘women and children,’ so too does the Court decide that the racial
distribution of speakers is a “generally known” fact and works to institutionalize that distribution of
racialized bodies, and the political eligibility assigned to them, as natural or obvious.

However, the Spivey decision articulates in far greater detail the contexts and conditions
necessary for racial slurs to injure. According to Spivey, the injurious power of nigger depends upon a
white man saying it and a black man hearing it. In the hypothetical presented in the decision, nigger
would not be injurious if the white man says it and there is no black man present to hear it. The Court was
cconcerned with Spivey’s use of nigger only if a black man was around to hear it and only because several
lawyers, not the “target” Jacobs, brought Spivey’s language to the Court for adjudication. The use of
nigger among a speech situation without black participants does not concern the Court, not only because
they assume nigger is excitable only to black participants, but also because they assume a speech situation
without black participants is not one in which racial slurs can constitute fighting words. A speech
situation involving only white participants, according to Spivey’s interpretation, would not constitute a
total speech situation in which the use of nigger could legitimate violence. In order for nigger to be
fighting words, the total speech situation must include racialized “targets,” targets primarily identifiable
by the color of their skin and other “characteristics.” This reliance upon determining the excitability and
injurious power of racial slurs based upon which races speak or hear them is also a prominent feature of
public discourse as well. The black rapper Ice Cube, for example, has argued that “When we call each
other ‘nigger’ it means no harm. But if a white person uses it, it’s something different, it’s a racist
word.”

Since Chaplinsky, applications of the fighting words doctrine have been primarily concerned with
the “target” and linguistic assailant, constituting both as fundamentally unequal participants in the speech
situation. Spivey specifies that nigger will “anger the black man and often provoke him” or cause him to
“retaliate.” Ann Coughlin has argued that this formulation of black Americans as woundable perpetuates
the belief that blacks are less capable of controlling their behavior and should be excused for their
unavoidable impulsiveness. The question of who the fighting words doctrine privileges is still a matter
of debate. Kennedy argues that in a dispute between “an offensive speaker and a violent target, the
fighting-words doctrine favors the target. Rather than insisting that the target of the speech control
himself, the doctrine tells the offensive speaker to shut up” and this inequality between participants also
means judges will give offensive speakers “more leeway to insult a nun than a prizefighter since the nun

593 Silverton, Filthy English, 124.
is presumably less likely to retaliate.”\textsuperscript{595} However, according to Lawrence, “The fighting words doctrine presupposes an encounter between two persons of relatively equal power who have been acculturated to respond to face-to-face insults with violence: The fighting words doctrine is a paradigm based on a white male point of view.”\textsuperscript{596} Additionally, for the Court to codify a prohibition of fighting words against the First Amendment’s prohibition of “the making of any laws…abridging the freedom of speech,” the Court must create distinctions between protected and unprotected speech. When seen from this perspective, the juridical construction of fighting words, and its application to burning crosses in \textit{R.A.V.} and racial slurs in \textit{Spivey}, may serve as a kind of juridical decision support system as described in the chapter on obscenity regulation. In \textit{R.A.V.}, the ordinance’s selection of “race, color, creed, religion or gender” served a similar function as Carlin’s selection of “\textit{shit, piss, fuck, cunt, cocksucker, motherfucker} and \textit{tits},” except that where Carlin helped write the law by identifying content the FCC could regulate as indecent, the ordinance’s selection of characteristics provided Scalia with support for regulating the vehicle of expressions and protecting free expression from those who would threaten it. Similarly, a series of cases indicates that judges, in addition to making decisions based on the color of participants’ skin, have been more interested in ascribing mental and physiological characteristics to racialized participants than in their roles as target or perpetrator in the total speech situation.

For example, the murder trial of Julius Fisher, who killed his boss in 1944 after she called him a “black nigger,” demonstrates how racialized subjects are ascribed political eligibility in juridical discourse. Fisher testified that his boss’s use of \textit{nigger} angered him, so he slapped her, and to stop her screaming he “beat, choked, and stabbed her to death.”\textsuperscript{597} In an early draft of the dissenting opinion, Felix Frankfurter asserted that the use of “‘black nigger’ pulled the trigger that made the gun go off,”\textsuperscript{598} following closely the argument from \textit{Chaplinsky} that words can “incite an immediate breach of the peace.”\textsuperscript{599} However, in the published dissent Frankfurter altered the option to instead argue that Fisher’s “whole behavior seems that of a man of primitive emotions reacting to the stimulus of insult and proceeding from that point without purpose or design.”\textsuperscript{600} Frankfurter’s measure of Fisher’s capacity as the “target” of a racial slur therefore depends upon the race of those involved in the speech situation, but the later version underscores the “diminished capacity” he ascribes to black targets. Lawrence calls this subject position a “double standard that our culture applies in responding to insult” which assumes, “First, that Black as a group—especially Black men—are more violent; and second, that as inferior persons,
Blacks have no right to feel insulted.”\textsuperscript{601} This constitutes a form of state-sanctioned racism whereby the state, which raced its citizens, through the judiciary now separates the political eligibility of speaking subjects by skin color in order to guarantee their “equal protection under the law.”

The adjudication of taboo language, through the judiciary, is then a method the state uses to present itself as what Butler calls a “neutral instrument of legal enforcement.”\textsuperscript{602} In the \textit{Spivey} decision, for example, we see the Court going out of its way to affirm that Spivey’s “use of the word \textit{nigger}...did not in any way involve an expression of his viewpoint on any local or national policy.”\textsuperscript{603} By asserting that Spivey’s language was not intelligible content, or an “exposition of ideas,” the Court makes a distinction between Spivey, the government official, a “neutral instrument of legal enforcement,” and Spivey, the private citizen, assaulting another private citizen from a minority group with hate speech. The distinction between Spivey the D.A. and Spivey the private citizen is constructed, and the difference between majority and minority citizens is maintained, through a series of mechanisms (case law, testimony, juris-diction) which reduce racism to a scene between private citizens. This allows the state to depoliticize the institutional ways it makes decisions based on race by reducing racism to a scene between individuals. The Court removed Spivey from office, but it also removed him from the subject position as an officer of the state and placed him into the subject position of private citizen in order to regulate the intelligibility of his expressions. The separation of noise from discourse primarily on the basis of race, and the subject positions created for raced “targets,” is also an exercise of power over discourse which helps determine the political intelligibility of expressions made from these subject positions and allows judges or legislators to “reproduce them this time as state-sanctioned speech.”\textsuperscript{604}

**State-Sanctioned Speech: Rights, Identity Politics, and Equality**

Lawrence insists that “Racism is both 100 percent speech and 100 percent conduct,”\textsuperscript{605} and asserts that “The experience of being called ‘nigger,’ ‘spic,’ ‘Jap,’ or ‘kike’ is like receiving a slap in the face.”\textsuperscript{606} Butler points out, Lawrence’s statement relies upon a simile, drawing an equivalence between unlike things which makes speech into a slap, in part because “there is no language specific to the problem of linguistic injury, which is, as it were, forced to draw its vocabulary from physical injury.”\textsuperscript{607}

Thus, according to Butler, descriptions of linguistic violence are required to use metaphors. However, I

\begin{thebibliography}{99}
\bibitem{601} Matsuda et al., \textit{Words That Wound}, 69.
\bibitem{602} Butler, \textit{Excitable Speech}, 48.
\bibitem{603} In re Jerry L. Spivey, District Attorney, 480 SE 2d 693 (Supreme Court 1997).
\bibitem{604} Butler, \textit{Excitable Speech}, 101.
\bibitem{605} Matsuda et al., \textit{Words That Wound}, 62.
\bibitem{606} Ibid., 68.
\bibitem{607} Butler, \textit{Excitable Speech}, 4.
\end{thebibliography}
would add that these metaphors are not chosen simply because they are the nearest equivalents to what one would say if one had the “proper” language to describe the injury of racial slurs, but also because the discourse of racial slurs conforms to a certain convention, or genre, and encourages those injured by racism to describe that injury a certain way. Rancière, in The Future of the Image, makes a similar observation with regards to Robert Antelme’s description of his experiences in a Nazi extermination camp from his book The Human Race. Rancière points out that “it is clear that this paratactic writing is not born out of the camp experience. It is also the style of writing of Camus’s L’Estranger and the American behaviourist novel. To go back further, it is the Flaubertian writing style of small perceptions placed side by side.” Thus, the problem is not that there is no language which can represent Antelme’s experiences properly, but that “The language that conveys this experience is in no way specific to it.” Similar to Claxton’s trouble determining how to print English with a German printing-press, the problem of describing the injury of racial slurs is not that there is no language to describe it, but that the unrepresentability of linguistic injury requires the use of language used to describe something else. The genre in which those injured by racial slurs must use is the language of rights.

Lawrence, for example, makes a peculiar argument, repeated later in digital language regulations, which uses the metaphor of a “marketplace of ideas,” first developed by John Stewart Mill’s in a founding text of liberalism, On Liberty, and later deployed in juridical discourse by Justice Oliver Wendell Holmes, Jr.’s dissent in Abrams v. United States. Lawrence asserts that “Racist speech also distorts the marketplace of ideas by muting or devaluing the speech of Blacks and other despised minorities.” Writing in the liberal legal genre, he therefore describes the appropriate corrective within this liberal scheme is the removal of barriers which would devalue expressions or interfere with their free circulation. However, the metaphor also treats ideas as a commodity which can be valued and consumed absent the bodies which produce them, and ensuring that the best idea/commodities win out in the end. Lawrence concludes, again deploying a series of similes, “The real problem is that the idea of racial inferiority of nonwhites infects, skews, and disables the operation of a market (like a computer virus, sick cattle, or diseased wheat).” Using the genre of liberal economics, filtered through liberal legal discourse, Lawrence’s argument is constrained to describe the injury of racism as unfair competition, reduced to a condition like “diseased wheat” rather than a political problem of institutionalize racism.

608 Antelme, The Human Race.
610 Ibid., 126.
611 Matsuda et al., Words That Wound, 78.
612 Ibid., 77.
Delgado makes similar affective argument to Lawrence which collapses speech and conduct, this time based on measurable physiological responses like high blood pressure and psychological responses like “self-hatred” in the targets of racial slurs as a means for judges to assess civil damages. Matsuda, Lawrence, and Delgado all argue that thought is a precursor to action and speech a precursor to thought. For them, an expression signals, and is evidence for, intentional action; an assumption which the chapter on Tourette syndrome directly challenges. In the hate speech literature, there is considerable disagreement as to which speech acts should be considered conduct and which as contributions to discourse, dissent, or simply speech not related to action. Matsuda, Lawrence, and Delgado deny any distinction between thought, vocalizations, writing, and action because treating racial slurs as injurious speech acts justifies their exclusion from the First Amendment’s protection of free expression. Thus, they repeatedly assert that racial slurs are racist actions. However, because they make their arguments in writing, all three provide numerous examples which complicate their collapse of speech and conduct. Delgado, for example, asserts that racial slurs “Words such as ‘nigger’ and ‘spick’ are badges of degradation even when used between friends: these words have no other connotation.”613 However, his decision to use the racial slurs in an academic text arguing in favor of juridical hate speech initiatives, Delgado is using the terms in a very different way, showing that they do have other connotations. Lawrence and Delgado both write out the racial slurs they argue should be regulated, but are careful to always wrap them in quotation marks to indicate a special usage, again demonstrating that the terms can have different connotations. In Matsuda’s essay, for example, she uses graphical symbols to censor racial slurs, using grawlix characters like “J—p” to both record the fact of censorship and treat them as having a consistently taboo meaning. However, Matsuda by using grawlixes to prevent the affective injury of the explicit term, what I refer to elsewhere as “sensorship,” Matsuda also assumes that her readers will know which term she has modified, meaning that her readers will read “J—p” and think “Jap” without it being an injurious racial slur or thought-action. In one instance, she replaces a term with “[racist slur for Asian groups],” requiring the reader to think of several racial slurs, plug them into the sentence, and figure out which slur makes the most sense in the context of the sentence. In other words, Matsuda’s deployment of grawlixes excites the very kind of thinking she insists must lead to action and therefore be legally prohibited. Like the Meese Report examined in the last chapter, hate speech initiatives cannot avoid reproducing taboo language in their arguments in favor of regulating taboo language and, by making them the object of juridical regulation and drawing attention to them with grawlixes, their censorship excites a discourse in which the racial slurs they hope to expunge are circulated. As Butler points out, this is not simply a contradiction,

613 Ibid., 107.
but a strategy which collapses “the speech/conduct distinction” in order “to strengthen the case for state regulation and suspend reference to the first Amendment.”

Similarly, all three authors repeatedly reference Nazism as an example in which speech acts were conduct, in part cashing in on the cultural capital Nazism and racism have acquired in the U.S. as shorthand for evil. Matsuda, for example, links Nazism to international law against racial slurs by writing “Hitler had banned ideas. He had also murdered six million Jews in the culmination of a campaign that had as a major theme the idea of racial superiority. Although the causes of fascism are complex, the knowledge that anti-Semitic hate propaganda and the rise of Nazism were clearly connected guided development of the emerging international law on incitement to racial hatred.” While first acknowledging the complex “causes of fascism,” Matsuda’s formulation of “anti-Semitic hate propaganda” greatly simplifies the “rise of Nazism” by asserting the two “were clearly connected.” When taken with her broader argument about the need to regulate racial slurs as hate speech, Matsuda’s use of Nazism specifies both the “cause” of racial violence as propaganda, anti-Semitic speech acts, and isolates an agent responsible for executing that violence, in this case Hitler. In this case, the collapse of speech and conduct ushers the return of the “transcendent singularity of Machiavelli’s prince,” whose speech carries the power to kill, and whose power Matsuda believes can be deployed through the judiciary to counter the power of racial slurs. Matsuda’s use of Nazism also downplays the one of the most significant challenges Nazism made to the idea of the state as an agential sovereign; namely Stanley Milgram’s demonstration that “sometimes all it takes is a white coat, a clipboard, and the right tone of voice to assume an effective position of authority.” Just as Carlin, not the judiciary or legislature, selected the words which were written into law complicates the agency of the state, the willing participation of millions in the genocide of millions challenges Matsuda’s conflagration of speech and conduct. Hitler himself killed no one but himself. The ambiguity of causal relationships between thought, speech, and action and the ambiguities of agency complicate the reduction Matsuda makes between state-speech and the broader institutional conditions which produce violence.

In order to demonstrate that juris-diction extends over racial slurs, Matsuda deploys the ‘women and children’ argument by asserting “The places where law does not go to redress harm have tended to be the places where women, children, people of color, and poor people live.” However,

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614 Butler, Excitable Speech, 20.
615 Matsuda et al., Words That Wound, 27.
616 Foucault, “Governmentality,” 209.
617 This quotation is from Fuller and Goffey, Evil Media, 49 in reference to Stanley Milgram, Obedience to Authority: An Experimental View (London: Harper Collins, 1974).
618 Matsuda et al., Words That Wound, 18.
Matsuda goes a step further and adds “This absence of law is itself...A legal response to racist speech is a statement that victims of racism are valued members of our polity.”\textsuperscript{619} For Matsuda, a primary goal of racial slur regulation should be curtailing the “chilling effect” racism has on those who might otherwise express themselves or removing the conditions which “silence” racial minorities. Thus, she argues that the state should regulate racial slurs in order to promote free expression and concludes that “To allow an organization known for violence, persecution, race hatred, and commitment to racial supremacy to exist openly and to provide police protection and access to public facilities, streets, and college campuses for such a group means that the state is promoting racist speech.”\textsuperscript{620} Matsuda therefore frames the overriding issue of hate speech as a dilemma in which “Target-group members” must “either identify with a community that promotes racist speech or admit that the community does not include them.”\textsuperscript{621} She asserts then that hate speech is also a problem of identity and state-speech in the form of juris-diction.

Matsuda’s critical race theory is at odds with the Marxist-inspired “identity politics” movements of 1950-70s liberalism and civil rights groups, like the Combahee River Collective which describe their identity as “a politics that grew out of our objective material experiences as Black women.”\textsuperscript{622} Matsuda rejects the idea that individuals declare, or “self-identify,” with minority groups. Instead, one is identified by becoming the “target” of a racial slur and by having the injury of that identification adjudicated by the state. The solution, therefore, is that the speech racists use to create and injure minority subjects be overcoded with the speech states use, in this case juris-diction, to create and protect minority subjects. Indeed, Matsuda describes the absence of juris-diction as a “second injury,” another wrong, in which the state “offers no recognition of the dehumanizing experience that victims of hate propaganda are subjected to” and a “denial of personhood” by the state\textsuperscript{623} or as Butler summarizes, “The problem, then, is not that the force of the sovereign performative is wrong, but when used by citizens it is wrong, and when intervened upon by the state, it is, in these contexts, right.”\textsuperscript{624} The issue Matsuda describes then is not one in which racism is a problem, but whose expressions of racism count as legitimately able to create racial subjects and who has the authority to injure with language.

The state exercise of power over discourse in the U.S. is apparent in the framing of racism as a product of relations between its “majority” and “minority” communities, and in the way raced subjects are encouraged to describe the injuries of racism. For example, Matsuda suggests an alternative construction

\textsuperscript{619} Matsuda et al., \textit{Words That Wound}, 18.  
\textsuperscript{620} Ibid., 48.  
\textsuperscript{621} Ibid., 25.  
\textsuperscript{622} Collier-Thomas and Franklin, \textit{Sisters in the Struggle}, 300.  
\textsuperscript{623} Matsuda et al., \textit{Words That Wound}, 49.  
\textsuperscript{624} Butler, \textit{Excitable Speech}, 77.
of the “community standards” imagined by jurists regulating broadcast obscenity when she argues “The appropriate standard in determining whether language is persecutory, hateful, and degrading is the recipient’s community standard lest by misunderstanding linguistic and cultural norms we further entrench structures of subordination.” In making this claim, Matsuda is again authorizing a form of state-sanctioned racism in which the judge determining when a racial slur is injurious must do so based upon the race of those involved, but also authorizing judges to assign community standards to individuals and groups rather than the nation as a whole. To ignore race, and ascribe the community standards of the “dominant culture” to racial minorities, is for Matsuda subordinating because the state, as a multi-cultural governor, is tasked with guaranteeing equality. Similarly, Delgado argues that what gives racial slurs their power to injure and “breach the peace” is that “Racism is a breach of the ideal of egalitarianism, that ‘all men are created equal’ and each person is an equal moral agent, an ideal that is a cornerstone of the American moral and legal system.” For Matsuda and Delgado, racial slurs are a reminder of inequality and, through the overcoding of jurisdiction, must be erased by the state application of equality.

However, as Rancière describes with regards to the immigrant worker, members of a racial minority are forever prevented from attaining equality because they are always constrained to speak within the discourse of race. Racialized speakers must speak from the racial subject position to have their expressions counted as legitimate or politically eligible, continually reasserting the gap “between the declared political community and the community that defines itself as being excluded from this community.” One place this become obvious is the refusal of judges to classify honky and cracker as hate speech. The reason is not simple because honky is not equal to nigger in terms of its power to injure, as is often argued, but because white Americans are not required to speak from a racialized subject position. Indeed, part of white privilege is being treated as though one does not have a race. This is apparent in the identification of race made in the Spivey decision and hearing transcripts. In the introduction to the decision, for example, Spivey is identified as a “white man” and Jacobs a “black patron,” but thereafter all references to race are limited to hypothetical speech situations with a “white man” and a “black man” except when Jacobs is referred to as “African-American.” Similarly, the race of the judge, or the race of any judges and participants in the case law the decision sites, are never referenced. White Americans are typically seen by the state as having no skin color, and therefore not identified as having a race, and when they are identified as “white” it is only to signal the presence of a non-white participant in the speech situation. Thus, the Court polices an unequal distribution of raced

625 Matsuda et al., Words That Wound, 40.
626 Ibid., 93.
627 Rancière, Disagreement, 33.
628 Ibid., 38.
629 Hughes, Swearing; Jay, Cursing in America; Pinker, The Seven Words You Can’t Say On Television.
speaking subjects while also prohibiting expressions by a state official which are “prejudicial to the administration of justice.”

The Juridical Deployment of Privilege

However, Shapiro points out that, “To now seek a model of justice and fairness that does not discriminate on racial grounds is therefore to beg a prior political issue—the deployment of privilege that resulted when various peoples or nations were racialized, as states sought to impose unitary cultural nation.” To elucidate what my reading of Shapiro’s “deployment of privilege” means, it is useful to employ John Rawls’s theory of justice which is one of the best defenses of contemporary liberalism yet devised. In his now famous text *A Theory of Justice*, Rawls attempts to address the inequality of subject positions and formulate “pure procedural justice as a basis of theory” by devising a thought experiment. In contrast to Spivey’s thought experiment for the conditions under which “the black man” can be provoked to violence by the utterance of a racial slur, Rawls asks us to imagine a situation in which people devise a new social contract without prejudice or bias. In order to be rid of their biases, Rawls tells us they sit behind a “veil of ignorance” through which “no one knows his place in society, his class position or social status; nor does he now his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like.” The participants know nothing of their sex, race, nationality, social status, or individual preferences. From this subject position, which Rawls calls the “original position,” the participants “must choose principles the consequences of which they are prepared to live with” after the veil of ignorance is lifted. They know there will be a wide variety in the distribution of “natural assets” and ability each is endowed with, and there will be differences of sex, race, class, nationality, and properties with will distinguish between groups of people. According to Rawls, in this position, the participants are rational and egalitarian, not willing to agree to slavery, for example, because they risk discovering they are, and have to live with, being a slave once the veil is lifted. Using the thought experiment, Rawls then derives several general principles which he argues the group would agree to and which form a good theory of justice guaranteeing fairness.

The thought experiment *Spivey* devises is not exactly the same as Rawls, but the *Spivey* decision describes three subjects as occupying the “original position” even if it never uses that expression. The first occupant is the Court, demonstrated by the absence of any notes in the decision of the judge’s race.

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630 “In Re Spivey, Transcript Volume I.”
633 Ibid.
634 Ibid., 119.
635 Ibid., 55.
class, gender, or other attributes and, following the conventions of legal writing, even assuming the absence of personhood by referring to itself as “the Court” and “this Court.” From this position, the Court presents itself as the “neutral instrument of legal enforcement.” The second subject position is occupied by Spivey the District Attorney, a neutral instrument like the Court itself until Spivey the private citizen threatens neutrality and must be removed, though the position or “office” remains. However, there is a “deployment of privilege,” like the one Shapiro identifies, at work in Rawl’s and Spivey’s application of anti-discriminatory fairness as a model of justice. In the description of his experiment, Rawls never mentions “race,” only coming as close as “social circumstance,” precisely because race cannot factor into deliberations of justice. This is not only “racial blindness” which sees no race when applying the law, but because the participants “do not know the particular circumstances of their own society,” the effects of racism also cannot factor into deliberations of justice. Race and racism are treated as separate from the facts relevant to the creation of fair principles or policies. Unlike the inclusion of self-interest, the assumption that the participants will not discriminate because it is in their self-interest being behind the veil, or material conditions, “the particular circumstances of their own society,” race cannot appear in Rawl’s reasoning because the inclusion of racial matters would pollute the universality of the “principles,” namely liberal principles, with a fact which derives its force from difference and a differential valuation of bodies.

The Founding Fathers similarly bracketed off the question of slavery, race, gender, and property because their inclusion would pollute the universality of the principles, or “self-evident” truths, articulated in the Declaration of Independence and repeated often in case law, “that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” The inclusion of gendered language, both in the Declaration, “all men are created equal,” and in Rawl’s description of the original position in which “no one knows his place in society, his class position or social status; nor does he now his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like” belies a deployment of privilege made by Rawls in which his gender, masculine, and his race, white, is presumed to be the unbiased or original position. Additionally, Rawls demonstrates his privilege by having the option, or ability, to imagine the original position at all. Throughout the experiment, he identifies several assumptions necessary for the experiment to work, but alternates between the expressions “I assume” and “it is assumed,” demonstrating both his construction of the original position as white and masculine, but also his ability to “assume” the position of an unbiased subject without race or gender.

636 Butler, Excitable Speech, 48.
637 Rawls, A Theory of Justice, 118.
638 Ibid.
Thus, the principles Rawls derives from his thought experiment, first that “each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others” and “Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all” are suspect. By excluding race, the facts of racial inequalities of income, education, incarceration, health, and violence are no longer facts, but beliefs held by individuals which are forgotten on the other side of the veil of ignorance. Thus, Rawls imagines, as Shapiro points out with regard to cultural governance, “a model of justice and fairness that does not discriminate on racial grounds” which tries to forget “the deployment of privilege that resulted when various peoples or nations were racialized.”

With this in mind, we can now see that the third original position described in Spivey, not explicitly but inferred, is occupied by Spivey the private citizen outside the courtroom and no longer the object of judicial interest. Once the Court’s decision has been made, and its temporarily racialization of Spivey in its thought experiment as “the white man” ends, Spivey will be free to assume (or resume) the white male position of privilege. It is thus not that racism is exclusively produced by the state in which the deployment of privilege undermines address to the state for equality, but in this judicial deployment of privilege, facts like race and gender do not count in the application of anti-discriminatory justice.

The result is that “historically produced inequality is thereby displaced by a formal, ahistorical approach to political equality, a ‘formal equality’ by which the state ascribes racial and cultural characteristics or preferences to biological bodies, translating them into social bodies which speak from racial subject positions, and deploys anti-racist policies like hate speech legislation to police the intelligibility of statements made from those subject positions. Matsuda’s prescription for state-enforced formal equality also asserts the sovereign authority of the state in racializing subjects, a move which limits the possibilities of redress to a juridical debate about free speech and equal protection, but which also limits her ability to imagine alternatives to the racial slate and the racial subject position. She warns, for example, that “the price of disassociating from one’s own race is often sanity itself” and that victims of racial slurs not protected by the state risk becoming “a stateless person.” Matsuda’s framing of racial slurs as an issue of free expression and equal protection prevent her from considering the possibility that being a stateless person might be preferable to being a subject of the racial state or any alternative to accepting one’s place as a raced speaker other than insanity. Within this frame, and put in their place, racialized subjects are able to address the “wrongs” of racism only if they use the state-

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639 Shapiro, Methods and Nations, 21.
640 Ibid., 20.
641 Matsuda et al., Words That Wound, 25.
642 Ibid.
sanctioned language of “rights”—the right to free speech and the right of equal protection—without challenging or offering resistance to the racial state. Given the influence of these preexisting state-sanctioned discourses, and the apolitical accounts for what gives racial slurs their power focused on the words themselves or the individuals who use them, the question then becomes: what would a politically attentive account of what gives racial slurs their power to injure look like?

Towards a Political Theory of What Gives Racial Slurs their Power

A political theory of what gives racial slurs their power to injure would be attentive to the formation of subject positions from which the racialized subject must speak in order to make politically eligible expressions. Chambers provides a useful starting point when he observes that “Speaking, contra Aristotle, does not necessarily mean a realization of equality, if one is forced to speak from a particular location.”643 Similarly, contra Matsuda’s argument that the state needs to protect racial minorities from racial slurs in order to ensure they will not be “silenced” out of fear or Lawrence’s argument that “‘Nigger’ produces physical symptoms that are temporarily disablin”644 being required “To speak from a fixed or given location within a particular distribution of the sensory realm may be not to speak at all.”645 In terms of hate speech, the racialized subject is not so much “silenced” as policed, kept in their place by the racial state and required to express the injury of being held in place as one of linguistic violence committed by a member of the majority against minority groups, and described as the transmission of harm from a speaker “to the psychic/somatic constitution of the one who hears the term or to whom it is directed.”646

In her study of hate speech initiatives, Butler concludes that “The name [nigger] has, thus, a historicity...the sedimentation of its usages as they have become part of the very name, a sedimentation, a repetition that congeals, that gives the name its force,”647 but this only partially explains what gives racial slurs their power. Nigger reproduces a sedimented history of abuse, and juridical discourse reproduces them, but nigger also reminds racialized subjects of the impossibility of ever being counted as an equal member of the multi-cultural state. Using Rancière’s theory of identification,648 a supplemental political theory of racial slurs to the one Butler presents is once which finds that nigger is the name given to the

643 Chambers, The Lessons of Ranciere, 119.
644 Matsuda et al., Words That Wound, 67–68.
646 Butler, Excitable Speech, 80.
647 Ibid., 36.
648 Rancière, “Politics, Identification, and Subjectivization.”
antagonism between recognized parts of the community and the parts which have not been legitimate parts of the social body. Racial slurs reinscribe a “political subjectivization” where the politics is about qualifying those considered unqualified. *Nigger* defines the subject of a wrong, but what is being subjectivied is not just race or linguistic vulnerability, “but the simple counting of the uncounted, the difference between an inegalitarian distribution of social bodies and the equality of speaking beings.”

Returning to the etymological explanation given earlier in this chapter, that “*Nigger* is derived from the latin word for the color black, *niger,*” we can now see that being required to speak from the subject position of a slave—a member of the community not counted as a legitimate member of the community—better accounts for injury than ascribing it to the mispronunciation of a color in a language the slave is not likely to speak. The etymology is even more problematic when we also consider that Latin was the language of the Romans and for the Romans slavery was not tied to race. Similarly, Hughes’ explanation that racial slurs are insults based upon mischaracterizations of group preferences does not explain why *boy* would be insulting when used to address a black male. *Boy* is diminutive and insulting when used to name an adult male because the expressions of children are “merely perceived as a noise signaling pleasure or pain” rather than counting as legitimate discourse. In terms of hate speech, asking the state to further police subject positions by deciding, through the final power of jurisdiction, demonstrates the extent to which law injures or, in Giorgio Agamben words, “As jurists well know, law is not directed toward the establishment of justice. Nor is it directed toward the establishment of truth. Law is solely directed toward judgment, independent of truth and justice. This is shown beyond doubt by the force of judgment that even an unjust sentence carries with it.” The *Spivey* decision makes this count of the uncounted clear in its lack of concern with “the white man” using *nigger* outside the earshot of “the black man.” As a technique of multi-cultural governance, hate speech legislation authorizes the state to exercise its “power to injure precisely by virtue of being invested with the authority to adjudicate the injurious power of speech” and codifies the inegalitarian distribution of social bodies based on race.

Finally, racial slurs offer a way for the state to create racial communities and then govern them as a multi-cultural nation(s)-state. Matsuda’s formulation of identity politics, for example, where one is identified by becoming a “target” of racial slurs or identified by the judiciary making decisions about how to adjudicate the injury of racial slurs demonstrates one way racial slurs form imagined racial communities. However, in even greater contrast to earlier projects of American cultural governance,

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650 Ibid., 38.
651 Ibid., 23.
racial slurs are much more involved with creating and governing individual subjectivities. Matsuda’s suggestion that the appropriate instrument judges should use in determining whether language is injurious is “the recipient’s community standard,” instead of the national community standard imagined by judges dealing with obscenity, demonstrates a new concern for the individual. Similarly, the careful separation made in the Spivey decision between Spivey the district attorney, “a “neutral instrument of legal enforcement,”654 and Spivey the individual citizen enacting violence against the “African-American community,”655 reduces complex institutional racism to a speech situation between individuals. The series of events with which I opened the chapter (and the numerous instances of everyday encounters with racism) are similarly rendered as series of isolated incidents, problems of xenophobic individuals with racist thoughts.

In the end, my genealogy of hate speech cannot derive any clear solutions, laws, or policies which might address the violence of an institutionalized distribution of racialized bodies without also extending the power of the state, specifically its legal power, over the issues. In the conclusion to the chapter on obscenity, I noted that the Parent Television Council’s (PTC) campaigns to clean up broadcast eventually led the Supreme Court to expanded of the scope of indecency to include expressions like “fucking brilliant,” making it possible for the FCC to become increasingly involved in regulating television language. I suggested this expansion might also allow the FCC to soon police language on the Internet, but the PTC’s campaign might also have worked against its interest, allowing the FCC to not regulate Saving Private Ryan’s 21 uses of fuck because it contributed to honoring “American veterans.” Encouraging the state to regulate speech as conduct or more language as fighting words also risks empowering the state, and the judiciary, in ways which might work against goals of anti-discrimination policies or further retrench the state’s distribution of subject positions according to race and legitimate its policing of discourse on the injuries of racism as a matter of free expression versus equal protection under the law. The question, following Chamber’s reading of Rancière, “what is the possibility for the emergence of politics—the confrontation between the logic of the police order that keeps the” racialized subject “in his or her place, and the logic of the politics, which asserts the fundamental equality of the” citizen who is also “a minority,” “and potentially an activist—given these existing discourses?”656 I am not able to answer that question, but perhaps such a confrontation might take the form of protestors making seen what has no business being seen or counting when they are not authorized to count. The protestors in Boston, Seattle, and other cities who responded to the grand jury’s decision not to indict

654 Ibid., 48.
655 In re Jerry L. Spivey, District Attorney, 480 SE 2d 693 (Supreme Court 1997).
656 Chambers, The Lessons of Ranciere, 119.
Paletto for killing Garner by standing in a line across the interstate highway, blocking all traffic, and carrying “Black Lives Matter” signs may have been one such confrontation. The protestors did not call for the state to protect free expression or equal protection, but confronted the Rawlsian assumption of privilege when deploying a colorblind application of justice to legitimize the execution of a black American by declaring a fundamental misconception and counting “black lives” as something which “matters.”  

Another political event can be seen in the refusal of police officers to “support” the mayor of New York City after he failed to “respond properly” with a crackdown following the murder of two police officers, assumed to be in response to Garners execution, by not issuing tickets for minor offenses. The NYPD’s refusal to enforce minor laws dropped the city’s crime rate for traffic violations and minor offenses by ninety four percent, arrests by sixty six percent, and drug offenses by eighty four percent without causing a societal collapse. In this regard, refusing to police made visible what has no business being seen—that social order need not necessarily be imposed by the state or that much of social life may be over-policed in much the same way grammarians produced more rules for good language than are necessary for communication. As Rancière reminds us, the emergence of politics is rare and, like the sudden collapse of the USSR or the Egyptian revolution, the assertion of equality which undoes a given order does not exist before its surprising, and usually unpredicted, appearance on the stage.

However, I can conclude that as a technique of American multi-cultural governance, the regulation of racial slurs allows the U.S. government to shift the terms of its historically destructive nation building initiatives and redirect them towards the violence of individual citizens harming each other. The regulation of racial slurs also tries to “isolate the ‘speaker’ as the culpable agent” in ways which parallel the psychiatric interest in isolating the cursing voice of their patients and make that voice culpable for its expressions. The treatment of uncontrollable cursing and the development of cultural governance techniques aimed at intervening in the language of individuals is the subject to which I now turn.

657 Annear, “‘Black Lives Matter’ Highway Protests Shut Down Lanes On I-93.”
659 Butler, Excitable Speech, 39.
Chapter 4. Sophisticated Treatments for Cursing Brains

Tourette teaches you what people will ignore and forget, teaches you to see the reality-knitting mechanism people employ to tuck away the intolerable, the incongruous, the disruptive.

—Jonathan Lethem in *Motherless Brooklyn* 660

Almost immediately after the South Park episode “Le Petit Tourette” aired on Comedy Central in October 2007, the American Tourette Syndrome Association issued a statement condemning the cartoon’s portray of people with Tourette syndrome (TS). According to the Association, the episode “served to perpetuate even further the outright myth that most of those affected by TS have involuntary outbursts of foul language…For viewers less familiar with the symptoms of this neurological disorder, the misleading take away message couldn’t have been clearer—unless you curse, you don’t have TS.” 662 In the excitable episode, one of the characters (Cartman) pretends to have TS so that he can evade taboo language regulations, using the disorder as an excuse for evading censorship, calling TS “a magic cloak that makes me impervious to getting in trouble.” Poking fun at the FCC’s regulation of broadcast, Cartman is asked to be interviewed in a news program on live broadcast television. Cartman describes the opportunity as a chance to resist Victorian language prohibition, telling friends “I will say horrible things on the air, despicable things and people will call me brave.” Envious, his friends make remarks like “If I could say titty sprinkles on national television I would be so happy” and “If I could say ‘ass pussy’ to the counselor, I would be happy.” 663 On the big day of the news event, Cartman suddenly discovers that his resistance to censorship has caused him to lose the ability to control his language, that pretending to have the disorder gave him the disorder, and is publicly embarrassed when he repeats on air over and over “my cousin and I touched wieners.”

While Comedy Central is a cable channel free from the FCC’s content indecency regulations, during one scene of the South Park episode a taboo word was *bleeped* with the familiar 1khz tone used on

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663 Stone and Parker, *Le Petit Tourette.*
broadcast television. While the script writers and network never explained this odd bleep, in regards to similar bleeps in other episodes they recently made it clear that sometimes the network bleeps the show after it is produced, but more often the bleep is inserted to represent precisely the language they were meant to obscure, bleep to draw interest and excite laughter. The TV Parental Guide, an organization created in 1996 by Congress and the FCC to apply content labels warning for parents (and a television’s V-Chip), gave the episode a “TV-MA LV” or “for mature audiences only” citing its “language/violence.” The PTC also listed the episode in a series of articles published online as evidence of the alarming rising tide of taboo language on television children regularly access but, much like Justice Murtagh’s decision in The People v. Lenny Bruce and the 1986 Meese Report, the PTC reproduced uncensored lists of examples taken from the scripts of television shows on their website.

The South Park episode encapsulates a series of debates which have continued in popular and medical discourse in Europe and the U.S. since at least the 17th century regarding the surprising phenomenon of people who unexpectedly begin making non-rhythmic, recurrent, and uncontrollable noises or movements. The debates are usually focused on the relationship between the person and what their sudden eruptions say or mean. While only a small number of those diagnosed with what today is called primarily by its medical name, Tourette syndrome, have vocal tics the often taboo language of those vocal tics is what excites interest in the disorder. That language is also what has attracted institutional interest and made the people who curse uncontrollably the subjects of numerous experimental interventions into the expressions of individuals—the vast majority of which have failed to eliminate the tics, reduce their frequency, or alter what the tic says in at least 500 years since the phenomenon was first recorded. However, as Foucault points out in his genealogy of the prison systems failure to end crime, this study of uncontrollable cursing, and the medicalization of the phenomenon as “Tourette’s disease” and now “Tourette syndrome,” also finds that these failures, especially those attempted by physicians, has succeeded very well in producing disorders and developing governance techniques which have been deployed to regulate the expressions of individuals. Additionally, I found that

665 The rating system is voluntarily on cable television. Demonstrating how the FCC can indirectly manage online content as well, many online television services like Netflix, Amazon Instant Video, Hulu, the iTunes Store and Google Play have also recently begun submitting their content to the PTC for review and rating.
uncontrollable cursing has become the subject of recurring moral panics, many of which are related to the difficulty of applying the regulatory techniques this project has examined. Economic interventions into print-capitalism, moral interventions, Victorian language prohibitions, legal interventions, and interventions into total speech situations have all proved ineffective in controlling the uncontrollable expressions of individuals. However, that does not mean these interventions have not been tried or that they have proven useless for regulating the subject who curse uncontrollably and it does not mean techniques devised for regulating, for example, racial slurs have not been enhanced by experimentation on those subjects. In the last chapter, I noted that the treatment of racial slurs, and the presumed underlying racism their expression betrays, deploys some of the same techniques devised by physicians for Tourette syndrome. Additionally, in my study of primary medical texts related to the treatment of patients, I also unexpectedly discovered that physicians have been developing procedures and bodies of knowledge which are now a primary feature of digital language control, specifically theories of media and control from a distance made long before Marshall McLuhan described media theory and Norbert Wiener developed his theory of cybernetics.

This chapter is, however, different from the other case studies considered in this project. The relationship between state-sponsored American cultural governance and the regulation of uncontrollable cursing is much more tenuous and less obvious than, for example, Webster’s overtly nationalistic interventions into print-capitalism to regulate bad language and thereby produce an American national culture. This is, in part, because of the difference in scale between the object of Webster’s project, the print market and educational institutions of the entire U.S. (including territories later annexed and to some extent Britain as well), and the object of interventions into the language of a very small, often widely disparate, number of individuals who curse uncontrollably. Elements of nation-building are present, but with TS especially, the interventions are better described as ones which try to impress and police established behavior or linguistic norms. In other words, while there is now clearly a nationalistic bent to psychiatric discourse, with the French for example resisting the Americanization of TS by continuing to use psychoanalysis rather than psychopharmaceuticals, most of the primary sources on the problem of uncontrollable cursing describe it as a deviation from socially acceptable behavior and speech or a deviation from the performatives one should exhibit to demonstrate participation in the community culture. Thus, the techniques of cultural governance which the regulation of TS develops are ones which


try to impress upon or modify the individual so that they conform to social norms. The entry for TS in the *Diagnostic and Statistical Manual of Mental Disorders,* the primary text used by physicians in the U.S. to diagnose and prescribe treatments for mental disorders for example, includes a very short section on “Specific Culture and Gender Features” where we might expect to find details specifically addressing culture, but find only statistical information about the prevalence of the disorder among males in the United States. However, the Manual also states that a person with TS “may be better able to suppress tics...when the individual engages in directed, effortful activity (e.g., reading or sewing).” The manual’s statement that for the “individual,” earlier called “he/she,” might be “reading or sewing” is not an arbitrary selection, but the authors’ policing of culture and gender norms, where reading (traditionally man’s purposeful activity) and sewing (traditionally women’s purposeful activity) are abstracted activities which can be used to diagnose the presence of the disorder and describe normal effortful activities. The passage also identifies the individual as the unit of governmentality.

Despite the difference in scale for both cultural governance and unit of intervention, uncontrollable cursing is a valuable case study for American cultural governance because the regulation of “individuals” who curse uncontrollably and the various interventions used to manage their language is the result of a historical exercise of power which assigns subject positions, polices whose expressions count as politically eligible, and (to a greater extent than the other cases) which parts of an expression count as discourse or are discounted as noise. In medical discourse, the distinction between subject positions of patient and physician are heavily policed, as are the legitimate expressions patients especially are allowed to make both in terms of their language and in terms of describing their disorder. The current prevalent medical policing of tics, defined as movements or vocalizations which “tend to be stereotyped and serve no useful purpose,” disqualifies tics from having anything useful to say, but in earlier periods the voice of a tic was listened to with great interest. However, TS also complicates Rancière’s framing of politics and policing as the count of animals capable of speech and animals capable of mere noise. The modern medical understanding of TS is primarily organic, a physical property of the brain and not psychological. At the same time contemporary medicine treats the tic as making mere noise, because “it” knows just what to “say” in order to violate a linguistic taboo means that physicians have already counted the tic as making speech even while they insist it is only making noise.

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675 Paying attention to what the voice said became especially important at the turn of the 20th century when psychoanalysts began carefully studying every expression made by the patient for clues as to the underlying, unconscious or repressed, cause of mental illness.
This feature of uncontrollable cursing is also what first attracted the attention of physicians nearly 300 years ago in France. This chapter is primarily interested in how uncontrollable cursing became medicalized and the cultural governance techniques developed by physicians to treat their patients. To do this, the chapter begins by considering how uncontrollable cursing was understood and treated before physicians took interest and began medicalizing it as a mental illness. Next, the chapter will consider how physicians build knowledges about the disorder and how the writing conventions of psychiatric discourse—influenced by the genres of novels and memoirs—shaped the treatments physicians prescribed. The chapter will then examine Freud’s theory of mental illness as a product of Victorian prohibitions and his “talking cure” which freed his patient’s speech and also conditioned the development of rhetorical techniques to reassert the physician’s authority in separating speech from noise with psychoanalysis. Finally, the chapter concludes with an analysis of drug interventions as a way to manage the conditions under which expressions can be made or “pre-speech” conditions. Where the other chapters in this project have been interested in what gives taboo language its power, this chapter is more interested in what gives physicians their power over the discursive terrain of TS and people who curse uncontrollable, despite nearly 300 years of failed interventions and other alternatives to medical treatment.

The Church and the Doctor: How Medicine Came to Possess the “Possessed”

It is fairly easy to trace the first cases of uncontrollable cursing in medical discourse because nearly every history and popular account of TS, even clinical studies, begins with the same account. The founding scene of medicine and uncontrollable cursing is a clinical encounter between the physician Jean Marc Gaspard Itard, famous in French for his attempt to teach the feral child Victor of Aveyron language, and the Marquise de Dampierre, noble woman who had for years been the subject of Parisian gossip because of her inability to refrain from shouting “merde” and “foutu cochon” (“shit” and “filthy pig”). Itard’s original description was published in the *Archives Générales de Médecine* in 1825, but the vast majority of articles in the U.S. and Britain employing Itard’s clinical description of the Marquise do not cite Itard’s article. Instead, they cite an abridged translation of the introduction to an article written by Itard, “Study of Several Involuntary Functions of the Apparatus of Movement, Gripping, and Voice by Jean Marc Gaspard Itard (1825),” trans. S. Newman, *History of Psychiatry* 17, no. 3 (2006): 333–39.

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60 years later by Georges Gilles de la Tourette in which Tourette makes a controversial argument in favor of separating the ticcing “nervous disorder” from other disorders. It is important to note that in France and elsewhere, between 1885 and 1968 almost no one accepted Tourette’s typology of uncontrollable expressions, but like Itard’s first article, Tourette’s paper continues to be quoted and cited in contemporary studies of the disorder. So while Itard was the first to describe uncontrollable cursing as a medical disorder, most of the medical discourse has followed Tourette’s account of the encounter with the Marquise. The construction of the Marquise as a literary figure using the account from Tourette’s article, will be examined later, but it is important to note that Tourette was born and raised near Loudun, France where two hundred years before a famous witchcraft trial had been held in 1634. Tourette, aware and interested in the witchcraft trial, wrote similar psychiatric articles to the one on uncontrollable ticcing behavior dealing with the medieval treatment of hysteria as demonic possession. In one of his more famous accounts, Tourette described the treatment of mental illnesses by the Catholic Church as barbaric and cruel (a popular opinion in much of the literature then and now), but contrary to Tourette’s interpretation I discovered that the Church’s treatment of uncontrollable cursing was relatively benign and disinterested.

By the 15th century, the legitimacy of demonic possession as a cause was firmly entrenched in large part due to the extraordinary efforts of a failed Inquisitor, Heinrich Kramer, and the publication of his „Malleus Maleficarum” or “Hammer of the Witches” in 1486. While magic, witchcraft, and sorcery had been officially condemned by the Catholic Church long before Kramer's text appeared, before the 15th century those convicted of witchcraft, for example, were subjected to fairly minor public punishments. A person found doing witchcraft or casting spells was usually punished by spending a day in the stocks or by paying a fine. Before writing the “Malleus”, the Dominican theologian Kramer had been appointed as an inquisitor by two popes and made one of the first attempts to systematically persecute witches in 1484. Kramer’s attempted persecutions failed miserably. As a result of his failed attempts to convince magistrates that witchcraft was a serious threat, Kramer was dismissed by the local bishop, and was thrown out of the territory. Jeffery Russell has persuasively argued that the “Malleus” may best be read as

684 MacCulloch, Reformation, 563.
Kramer’s revenge for his treatment as inquisitor, but it is undoubtedly also a text seeking to legitimate theories of demonic possession and prescribe a method for expelling demons. Kramer managed to receive a papal bull approving the prosecution of witchcraft during the Inquisition and which he included as a legitimation of his theories in the preface of the book. Soon after its publication, Kramer and the Malleus were denounced by the Catholic Church, but aided by the recent invention of the moveable type printer by Johannes Gutenberg contributed to its rapid dissemination proving, as Jeffery Russell puts it, “the swift propagation of the witch hysteria by the press was the first evidence that Gutenberg had not liberated man from original sin.”\textsuperscript{685} The Malleus was officially condemned by the Catholic Church as false three years after its publication, the text was enormously popular (twenty editions were published between 1487-1520 and another sixteen editions appeared between 1574-1669) and became the handbook for secular courts dealing with cases of witchcraft or possession throughout Renaissance Europe.\textsuperscript{686} Only after the publication of the Malleus, and its circulation in the Latin and later German book market, did witchcraft and malicious magic become threats to the European communities.\textsuperscript{687} Kramer’s book is also significant because it contains what is generally believed, and I could find no evidence to disprove, the first description of uncontrollable cursing and yet, in contrast to Tourette’s analysis, even in the book designed to aid in the persecution of witchcraft, the interventions for this behavior are minimal and, surprisingly, require no experts or professionals to be remedied.

**Kramer’s Interventions into Demonic Possession of the Tongue**

Kramer begins his theory of possession by arguing that those possessed are not necessarily responsible for the ease with which they can be controlled, “Because this has more to do with penalty than with guilt… and because bodily penalties do not always follow guilt, but are sometimes inflicted on both sinners and non-sinners, demons can, in accordance with the loftiness of God’s inscrutable judgments, inhabit in substance both those in and those out of the state of Grace.”\textsuperscript{688} Throughout the Malleus, Kramer continually insists that the possess-ability of bodies by demons is made possible by God and not always as the result of sin or a weak moral character. While Kramer does argue that a person might be possessed as punishment for a sin, he is largely unconcerned with discovering the reasons for demonic possession and argues that “someone can be possessed as the result of someone else’s trivial

\textsuperscript{686} Ibid., 79.
\textsuperscript{688} Mackay and Kramer, *The Hammer of Witches*, 344.
misdeed” or through no fault of their own. For Kramer, God created humans which can simply be controlled by invisible forces and, surprisingly, he never prescribes any possible defenses against demonic possession.

The more important question for Kramer was how exactly human bodies come to be possessed by angels and demons alike. In order to answer this question, Kramer gives his account of a priest known for randomly using taboo language and making odd gestures, now identified in the literature as the first description of Tourette syndrome. Kramer reported accidentally meeting this apparently possessed priest at an Inn while travelling. After talking with the priest’s father, Kramer was amazed to discover that the well-tempered man sitting next to him was possessed. The priest describes having an argument with a woman, presumed to be a sorceress, who later summoned a demon and directed this force to take possession of the priest’s body. When Kramer asked the priest how he could be in control at the moment, the priest responded, “I am deprived of the use of reason only when I wish either to devote myself to Divine Service or to visit holy places. In particular, the demon said in the words he uttered through me that since up until then I had given him greater displeasure in my sermons to the congregation, he would not allow me to preach at all, as is now the case.” On hearing this, Kramer decided to travel with this priest for half a month to several shrines and observe how ecclesiastical authorities would attempt to free the man from his demon. In the Malleus, Kramer notes that at several sacred sites the priest seemed to temporarily regain control of his composure and body, but in one church the priest “would pour out awful wailings while being exorcized” and at another sacred site “the Devil would stick the priest’s tongue far out of his mouth.” When Kramer asked the priest to explain his behavior and language, the priest replied “When he [the Devil] pleases, he uses all my appendages and organs – my neck, tongue and lungs – for speaking or wailing so that while I do hear the words that he speaks in this way through me and from my organs, I am completely unable to resist, and the more devoutly I try to engage in prayer, the more keenly he attacks me, sticking out my tongue.” Kramer then describes subjecting the priest to an exorcism ceremony in which the priest suddenly began speaking in a foreign tongue (later identified as Italian) describing acts of sodomy. After praying, fasting, and exorcism rituals during the entire period of Lent, Kramer reports that this priest was finally freed from his demon. Using the case of this priest, Kramer then turns to the more important question of how demons can enter the human body and how they can be expelled.

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689 Ibid., 345.
690 Ibid., 348.
691 Ibid.
692 Ibid.
Relying heavily on the theological writings of Thomas Aquinas, Kramer begins his theory of possession by making a distinction between the body (the “mass”) and the soul (the “essence”). Importantly, Kramer finds that demons and angels can enter the body, but only God can enter the soul. Kramer argues that demons can attempt to influence the soul indirectly by manipulating the “internal faculties” of the body: temporarily depriving the use of reason as a chastisement, causing a person to destroy their property, terrifying a person with bad dreams, tricking a person’s senses, and by direct demonic possession. For Kramer, demons or angels cannot directly influence or direct the “essence” or soul of a person, but Kramer theorized that the demon inhabiting the ticcing priest could “slide into the body” and once there torment the priest by controlling or inhibiting “all the appendages and organs used for speaking and forming words, he [the priest] was always aware of the words, though not of their sense.”

Contrary to Tourette’s description of this period and the sprawling religious authority of the Catholic Church, Kramer expressly argues that anyone following the correct procedures can expel or exorcise a demon. In considering whether an exorcism is legal, and not simply another display of witchcraft and popular superstition, Kramer finds “that a regular priest or a discreet one or a layman or laywoman of outstanding way of life and proven discretion can perform such acts, uttering lawful prayer over the sick person...Persons of this kind should not be prohibited from such acts.” Citing Scripture and Thomas Aquinas, Kramer argues that anyone is capable of performing the right (even morally bad priests) so long as they follow the correct procedure. For Kramer, the treatment of the possessed body does not depend upon the specialist’s authority or knowledge of the afflicted person’s condition, but is instead dependent upon the exorcist saying the correct words in their proper sequence and expressive mode. The only requirements for an effective and legal exorcism is: that the would-be exorcist not directly invoke the demon (which might give the Devil power to intervene), they not use any unknown words (“some superstition may lurk in them”), not use written words or amulets as charms, scripture quotations be spoken with reverence, and that the exorcist trust in God’s will. If these conditions are observed, according to Kramer, anyone can perform an exorcism. Kramer goes further to argue against the necessity of a specialist or of even understanding the meaning of the exorcising words. He asserts that “If it is said that a layman who does not understand the words can have no respect for their meaning, the response is that he should have respect for the virtue of God.” Kramer goes so far against the intervention of specialists that he argues even diseases, which are suspected to be the result of possession,

693 Ibid., 353.
694 “Soeur Jeanne Des Anges, Supérieure Des Ursulines de Loudun, XVIIe Siècle.”
696 Ibid., 447.
697 Ibid., 450.
do not fall within the physician’s realm of authority. Kramer describes in detail the procedure of exorcism, describing even the arrangement of furniture in the room where the exorcism is to be performed, but he continually denies the necessity of a specialist in performing the ritual. According to this influential text, a would-be exorcist does not need to understand the meaning of what they are saying, have the ability to read and write, or be members of any religious Order for their exorcism to be successful. This is in stark contrast to the arguments made later by physicians who demanded that only specialists should be allowed to treat people who curse uncontrollably.

According to Kramer, anyone could be possessed and anyone could expel the possessor. The person inhabited by a demon was not at fault for their possession and the person performing an exorcism did not need to be superior, morally or intellectually, in order to effectively treat a possessed body. Likewise, the exorcism ritual did not require confinement, techniques to lessen the possessed person’s resistance to intervention, or for the subject to realize the truth or underlying causes of their possession. Kramer gives numerous other examples in the Malleus of people being freed from a possessing demon by laymen and laywomen as well as by religious authorities. However, Kramer makes it clear that only adherence to written religious scripts, spoken aloud without any particular intentionality by the speaker, and the observation of typical religious ritual was required to expel a demon.

One reason Kramer took notice of the priest, as I have argued elsewhere in this project with regard to bad language and taboo language, was that the practice of writing, and especially print, conditioned the development of regularized expression. For irregular expressions to be identifiable, and problematized, the regularizations of writing needed to be applied to speech. According to Ong, written language becomes more fixed in grammars than primarily oral discourse “because to provide meaning it is more dependent simply upon linguistic structure, since it lacks the normal full existential contexts which surround oral discourse and help determine meaning in oral discourse somewhat independently of grammar.” Everyday speech is filled with repetitions, incomplete sentences, and meanings which are inferred by emotive expressions and social contexts. The practice of writing turns thought and speech into visual symbols, each distinct from another symbol and uniformly reproduced. Irregularities become “bad” and, in the case of Webster, should be made rational or made to conform to a standard language. This is evident too in Kramer’s assertion that the irregular language of a possessed person could be corrected with the correct repetition of written script or passage of scripture.

However, the Malleus makes no special note of what the demon possessing the priest says, only that it is surprising and that the demon possesses the priest, thereby also possessing language. Kramer’s

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lack of concern for what the demon says means he counted the expressions only as making noise. Similarly, anyone can read aloud a written script and, without understanding the noises they are making, and expel the demon with the power of language. What gives the language of the exorcism its power to expel the demon is God or, as Kramer acknowledges in the introduction with the inclusion of his papal bull, the authority of the church. In other words, Kramer conceives of politics in the way Foucault described as “the transcendent singularity of Machiavelli’s prince.” A demon or angel can possess any body in the same way that a prince can possess any body. Reading the script of an exorcism or knowing the right sounds, just as reading the law without needing to understand the law could police the prince’s distribution of subjects and the intelligibility of their expressions. One reason Tourette and so many other physicians rejected medieval Catholic theories and interventions like the kind Kramer suggests, and called them barbaric and cruel, was not because medical science had uncovered the “real” cause of uncontrollable cursing, but because they understood power differently.

Physicians in the 18th and 19th century rejected medieval practices because authorities were no longer interested in only “leading people to their salvation in the next world, but rather ensuring it in this world. In this context, the word salvation takes on different meanings: health, well-being…security, protection against accidents. A series of ‘worldly’ aims took the place of the religious aims of the traditional pastorate,” which Foucault calls governmentality. Despite Tourette’s assertion, medicine had come no closer to determining the real cause of uncontrollable cursing, or curing it, by his time or in medicine today. Instead, by the time Tourette read accounts of medieval medicine and of the witchcraft trials, medicine had “spread far beyond the church to inform the state’s mode of managing society” and the cruelty he saw in medieval histories was a lack of concern for the well-being of patients. So while Russell points to how the printing press facilitated the “propagation of the witch hysteria,” print and this new governmentality also facilitated the propagation of the medical condition “hysteria,” a symptom of which uncontrollable cursing was at first thought to be, and helped make physicians the governors of mental health tasked with making the hysteric “rational” or conform to social norms. This explains why uncontrollable cursing became an object of medical study and the patient a subject of medical power during the 18th century and not before.

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702 Russell, Witchcraft in the Middle Ages, 234.
How the Marquise Got Tourette’s Disease

Before physicians could be put in charge of making corrections to taboo and uncontrollable expressions, they needed to demonstrate that these expressions were evidence of madness which could be treated. More important than Itard’s initial clinical encounter with the Marquise is how Itard’s article has circulated through the discourse network of psychiatry since he first published it. Almost 60 years after he published his article about her, Itard’s student Jean-Martin Charcot\textsuperscript{703} claimed to have met the then elderly Marquise and made his own diagnosis.\textsuperscript{704} However, Charcot seems never to have had any direct contact with her. In 1887, Charcot described his only encounter with the Marquise by writing “there was in high Parisian society, someone of the most aristocratic part of society, who was known for uttering filthy words. I never had the honor of knowing her; I did recognize her one day climbing the stairway to the Salon and I was surprised to hear her suddenly say SNdD [Holy name of God].”\textsuperscript{705} Records left by Charcot’s students mention that Charcot claimed to have examined the Marquise, but in his comprehensive history of TS Kushner has found that Charcot’s assertion that the Marquise continued ticcing until her death, for example, came from obituaries and not from medical examinations—a detail Charcot omitted from his descriptions of her.\textsuperscript{706} It is likely that Charcot’s diagnosis of the Marquise relied most upon Itard’s brief descriptions of her, popular and published accounts of encounters with her, and his chance single observation of her climbing a staircase.

In 1885, Charcot encouraged his own student, Tourette, to collect other clinical accounts of uncontrollable expressions for classification and publication. Charcot often used his students to publish his own ideas and test out whether the medical community would accept them. At Charcot’s direction, Tourette, who had been interested in odd behaviors reported in Malaysia, Maine, and Siberia, published a “Study of a nervous disorder characterized by motor incoordination accompanied by echolalia and coprolalia.”\textsuperscript{707} Tourette’s interest in the disorder was also prompted by the taboo language people with the disorder would suddenly express as evidenced by his decision to begin his study with a quote from the physician Etienne Michel Bouteille’s account of the disorder, “Everything about this illness is extraordinary: its name is ridiculous, its symptoms strange, it’s precise nature doubtful, its cause unknown

\textsuperscript{703} Charcot, like Tourette, also studied documents on witches, but used them to form a basis for his theories on “hysteria."
\textsuperscript{704} Kushner, A Cursing Brain?, 11.
\textsuperscript{705} Ibid., 21.
\textsuperscript{706} Ibid.
\textsuperscript{707} Georges Gilles de la Tourette, Study of a nervous disorder characterized by motor incoordination accompanied by echolalia and coprolalia (Paris: Aux bureaux du Progrès médical : V.-A. Delahaye et Lecrosnier, 1885).
and its treatment difficult. Serious authors have questioned its very existence; others have regarded it as simulated or as a manifestation of the supernatural.\textsuperscript{708} Shortly after the publication of Tourette’s study, Charcot renamed the convulsive tic illness in honor of his pupil and for the next two centuries this “malady of tics” would be known off and on as “Tourette’s disease.” Thus, we can say, decades after her death the Marquise got Tourette’s disease.

However, Tourette was not the only physician to acquire the Marquise or interpret Itard’s article about her as validation of medical and philosophical theories about human behavior and the possible connections between physical and mental functions.\textsuperscript{709} Itard himself used the Marquise to validate his theory that deaf-mutes, like Victor, had experienced an emotional or social trauma which retarded their brain development.\textsuperscript{710} His account of her therefore includes details about abnormalities in her family life which, at a young age, potentially damaged or inhibited her brain’s development. 1847, Ernest Billod read the Marquise’s symptoms to validate his theory that the “faculty” of the mind or the “will” of the organ could not be altered by reeducation of the senses or environmental intervention.\textsuperscript{711} A few years later, Dr. David Didier Roth read the Marquise as evidence for his theory that the underlying cause of uncontrollable cursing was entirely muscular. The next year, another physician argued that the Marquise’s illness was caused by the same disorder which caused one of his patients to be unable to stop walking. A few years later, the Marquise was used by Théodule-Armand Ribot in his search for purely psychological causes for ticcing.\textsuperscript{712} By the time Tourette appropriated the Marquise, not based upon any clinical examination of her but on Itard’s short three-page description of the Marquise 60 years earlier, her story became less about her affliction and more about how she could fit into a particular medical definition. From the very beginning, the Marquise was a literary figure written about and discussed according to the conventions of medical discourse and, above all else, the novel.

### Literary Fictions

One such convention was to link disorders with Greek culture and to classify them using Latin or Greek names. Similar to the way in which most anthropologists, linguists, and historians concerned with

\textsuperscript{709} Kushner, \textit{A Cursing Brain?}, 13.
\textsuperscript{710} Ibid., 14.
\textsuperscript{711} Ibid., 17.
\textsuperscript{712} Ibid., 18.
taboo language often begin by tracing a particular word’s etymology, psychiatrists’ allusions to ancient Greek culture hoped to cash in on the cultural capital associated with ancient origins and with the educated classes familiar with Greek myths. Thus, uncontrollable cursing becomes “coprolalia” from the Greek *kopros* meaning “feces” and *lalia* “to talk.”713 The use of Greek and Latin also prevents patients from gaining too much knowledge about the sophisticated techniques involved in medical discourse since it codes the language about disorders in order to police professional boundaries. Ong points out that “Since Freud, the psychological and especially the psychoanalytic understanding of all personality structure has taken as its model something like the ‘round’ character of fiction. Freud understands real human beings as psychologically structured like the dramatic character Oedipus, not like Achilles, and indeed like an Oedipus interpreted out of the world of nineteenth-century novels, more ‘round’ than anything in ancient Greek literature.”714 My reading of these various accounts agrees with Ong’s observation that the depth of psychology written into descriptions of patients parallels the development of characters in the novel genre. This novelization of patient narratives is evident both during a psychoanalytic session between the patient and a doctor as well as in the reporting of specific cases. Psychiatrists discuss patients with each other much as a novelist would describe a character and patient histories often include the patient’s abbreviated name (“Madame de D,” “Anna O.,” “Pete,” etc.), a third-person narrative of their childhood and the rising action of important life events, a crisis which brings the attention of the medical community, the falling actions of treatment attempts, and a final resolution to the patient’s biography.

Tourette and Freud both studied under Charcot in the hospital at Salpêtrière in Paris. Tourette, in addition to writing many medical volumes, was also a drama critic to the literary gazette *La Revue hebdomadaire* and published several articles on music, characters in plays, and historical figures. As chief physician of the hospital and the foremost neurologist in late 19th century France, Charcot had been a master showman, often arranged exhibits featuring his asylum patients and induced them to perform their madness before the wealthy.715 The descriptions made by Itard, Charcot, and Tourette of the cursing Marquise were almost as sensational as the woman herself had been among the Paris nobility. Their dramatic descriptions of the Marquise captured the imaginations of medical and popular writers for the last two centuries. In the 1920s, for example, the Hungarian neurologist and psychoanalyst Sandro Ferenczi created the first purely psychological description of TS without ever having seen a ticcing patient. Ferenczi based his diagnosis and treatment recommendations upon patients he never met. Ferenczi’s claims were based upon textual interpretation rather than clinical interactions. However,

714 Ong, *Orality and Literacy*, 151.
instead of seeing his lack of contact with ticcing patients as weakening his arguments about TS, Ferenczi
made the surprising claim that by relying upon textual descriptions alone he could not be accused of
making suggestions to a patient which might bias his observations.  

The first recorded case of uncontrollable expressions in North America by C.L. Dana and W.P.
Wilkin in 1886 described a 12-year-old boy who, after falling and spraining his foot, “would suddenly
and involuntarily burst out into expressions of the most profane and obscene character; repeating them
rapidly for a few moments and the stopping.” Dana and Wilkin believed that the initial trauma causing
the uncontrollable cursing was the boy’s fall, but later concluded that the boy had developed a
compulsion to confess “things he wanted most to conceal” which resulted from a “neuro-degenerative”
disorder. In North America, the insistence upon a conscious and willing subject and the rejection
of theories which argued that individuals contained a plurality of equally valid consciousnesses became a
fixture within psychiatric discourse throughout most of the early 20th century. Indeed, when Henry Meige
and E. Feindel’s Les Tics et leur traitement, was translated into English in 1907 it quickly became the
standard diagnostic interpretation in Europe and North America. Meige and Feindel’s book argued
strongly against Tourette’s biological understanding of uncontrollable cursing. In the introduction to the
English translation, the clinical physician Edouard Bissaud reasserted the psychopathology of the
disorder. Bissaud argued that tics were always the result of insufficient inhibition by a person with many
bad habits. In fact, Bissaud argued that “a tic is only a ‘bad habit’ ” itself and that “the checking of bad
habits…must be our goal from the outset” concluding that the “Reinforcement of will is the prime
therapeutic indication.”

Meige and Feindel meshed their explanations of uncontrollable cursing with eugenics and insisted
that all tics were psychological and were a regression to infantile behavior. Evidence for a weak will as
the cause of TS was found in the popular memoir Confessions of a Tiqueur written by a man who
identified himself only as “O.” In the Confessions, O. described being able to temporarily suppress his
tics while fishing and, since O. was also a successful businessman, Meige and Feindel concluded that O.

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717 C. L. Dana, “On Convulsive Tic with Explosive Disturbances of Speech (So-Called Gilles de La Tourette’s
Disease),” The Journal of Nervous and Mental Disease 13, no. 7 (1886): 409.
718 Ibid.
719 Howard I. Kushner, “Freud and the Diagnosis of Gilles de La Tourette’s Illness,” History of Psychiatry 9, no. 33
720 Ibid.
721 Ibid.
722 Meige and Feindel also introduced many anti-Semitic arguments into their theories. Meige’s doctoral thesis
hoped to establish a “Wandering Jew” syndrome which prevented them from forming attachments and caused an
obsession with travelling from city to city in search of a cure. Jacyna and Casper, The Neurological Patient in
History, 135.
had some limited willpower available to repress tics when under social pressure. However, their interpretation of O.’s memoirs also presented a difficulty since O. did not report having an irresistible urge to use taboo language. To resolve this difficulty, Meige and Feindel argued that O.’s occasional use of slang was a “sort of fruste [substitute] coprolalia.” While Meige, Feindel, and Bissaud did have clinical encounters with people exhibiting uncontrollable cursing and they did not ever meet or treat O. Much like the Marquise for Charcot and Tourette, O. presented a convenient and popular literary figure for the justification of medical theories.

Remote diagnosis based on textual evidence continues into the present. Samuel Johnson has been posthumously diagnosed by several psychologists as having TS. The diagnosis all rely almost exclusively upon a letter from a contemporary friend which noted that Johnson would often make “various sounds with his mouth; sometimes giving a half whistle, sometimes making his tongue play backwards from the roof of his mouth, as if clucking like a hen, and sometimes protruding it against his upper gums in front, as if pronouncing quickly under his breath, ‘Too, too, too.’” Psychiatrists and psychologists in the 1960s attempted to re-diagnose a foundational figure in Freud’s creation of hysteria, Frau Emmy von N., as actually having Tourette syndrome. Another, more controversial, attempt has been to diagnose Wolfgang Amadeus Mozart as a genius with TS. In 1992, the endocrinologist Benjamin Simkin published a paper which catalogued and counted the number of scatological statements in Mozart’s letters to his sister, parents, and friends as evidence of his disorder. Simkin found Mozart’s continual use of “Leck mich am Arsch” (lick my ass) in letters as well as accounts from his contemporaries that Mozart had a fondness for meowing at people, inventing odd nicknames, and playing linguistic games by rhyming or making up nonsense words as proof. Not long after Simkin made the diagnosis, the neurologist Oliver Sacks published an editorial disputing Simkin's claim. Specifically, Sacks noted that no topology of Tourette syndrome has included scatological writing as evidence of the disorder. Since then, psychiatrists have tended to agree with Sacks that the evidence is scant at best, but

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723 Ibid.
724 Cited in ibid.
the patient-led Tourette Syndrome Association in the U.S. continues to share links and articles online which assert that Mozart had TS.  

As a literary figure, Tourette’s Marquise played a large role in popularizing the disorder outside the medical field and has shaped how later mental health specialists would create their diagnostic criteria. The Marquise was a member of the nobility who had been suffering from uncontrollable expressions for over 80 years. She had been diagnosed by two of France’s most premier physicians nearly 60 years apart, and had scandalized French society with her vulgarity and continues to excite the literature today regardless of the evidence of whether or not she actually had TS. Indeed, most English-language descriptions of the Marquise cite an abridged translation of Tourette’s 1885 report and a partial translation of Itard’s original description which was only fully translated into English in 2006.  

As Kushner notes in his history of the disorder, “changing claims of the etiology of Tourette syndrome often were due less to compelling and robust scientific findings than to the dynamics of the political culture of medicine” and with cures in particular physicians “desperate for results, mistook the natural waxing and waning of symptoms for therapeutic success.” Whether or not the Marquise actually suffered from Tourette’s disease is unclear. However, of all the case studies presented by Tourette, only the Marquise unambiguously qualified as suffering from the disorder as he originally described it. The Marquise is also the only case which fits clearly within the current definition of TS from the primary text physicians in the U.S. used to diagnose the disorder, the Diagnostic and Statistical Manual of Mental Disorders. As a counterfactual, Howard Kushner ends his history of Tourette syndrome by arguing if physicians had listened to the Marquise de Dampierre “rather than appropriating her symptoms to shore up their preconceived theories, much suffering may have been ameliorated. Instead, many subsequent physicians concentrated on the patient’s ‘will,’ ignoring the repeated testimony by the afflicted that they were unable to control their symptoms.” The medical discourse on uncontrollable cursing has relied upon literary accounts of patients, and has rendered patients into characters of a novel, but I also discovered a strong correlation between how mental health experts wrote about their patients and the interventions they devised to regulate their taboo language. I also discovered that physicians have, since Itard’s initial

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730 Itard, “Study of Several Involuntary Functions of the Apparatus of Movement, Gripping, and Voice.”
731 Kushner, A Cursing Brain?, 218.
732 Ibid., 219.
733 Ibid., 24.
735 Kushner, A Cursing Brain?, 220.
encounter with the Marquise, theorized about their patients who curse uncontrollably as essentially re-writable media.

Rewriting the Patient’s Brain and Controlling the Language from a Distance

Before the 18th century, uncontrollable expressions were theorized as originating in an external force maliciously operating a person’s vocal cords, muscles, or language as we saw with the first case described by Kramer. As medical doctors began establishing their truth of uncontrollable cursing, they rejected and retained other elements of the malleable subject. They rejected the idea that patients suffering from uncontrollable expressions were being influenced by unseen external forces (i.e. demons or angels). Instead they argued the expressions were the result of organic deformities or injuries happening inside a person’s body or mind. Freud would famously solidify this belief by stating that “Demons do not exist any more than gods do, being only the products of the psychic activity of man.”736 However, early on physicians agreed with Kramer’s idea that anyone could become possessed, if not by a demon, then by the negative influence of external forces. In contrast to priests who might have tended to the Marquise only a generation earlier by exorcising a malevolent third party from her body, the physicians who first took notice of uncontrollable expressions considered the plasticity of their patients to be a chief cause of their disorders. Predominantly, these physicians described their patients as having poor character, weak wills, and an essentially child-like susceptibility to external influence.

For example, in Itard’s description of the Marquise, reproduced later by Tourette, he theorizes that “her general state of health seems to respond strongly to the effects of the length of this nervous affliction, as proof causing her emaciation, and a pale complexion...The influence of the malady on her moral state is marked even more palpably; observes here, as in all protracted neuroses of this genre, great variability of ideas and an instability of mind and character which belong only to extreme youth and to those who resist the changes of their age.”737 According to Itard, mental traumas could not only manipulate a person’s psyche, but could also lead to physical deformities. Itard believed these conditions could be overcome through various regimens of self-disciplining and held that a weak will could be strengthened through exercise. Like other physicians of his time, Itard believed that these “moral treatments” of self-discipline could be a viable alternative to reliance upon external authorities and that

737 Itard, “‘Study of Several Involuntary Functions of the Apparatus of Movement, Gripping, and Voice,’” 351.
strengthening the Marquise’s self-discipline she could learn to control her uncontrollable cursing.\textsuperscript{738} However, as Foucault points out, the “moral treatments” which became popular between 1810 and 1830 in France also fulfilled the psychiatrist’s need to “make the reality of the doctor’s power felt against the omnipotence of madness. But it is also a matter of taking the pleasure out of madness, that is to say, wiping out the pleasure of the symptom through the displeasure of the cure.”\textsuperscript{739} In other words, these moral treatments tried to establish the authority and subjective reality of the psychiatrist onto the patient, rewriting a patient’s defective worldview with the superior worldview of the psychiatrist. They also hoped to erase any sense of enjoyment a person might get from having, returning to the example with which I opened the chapter, “a magic cloak that makes me impervious to getting in trouble” or saying “titty sprinkles on national television.”\textsuperscript{740}

**Self-Discipline and Psychiatric Punishment**

Itard observed that people with uncontrollable expressions were sometimes able to control their utterances or movements if they feared public humiliation. From this observation, Itard devised several treatments which relied upon publically shaming the patient into controlling the expression of their tics. Like Kramer had done with his possessed priest, making a pilgrimage between sacred spaces, Itard treated one patient with tics by taking her for walks around Paris and forcing her into social encounters with others. Itard reported that by leveraging her fear of offending her fellow Parisians “I obtained…a success more prompt and more complete than I would have dared to hope. The attacks diminished so rapidly in frequency and intensity, that at the beginning of 5 weeks Mlle. de C. found herself completely cured.”\textsuperscript{741} Itard never tried this intervention with his famous Marquise, but he nevertheless argued, “if the means of repression or resistance so successfully followed [with her]…had been put to the same service in [Dampierre’s case]…, we would have obtained the same result.”\textsuperscript{742}

Perhaps more importantly, Itard’s construction of uncontrollable expressions and his shaming techniques introduced another overriding necessity for psychiatric intervention; not only whether uncontrollable expressions were a symptom of an underlying madness, but also whether those expressions could drive a person to madness or make them dangerous. By exposing people with tics to social situations in which the expression of their tic would cause social disturbance, the treatments of the

\textsuperscript{738} Kushner, *A Cursing Brain?*, 15.


\textsuperscript{740} Stone and Parker, *Le Petit Tourette*.

\textsuperscript{741} Itard, “Study of Several Involuntary Functions of the Apparatus of Movement, Gripping, and Voice,” 349.

\textsuperscript{742} Ibid., 351.
psychiatrists became yet another trauma which had to be addressed. In the case of the Marquise, Itard found that her uncontrollable use of taboo language “present[ed] an extremely rare phenomenon, and constitute[d] an extremely disagreeable inconvenience that deprives the person who is affected of all the sweetness of society.” By this reasoning, even if the Marquise’s tics were not a symptom of a deeper madness, her offensive tics and the reactions of others would emotionally traumatize her. Itard argued that these encounters, and the continual effort required to temporarily suppress a tic, would be enough to drive the Marquise to madness if she had not been mad already. According to Itard and other physicians of the time, whether the underlying illness required psychiatric intervention or not, the results of the illness most certainly would. For example, Itard noted that another patient with tics was traumatized as “The more others seem revolted by her uncivilized statements, the more she is tormented by the fear of uttering them.” The argument that living with uncontrollable expressions can drive a person to madness, and also traumatize others around them, has remained a prominent feature of the psychiatric genre. In Itard’s estimation, even if the tics were not evidence of a dangerous mental disorder, the effects of the tics upon the Marquise were enough to drive her mad and justified the intervention of a physician. The vocal tics, for Itard, were both caused by the Marquise’s child-like and malleable character and also drove her to further madness.

In his study of ticcing behavior, Tourette introduced the symptoms of eight other patients in addition to the famous Marquise to support his claims. In most of the other cases Tourette presented, cursing was a distinguishing symptom. The distinction between controllable and uncontrollable cursing was sometimes difficult for Tourette to delineate. One patient, for example, seemed to intentionally use profanities in his regular speech and also seemed to uncontrollably curse while making spasmodic gestures. Tourette theorized that the two could be distinguished as the uncontrollable curses seemed to erupt only “If a suitable word or an idea translatable into speech did not occur to him, then he would frequently punctuate a contortion with the word shit irrespective of the company he was in. He would, furthermore, invest ordinary ideas with foul language.” The difference, Tourette argued, was that intentional uses of taboo language were distinguishable from unintentional speech based upon the social context. For example, Tourette determined that patient S’s use of “Such words are involuntary to the extent that they have been spoken in the presence of S…’s much loved mother.” Familial causes and repressions of ticcing behavior were an important part of Tourette’s typology. Accordingly he argued that the Marquise’s cursing, and the taboo eruptions of other ticcing patients, were the result of a morally

743 Ibid., 352.
744 Ibid., 351.
745 Gilles de la Tourette, Study of a nervous disorder characterized by motor incoordination accompanied by echolalia and coprolalia, 108.
746 Ibid.
degenerative disease by which the cumulative and inherited immoral behaviors of preceding generations caused a weakening of her nervous system.\textsuperscript{747} Hygiene was also an important feature in the treatments Tourette cited in his study. The treatments for filthy language and immorality of the disorder most often involved hygienic or gymnastic interventions. The Marquise, Itard and Tourette both noted, often took milk baths to decrease her symptoms. Two boys Tourette describes were treated by taking two showers a day and performing various exercises at the direction of a physician. Tourette reported treating one of his own ticcing patients by giving him static electricity baths three times a week.\textsuperscript{748} Itard and Tourette both seemed particularly convinced that various hygienic regimes might be useful for treating the filthy language of their patients.

Foucault description of “psychiatric power” a deployment of technologies designed to justify the physicians authority over the patient and a kind of disciplining which constructs docile bodies through disciplinary institutions constantly observing the bodies they control and ensuring an internalization of discipline, does explain Itard’s early interventions into uncontrollable cursing. Indeed, the purpose of putting his patients into uncomfortable social situations until they could internalize the controls necessary for conforming with social norms is disciplinary. However, while Foucault’s description helps explain many features of medical treatments for Tourette syndrome, the inability of disciplinary institutions to control tics, or get patients to internalize a self-discipline capable of controlling tics, meant that discipline had to be augmented with other forms of control. As Tourette famously announced, there was no hope of “a complete cure,” and concluded “once a ticcer, always a ticker.”\textsuperscript{749} Additionally, where Foucault’s account of disciplinary power finds that discipline also generates resistance, we can see in early treatments of Tourette syndrome that the first treatments were designed specifically to make the patient’s psyche resistant to outside manipulation and later to bypass a patient’s resistance so the physician alone could have access to the patient’s psyche. Without using the specific terminology, my study of medical discourse revealed that physicians have theorized about their patient’s minds as plastic, but a type of media which can be erased, written upon, and controlled from a distance. For physicians, the question was not whether a patient was plastic enough to be influenced, but rather which form of influence would be the most effective in eliminating sudden eruptions. While some argued that uncontrollable expressions could not be cured, classifying the disorder as a “syndrome” rather than a disease, most of the physicians

\textsuperscript{747} Jacyna and Casper, \textit{The Neurological Patient in History}, 133.

\textsuperscript{748} Gilles de la Tourette invented many exotic treatments and devices during his time as a physician. Inspired by a vibrating chair used for treating Parkinson’s disease, he invented a vibratory helmet to treat facial neuralgia and introduced suspension therapy which involved a particularly horrific spinal cord stretching regiment. Gilles de la Tourette, \textit{Study of a nervous disorder characterized by motor incoordination accompanied by echolalia and coprolalia}, 113.

\textsuperscript{749} Cited in Kushner, “Freud and the Diagnosis of Gilles de La Tourette’s Illness,” 10.
concerned with uncontrollable expressions chose interventions which they believed would strike at the internal causes. These interventions were also designed to test the limits of suggestibility and were early experiments in control from a distance. Physicians deployed interventions like surgery, questioning, hypnosis, or drugs not only because they wanted to discipline their patients, but also they wanted, in a way, to take the place of Kramer’s demon and “slide into the body” of their patient or manipulate various mediums in order to control their patients from a distance. While Itard focused mainly on moral treatments, by the 1830s treatments which depended upon public humiliation and shaming began to give way to individualized “mesmerization” and hypnosis. Charcot was one of the first to popularize hypnosis, especially as a treatment for “hysteria.”

Remote Control with Animal Magnetism and Hypnosis

For Charcot, the ability to be hypnotized was evidence enough of a person’s hysteria and reaffirmed the psychiatric preoccupation with the malleability of a patient. If one was susceptible to hypnosis, according to Charcot, than one was clearly not able to guard against the suggestion of others and must be mad. Charcot’s insistence that Tourette’s disease was a separate condition from hysteria was based upon his observation that patients under hypnosis did not display their hysteria and seemed to be cured by the process while patients with Tourette’s disease continued to tic even while under hypnosis.750 Tourette agreed that Tourette’s disease was separate from hysteria, but his reasoning focused more on the observation that while the appearance of tics could wax and wane, they never fully disappeared regardless of medical intervention.

The appearance of hypnosis as a potential treatment for a variety of disorders in the late 19th century, including its application to people with Tourette syndrome, represent a psychiatric shift away from a preoccupation with strengthening a patient’s will against manipulation by external forces to establish themselves as the only legitimate manipulators. By placing people under hypnosis, psychiatrists hoped to more directly access the underlying causes of a disorder without interference from the patient’s description of their disorder or resistance to treatment. Instead of strengthening the ability of patients to resist manipulation, psychiatrists began experimenting with methods overtly designed to weaken a person’s control over their own body and mind. Experiments with “animal magnetism,” had been conducted at the asylum Salpêtrière in Paris in the early 1820s, but its use quickly fell out of favor. The experiments with magnetism were an early attempt by physicians to gain control over a patient by manipulating an imagined invisible natural force exerted by animals. Hypnosis replaced animal

750 Kushner, A Cursing Brain?, 30.
magnetism as a preferred treatment because it did away with the theoretical invisible force connecting
animals, which might distort or fail to relay the influence of the physician, and instead allowed for a direct
exercise of power over patients. This was not simply a return to the priest’s acceptance of generally
malleable subjects, but instead represented a sea change in psychiatry whereby a patient’s morality was to
be replaced by the superior morality of the psychiatrist.

The use of hypnosis was not uncontroversial; especially its use by Charcot in his Salpêtrière
asylum. Hypnosis was not a popular treatment until Paul Broca demonstrated that hypnosis could be used
as a surgical anesthesia in 1859. After hypnosis became popular in psychiatry, Charcot’s theory and use
of hypnosis was sharply criticized by the neurologist Hippolyte Bernheim who preferred the use of
suggestion by reason on patients while in a waking state instead of subconscious manipulation on patients
under deep hypnosis. Bernheim argued that the susceptibility of people with hysterics ought to be
considered separately from the hypnosis of ordinary people. Bernheim also believed that the popularity
of hypnosis among the general public had decreased its scientific image. After Charcot’s death, the fight
over the proper uses of hypnosis continued between Bernheim and Charcot’s pupils, especially
Tourette. Loyal to his mentor Charcot, Tourette continued to develop and use hypnosis as a treatment
for his patients after Charcot’s death. Much of the debate between Bernheim and Tourette focused on
whether or not a patient could be hypnotized against their will or, while in a hypnotic state, whether a
patient could be induced to commit a crime against their will. In other words, they argued and
experimented on how much control at a distance hypnosis could achieve. The debate became
sensationalized when, in 1893, Tourette was shot in the head by an ex-patient who claimed that Tourette
had been hypnotizing her against her will. Tourette survived, and continued to practice medicine, but
was eventually committed to a psychiatric hospital himself and died in 1904.

Much like Charcot’s spectacles of patients from Salpêtrière, hypnosis created anxieties about
people no longer in control of their own thought processes or bodies. The most pressing panic introduced
by hypnosis was the demonstration that ordinary people could be made as malleable as the mentally ill
patient. For Foucault, hypnosis represented an extension of a physician's control over their patient’s body

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754 Ibid.
whereby the hypnotist could intervene at the muscle and nerve level. More importantly for Foucault, hypnosis was a “more sophisticated and intensive way than questioning for the psychiatrist to obtain a real hold on the patient’s body.”\footnote{Foucault, \textit{Psychiatric Power}, 287.} Like every other treatment, hypnosis had never been effective in eliminating or even reducing tics, but the idea that one could remove barriers to expression would have a profound impact on medial discourse after Freud. He had studied with Charcot in Paris for a time, but after visiting Bernheim in 1889 and witnessing some of Bernheim’s experiments, Freud declared himself a pupil of Bernheim and rejected much of Charcot’s teachings. Freud drew upon Bernheim’s hypnosis, and not Charcot and Tourette’s, to create his method of psychoanalysis which emphasized the use of analysis on patients in waking states rather than relying primarily on hypnotic suggestion.\footnote{Sigmund Freud and James Strachey, \textit{Introductory Lectures on Psychoanalysis ; Translated and Edited by James Strachey} (New York: W.W. Norton, 1966), 501–502.} Freud was familiar with Tourette’s description of tics, but rejected the disorder as being separate from hysteria.\footnote{Kushner, \textit{A Cursing Brain?}, 61.} Instead, Freud argued that tics were a symptom of hysteria which could be treated through hypnosis and by addressing the underlying emotional traumas of a patient by having them verbalize their own subjectivities and memories. When Edison invented the phonograph, Freud immediately seized upon the idea of using it in psychiatric treatment. Kittler points out that with the phonograph science had a machine capable of recording and making noise regardless of meaning,\footnote{Friedrich Kittler, \textit{Gramophone, Film, Typewriter}, trans. Geoffrey Winthrop-Young and Michael Wutz (Stanford, Calif: Stanford University Press, 1999), 85.} but its invention also had an impact on TS directly. Like vocal tics, the phonograph could make noise in ways which complicate Aristotle’s simple binary between animals capable of making noise and animals capable of making speech, allowed speech to be freed from the alphabets of writing, and conditioned the development of a new treatment which could purify language through a critical inspection noise.\footnote{Ibid., 27.} In contrast to the regulation of broadcast obscenity, which tried to censor the content of communications to protect ‘womenandchildren,’ Freud imagined that by uttering obscenities into the phonograph he could manage the mental health of his hysterical patients, the vast majority of whom were women and children.

Kittler criticizes Foucault for ending his archaeologies of knowledge at the very moment when speech is freed from text, pointing out as my study has done that the reliance upon texts for etymologies of racial slurs lends support to the hegemony of graphic language policed by the hegemony of literacy. As Kittler puts it, “Even writing itself, before it ends up in libraries, is a communication medium, the technology of which the archeologist simply forgot. It is for this reason that all his analyses end
immediately before that point in time at which other media penetrated the library’s stacks.” While I disagree with Kittler’s assertion that “Discourse analysis cannot be applied to sound archives and towers of film rolls,” especially given Freud’s careful development of techniques designed to analyze the discourse of his patients, the freeing of discourse from the alphabets of written language conditioned the possibility of Freud’s theory that mental illness was caused by Victorian prohibitions and his interventions designed to free the speech of his patients in order to cure them.

Freud, the Phonograph, and Freeing Speech

Charcot had used photography and film to record his patients and put their illnesses on display for his audiences, useful because he did not need to wait for his patients to perform their irregularities, but Freud’s use of the phonograph and telephone went far beyond Charcot and Tourette’s handling of patients as media. It also contributed to his theory of what gave language its power to both signal the presence of mental illness and provided the means to a cure. In *Totem and Taboo*, for example, Freud explicitly equates taboos with obsessional symptoms and makes them into a mental disorder, linking words and mental illness together in much the same way the use of a racial slurs is thought to be evidence of bigoted thinking. However, it is Freud’s “repression hypothesis” more than anything else which lends itself to the treatment of Victorian prohibitions by freeing speech:

> Just as the patient must relate everything that his self-observation can detect, and keep back all the logical and affective objections that seek to induce him to make a selection from among them, so the doctor must put himself in a position to make use of everything he is told for the purposes of interpretation ... without substituting a censorship of his own for the selection that the patient has foregone. To put it in a formula, he must turn his own unconscious like a receptive organ towards the transmitting unconscious of the patient. He must adjust himself to the patient as a telephone receiver is adjusted to the transmitting microphone. Just as the receiver converts back into sound waves the electric oscillations in the telephone line which were set up by sound waves, so the doctor’s unconscious is able, from the derivatives of the unconsciousness which are communicated to him, to reconstruct that unconscious, which has determined the patient’s free associations.

In Freud’s description of treatment as telephony, we see censorship as the cause of illness, but he also expresses a fear that while the power of language can cure a patient it can also negatively

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761 Ibid., 5.
764 Quoted in Kittler, *Gramophone, Film, Typewriter*, 88.
influence the physician who excites the patient’s freeing of speech. However, Freud also introduces the idea that the human psyche is divided into a conscious and subconscious, and while curing the patient involves bringing the subconscious causes and repressions out into the conscious mind through vocalization, Freud also suggests a communication between the patient’s unconscious and the physician’s unconscious which, as Kittler points out, becomes a technical apparatus for determining where an intervention should be made. It is here that language regulation begins to become interested in intervening in the conditions of possibility for an individual’s expressions, what I will discuss in the chapter on digital language control where these techniques are now deployed on a mass scale, as “pre-speech.” However, here Freud makes it clear that simply freeing a patient’s speech is not enough to cure them. The process of freeing that speech requires the psychoanalyst to continually encourage the patient to keep speaking and so Freud introduces a method of psychiatric questioning which simultaneously asks the patient to describe their subjective experiences and also denies the patient’s ability to interpret those vocalizations.

One way Freud did this was to prevent his patients from writing and to retain the practice of writing for the physician only, reintroducing the cultural governance technique examined in the chapters on graphic writing and racial slurs for determining whose expressions count or can be counted. As Kittler puts it, “Patients, who, thanks to the telephonic and equidistant receptivity of Freud’s’ unconscious, may indulge in any kind of babble as long as they stick to the everyday medium of orality, are themselves not allowed to make use of storage technologies, lest they incur the wrath of psychoanalysis, the discrete textual recording of contractually arranged indiscretions.” Thus, by putting the patient in front of a phonograph and continually questioning them about their subject experiences, requiring that they remove any barriers to speech, Freud introduces a new system for separating speech and mere noise. The phonograph records everything, but the psychoanalysis alone does the analysis and tells the patient what their own free speech means.

**Sophisticated Uses of Language**

The problem which TS presented was not only an issue of locating the uncontrollable “voice” uttering profanities firmly within the patient’s body, but also required the patient to understand that the alien voice was nothing more than mere projections of their mind, fears, and desires—not the expressions

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765 Ibid., 90.
of external demons or of multiple selves. Convincing patients of this and also convincing families or institutions to allow physician to exercise this authority over separating noise from discourse required what Fuller and Goffey describe as sophisticated uses of language. Tourette being shot in the head by a former patient served as a warning against assuming complete control over the tangled networks of actants, conditions, and accidents involved in remotely producing decisions. Instead of strengthening a patient’s will or rewriting it directly through hypnotic suggestion, Freud’s psychiatric theories and methods of questioning hoped to enlist the patient as a complicit ally in the process of psychiatric control. Sidestepping the Platonic prejudices against sophistry, Fuller and Goffey consider sophisticated techniques as the “art of always being right” by deploying a series of stratagems which work “with the propensities of argumentative language to fool, lead astray, trip up. A stratagem in this context was not just a power play but a deliberate attempt at exploiting natural language...Working on the other’s susceptibility to enticement and entrapment by language.”

This kind of sophisticated use of language had already been prevalent in medical discourse, especially those concerned with mental health, since winning an argument using rational persuasion was not an effective strategy for convincing an irrational person. Foucault cites the madness of King George III of England as a founding moment for psychiatric power because, among other things, it required the treating physicians to establish authority over a sovereign power and it was also deemed necessary to convince the King of lies in order to treat him.

Much in the same way Kramer argued that an exorcist should not try to argue with a demon, the strategy of psychoanalysis was to bypass the reasoned argumentation typically necessary for psychiatric questioning to gain a more direct control over the patient’s body and subjective experience of reality. However, rather than re-writing a patient’s psyche directly, psychoanalysis would deploy sophisticated strategies—by which an analyst could win any argument—to convince a patient of the validity of an analysis and the correctness of a treatment.

Psychoanalytic questioning, more than hypnosis or the moral treatments of earlier physicians, prepared the ground of subjects prone to a variety of anxieties and welded patients to their symptoms. Psychoanalysis initiated an intense search into a patient’s childhood, dreams, and other subjective experiences to draw together a narrative of embodied personhood. Intentionality became extremely important and psychiatrists became increasingly insistent that patients, despite describing their sudden or profane utterances as uncontrollable, must secretly wish to say the things their tics forced them to express. The uncontrolled and unrestrained expressions were linked to repressed desires, coping with unresolved traumas, or resistance to psychiatric therapies which might force a patient to realize the ultimate truth of

Fuller and Goffey, *Evil Media*, 38.
their disorder and thereby be cured. The psychiatric obsession with voice of TS and the illusion of presence presented serious contradictions for psychiatrists attempting to treat people for whom vocal tics at times appeared to be involuntary, but at other times seemed to be controlled by a patient.

The new science of bacteriology at the end of the 20th century seemed to suggest that tics were caused by foreign bodies in the bloodstream or rheumatic fever operating below the threshold of the conscious and subconscious mind. Several physicians had also found that the ticking behavior emerged after a person had suffered an injury or after the removal of a person’s tonsils; suggesting a biological cause. After Freud’s revolution, many descriptions of uncontrollable expressions followed Freud’s argument that mental illness most often resulted from infantilism and repressed sexual urges and continued to describe it as a symptom of hysteria, not its own disorder. Jean-René Cruchet was the first psychiatrist to defy Freud and argue that ticcing was not a form of infantilism, but was rather an expression of an irresistible sexual urge. In his treatment of a 13-year-old boy, for example, Cruchet concluded that his patient suffered from “mental feminism” because “He has the manners and tastes of a woman, he detests noisy games and brutality, he is a little quarrelsome, likes to work in the kitchen, takes extreme pleasure in cradling babies and is arms, would like to be a ‘soldier’ because the uniform attracts him.” Others theorized that tics were caused simultaneously by the urge to masturbate or the need to prevent the urge for masturbation. These theories were shared by Ferenczi in his first purely psychological description of uncontrollable cursing (mentioned earlier for being constructed without his ever having seen a ticcing patient). Drawing heavily upon Meige and Feindel and also O.’s memoirs, Ferenczi concluded that vocal tics were the result of erotic emotion whose release simulated what had been repressed. By the 1920s, psychoanalysis had almost entirely displaced the search for organic causes in the knowledge about people with uncontrollable expressions.

During the early 1930s, discussion of uncontrollable cursing or Tourette’s illness nearly disappeared from medical journals in the United States. Treatment of the disorder temporarily came under control of developmental psychologists who argued the cause was not sexual, but was instead linked to the unnatural inhibitions socially imposed on a child’s movement. These psychologists would go so far as to challenge the belief that tics were abnormal in the first place and argued that ticcing was simply part of normal development. However, with the flood of German psychoanalysts emigrating from

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770 Ibid., 57–58.
771 Jacyna and Casper, The Neurological Patient in History, 139.
772 Kushner, A Cursing Brain?, 39.
773 Ibid., 86.
774 Ibid., 90–92.
Nazi Germany to the U.S. in the late 1930s, the disorder once again came under power of Freudian psychoanalysis. The influx of European psychoanalysts had lasting effects upon the American understanding of uncontrollable expressions. One German emigrant and student of Ferenczi, Margaret Mahler, eventually became the foil for the battle between physiologists and psychologists during the 1970s over how to understand uncontrolled expressions. Mahler believed that organic causes were necessary, but not sufficient to cause ticcing behavior. By holding onto this belief, Mahler was able to legitimize psychoanalytic treatments and displace the American developmental psychologists’ theories that TS was simply part of natural development. In *The Americanization of the Unconscious*, John R. Seeley points out that while “The practice of psychoanalysis underwent almost no change in the transplantation, except for reasons that have more to do with politics than culture, it fell almost exclusively into the hands of doctors. (It should be remember that Freud to his life’s end tried to live down his definition and attitude as a physician in favor of a redefinition as a psychologist-philosopher of theory.”

Mahler, more than any other psychoanalyst treating TS whose reports I studied, changed very little in her practice of rhetorical techniques to win every argument with her patients, but she also radically (and inconsistently) changed Freud’s theories of mental illness.

**Mahler and European Psychoanalysis in the U.S.**

For example, Mahler began treating an 11-year-old boy named Pete who was admitted to Mahler’s care at the Psychiatric Institute and Hospital in 1945. Pete continually resisted Mahler’s explanation for the cause of his uncontrollable utterances throughout the time she treated him. Mahler insisted that Pete’s illness was sexual in nature, but Pete did not agree. During one of their sessions, which Mahler discusses in a publication, she brought up the subject of sex to which Pete replied “My cousin used to tease me because I didn’t know about sex…so now I know it, and there is nothing much to it. It’s not that interesting.”

Mahler read Pete’s statement as evidence that “In fact, we may assume that Pete really meant that sex is the subject which seems inexhaustibly interesting to him.” When Pete complained to his mother that psychiatry was “witchcraft and superstition,” Mahler confronted him about his attitude to which Pete responded “It’s silly that’s all. All this talk. How can it help me? It’s like the Middle Ages. Those faith healers. That’s just like this business.” Mahler’s reading of Pete’s statement concluded that he was unable to deal with her success in exposing his unconscious sexual issues. In Pete’s

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777 Mahler and Gross, “Psychotherapeutic Study of a Typical Case with Tic Syndrome.”
778 Kushner, *A Cursing Brain?*, 111.
final expression of defiance, he argued with Mahler’s sexual explanations for his tics saying “I’ve had tics since I was about 3 years old. How does that fit in?” Mahler read every expression and action by Pete as evidence of further mental illness and the need for psychiatric intervention. She was also not above encouraging fears in her patients and then finding those fears as evidence for her claims. Mahler asked Pete if he understood how condoms work to which Pete replied “Because they have no holes, they keep the germs from getting in or out.” Mahler took Pete’s use of the word “germs,” which therapists had introduced to the boy earlier, as evidence that Pete was fearful and preoccupied with sex.

Mahler also read any decrease in the symptoms of a patient’s illness as the success of the psychological treatments to validate their use. Most surprisingly, Mahler also sometimes considered the lack of uncontrolled cursing as further evidence for her diagnosis. Pete’s lack of vocal tics, according to Mahler, was a form of repressed coprolalia in which his sexual fantasies were the “noncrystallized equivalents” of involuntary curses. Another patient she treated, named Freddie, presented difficulty to Mahler’s theories in that he “kept his own vocabulary spotlessly free of any dubious words and shunned and avoided such expressions by others.” When the most exciting symptom of TS, the use of taboo language, was not present Mahler simply posited that the symptom was hidden and argued that Freddie was “defending himself against the latent existence of ‘mental coprolalia’.” Pete and Freddie’s lack of symptoms, according to Mahler, were actually symptoms themselves. Mahler’s uses of sophistry to win every argument with her patients are among the most obvious examples in the history of psychiatric treatment of TS. There was little Pete or Freddie could have done or said which Mahler would not use as evidence to confirm the correctness of her theories and prove the efficacy of her treatments.

Time and again, Mahler and other psychotherapists theorized that the cause of tics in their patients was related to childhood traumas and improper parenting. The greatest obstacle to the treatment of ticcing patients was often mothers or grandmothers, rather than the disorder itself or the symptoms it expressed. Mahler theorized that Pete’s tics were caused by an overindulgent grandmother whose doting attention infantilized the boy. Mahler interpreted Freddie’s being overweight and his expression of tics as the product of a mother who overindulged her child with food. Mahler concurred with Meige, Feindel, and her mentor Ferenczi that people with tics were essentially “big, badly brought-up children accustomed to give way to their moods[,] never having learned to discipline their wills.” Given these

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779 Ibid., 112.
780 Cited in Jacyna and Casper, The Neurological Patient in History, 144.
781 Cited in ibid.
782 Cited in ibid., 142.
783 Cited in ibid.
784 Cited in ibid., 140.
conditions, Mahler ultimately concluded there was little she could do as a therapist to rid her patients of ticcing behavior and acknowledged that psychotherapy often failed. However, Mahler was unwilling to give up psychotherapy as a potential treatment. Instead, she argued that psychotherapy should remain the primary treatment of TS and asserted that getting rid of a patient’s tics was not the real aim of therapy since “disappearance of the tics was not always accompanied by improvements in the total personality.” In fact, Mahler argued, some patients had achieved psychological integration but continued to tic nonetheless. According to Mahler, the failure of psychoanalysis was either not really a failure or was inevitably the fault of the patient and the patient’s family.

By the 1950s in the U.S., Mahler’s form of sophisticated psychoanalysis was increasingly being challenged by the discoveries of new chemicals which could intervene in a patient’s psyche more directly without the need for speech or arguments with patients. Likewise, generations of mothers had become disillusioned with the failures of psychoanalysis to cure their children and had grown weary of continually being blamed for causing the disorder. Chemical intervention became a more appealing alternative to people with TS and their families, despite the protestations of psychoanalysts. The psychoanalytic practices in Europe and the U.S. exploited a patient’s fears, enthusiasm, and resistance to manipulation in order to justify their interventions. For both the person being questioned and for the doctor, the narratives of potential causes for mental illness created literary figures open to interpretation and re-interpretation. Doctors confronted with trying to win a debate with a patient about their disorder found that deploying sophisticated techniques could make the discovery of psychiatric truths possible and also win a patient’s acceptance of that truth. The voice uttering curses had to be shown as issuing from a body which could be questioned in order for psychiatric questioning, and curing, to take place. Chemical interventions were appealing to patients not only because they had grown weary of always being wrong and the psychoanalyst always being correct about their experiences of the disorder, but also appealed to physicians because drugs gave them greater, measureable and adjustable, control over a patient’s body from a distance.

Drugs and the American Resistance

Foucault gives a brief genealogy of drugs in *Psychiatric Power* in which he found that when physicians first began experimenting with using drugs as a treatment for mental illness in the early 19th century, they discovered that they could also simulate mental illness on themselves by ingesting certain chemicals. This discovery gave physicians an increased claim to realizing the truth of madness since

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785 Cited in ibid., 145.
drugs could bring a doctor in, and back out, of the disorders they saw in their patients. Medical professionals experimenting with hashish, for example, also insisted that the susceptibility of persons to drugs was also evidence of mental illness in much the same way Charcot argued that being susceptible to hypnosis demonstrated mental illness. In my study I found that later, when the preoccupation with a patient’s will to resist manipulation shifted towards the replacement of a patient’s will with that of their doctors, physicians experimented with opiates and other drugs to enhance the effects of animal magnetism and hypnosis. How these drugs worked was understood to be a function of the will of the person ingesting them, not of any complex systems of body chemistry. Those with strong wills could resist the effects of the drugs while those with weak wills were susceptible to them, just as those who could be hypnotized were thought to be already suffering from a lack of resistance to manipulation. It was not until Otto Loewi demonstrated in the 1920s that neural messages are transmitted by chemicals and not bioelectrical signals that this perception of “mind-over-drug” finally began to give way. Loewi’s experiment, conditioned the possibility for the commercial production of psychotropic drugs in the 1950s, the creation of a Diagnostic and Statistical Manual of Mental Disorders, and the mixture of drugs with talking which forms modern “cognitive behavioral therapy.” However, the move away from psychoanalysis to chemistry was not immediate or accomplished without a struggle between patients and their doctors in the U.S.

When physicians first discovered the effectiveness of haloperidol in reducing tics in their patients during the 1960s, the influence of psychoanalysts (especially Margaret Mahler) from earlier decades prevented the widespread use of the new antipsychotic drug. Even when drugs were proven effective, many psychiatrists found it difficult to give up their psychoanalytic assumptions. For example, when the French psychoanalyst J.N. Lanter found that the drug parpanit had rapidly cured a patient with tics, Lanter insisted it was not the drug had not cured him but rather the patient’s illusions about the drug’s symbolic role in treatment which had caused his improvement. If the drug did have a mediating effect on the patient’s nervous system, Lanter argued, it was to tranquilize the patient and further suppress the man’s hostile feelings towards his father. In the U.S. during the 1940s and 1950s, many people with tics were operated on, had their sinuses removed, paralytics injected into their vocal muscles to reduce the volume

786 Foucault, Psychiatric Power, 284.
787 Loewi reported that the idea for his experiment came to him in a dream. It is interesting to note that the experiment proving chemical interactions in the brain and underpinning the development of modern psychochemistry required a mind already in an altered state to think of it. O. Loewi, “The Effect of Humoral Transferability of the Cardiac Nerves,” Pflüger’s Archiv für die gesamte Physiologie des Menschen und der Tiere 204, no. 1 (December 1, 1924): 629–40.
788 Fuller and Goffey, Evil Media, 39.
789 Kushner, A Cursing Brain?, 119.
790 Ibid., 121.
of their uncontrolled utterances, or were lobotomized before drugs became more widely acceptable as
treatment in the 1960s. By the 1970s, the effectiveness of drugs and the recalcitrance of psychiatrists
prescribing using them instead of psychoanalysis had begun to create considerable tension between
patients and doctors.

The medium of psychoanalysis is primarily speech and writing, whereas haloperidol and other
drugs addressed the possibility that consciousness was also constructed by other medias. Pills do not
require a person to delve into sensational experiences, traumatic memories, or inner truths in order to be
effective. Instead, psychopharmaceuticals represented a form of “automatic questioning” 791 which Fuller
and Goffey argue acts “as an index of complex shifts in the ecology of media as nervous systems,
metabolisms, and the capacity to cope and to compensate become integrated, unevenly, into it. Drugs, as
mediators, initiators, and attractors of changes in bodies, as means of coping with relations between
bodies and other elements in media ecologies, become handleable as media.” 792 Chemicals do not depend
upon the authority of the psychiatrist or the sophistry of speech to modify a malleable body. Patients, who
had long been blamed for the failure of treatments, also preferred chemical interventions since failures
could be attributed to the drug more easily. In the U.S. more than anywhere else, mothers of children with
Tourette syndrome became increasingly annoyed with psychiatrists continually blaming them for their
child’s disorder and led a rebellion against psychoanalysis. In the early 1970s, the American psychiatrist
Arthur K. Shapiro began regularly administering haloperidol to his patients with Tourette syndrome.
Shapiro settled on haloperidol after experimenting on a hospitalized patient with tics for several months,
administering 36 drugs and drug combinations before settling on the neuroleptic tranquilizer. 793 American
psychiatric journals refused to publish his findings, Shapiro published in the UK but stories of his
successes began being featured in publications like Today’s Health, the Wall Street Journal, the New York
Times, and Good Housekeeping. 794 Shapiro began advertising the drug as a cure and encouraged the
parental rejection of psychoanalysis. In an obvious reference to Mahler, Shapiro went so far as to warn
patients that psychoanalysis “may result in iatrogenic [physician-induced] psychopathology,” 795 declaring
that mental health experts produced mental illness.

Shapiro, along with many patients and parents of patients, formed the Tourette Syndrome
Association, an organization whose initial mandate was to promote drug therapies over psychoanalysis.
The TSA also began producing public ad campaigns which asserted that TS was not a mental disorder and

791 Foucault, Psychiatric Power.
792 Fuller and Goffey, Evil Media, 39.
794 Kushner, A Cursing Brain?, 172.
McNeill Laboratories, the makers of Haldol, began funding the TSA.\textsuperscript{796} During the 1970s and 1980s in the U.S., drugs had gone from being a complement to the medium of speech in psychoanalysis to replacing it as the preferred treatment by psychiatrists and patients. However, within a few years the side effects of haloperidol, which some people reported as being worse than the tics, made the drug less popular in the late 1980s. Many continued to insist that TS was still a psychological disorder because of the often taboo content of the utterances, but the truth of TS being primarily organic had become firmly entrenched.

Recent studies, for example, have concluded that TS may be the result of streptococcal infections at a young age.\textsuperscript{797} This theory holds that a genetically predisposed child infected with a streptococcus virus can later present symptoms of TS. The infection is thought to cause an antigen antibody response which attacks the virus, but also attacks cells in the basal ganglia area of the brain where motor control is regulated. The causes of the disorder are often also theorized as the point of application for a treatment. In other words, the biological or psychological causes of TS are exploitable points of medical intervention. Physicians have long argued that patient’s body or mind, open to disease and internal disorder, is subjected to an external force capable of overcoming any resistance to manipulation (malicious if the cause or beneficent if the cure) which then rewrites the mind-media with a new message and worldview. The modern understanding of the causes for TS continues this argument: a virus attempts to rewrite the body’s DNA with its own and is resisted by the immune system, but that resistance damages the brain and creates the disorder. This body is treated by exploiting its lack of resistance to chemical messages and drugs are used to temporarily correct the error of the disorder with acceptable behaviors.

Today in the U.S. there are no longer any serious psychological treatments for people with TS, except for those seeking treatment for the social ostracism their uncontrolled expressions may have caused. Additionally, experiments designed to uncover the psychological causes of tics are unlikely to receive funding.\textsuperscript{798} Only in France does Tourette syndrome continue to fall under the domain of the psychoanalyst where resistance to American and European organic explanations for TS has taken on a

\textsuperscript{796} Kushner, A Cursing Brain?, 181.
\textsuperscript{798} Kushner, A Cursing Brain?, 193.
nationalistic overtone. Today, very few French psychiatric journals cite their American counterparts and
the two medical communities largely ignore one another.  

Uncontrollable Cursing and American Cultural Governance

In recent years, people in the U.S. who curse uncontrollably have taken a more active role in
producing their own literary fictions to counter those produced by psychiatrists in the struggle over
defining the truth of uncontrollable expressions. For example, recent studies displayed on the TSA
website concluded that TS is linked with higher-than-average intelligence or enhanced creativity.
Many people with Tourette syndrome have embraced the idea that their disorder gives them an advantage,
arguing that tics give them faster reflexes or enhanced mental capabilities, like the pianist Nick van
Bloss and the soccer goalie Tim Howard. In the 1990s especially, considerable efforts were made to
find examples of historical figures with TS and ascribe tics as causes for their particular genius. Recently,
the TSA website featured an article about Mozart which, published almost 10 years after the Simkin and
Sack debate, ignores most of the controversial diagnosis of Mozart as having TS and simply states that
“While TSA takes no stand on the central question we feel strongly about the need to correct the book’s
[Simkin’s] statement that coprolalia (outbursts of obscene and inappropriate language), is exhibited in
‘one third to one half of all Tourette syndrome cases.’ The accurate figure is only 10 to 15%.” By
taking “no stand” on the central issue of Mozart’s diagnosis, but instead focusing on correcting Simkin’s
figures, the TSA has all but accepted the appropriation of Mozart despite the persuasive evidence against
his remote diagnosis. This form of resistance to the scripts of psychiatrists is what Michael Shapiro refers

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799 Ibid., 210.
to as “counter-scripts”\textsuperscript{805} and draws attention to the exercise of power by which people are accorded varying degrees of political eligibility.

However, as Foucault points out with regard to Victorian prohibitions, “We must not think that by saying yes to sex, one says no to power,”\textsuperscript{806} we can see that saying “yes” to chemical interventions instead of psychoanalysis does not mean saying “no” to psychiatric power. The medical historian Edward Shorter has argued that “We might think of the culture as possessing a ‘symptom repertoire’—a range of physical symptoms available to the unconscious mind for the physical expression of psychological conflict” and points out that “In some epochs, convulsions, the sudden inability to speak or terrible leg pain may loom predominantly in the repertoire….A whole range of symptoms is thus available in the repertoire, and what interests the cultural historian is why certain symptoms are selected in certain epochs.”\textsuperscript{807} While this project is not to present a cultural history, but instead show how culture has been constructed in history, Shorter’s theory of “system repertoire” is useful for understanding the variety of techniques medicine’s attempt to control uncontrollable cursing.

First, we can see that the treatment of uncontrollable cursing has been influenced by healers with diverse scientific and religious backgrounds which, when combined with the technologies of writing and the conventions of novels, meant that the forms of uncontrollable cursing look different from the forms of uncontrollable cursing in a different place and time. For Kramer, uncontrollable cursing was the result of demonic possession, treatable by anyone who could say the right words in the right order of an exorcism script or passage from scripture. For Itard in 1825, the Marquise’s uncontrollable cursing was caused by abnormalities in her family life and a genetic accumulation of bad behaviors which weakened her will, and so his “moral treatments” focused on strengthening her ability to control herself and resist external influence. For Charcot and Tourette 60 years later, uncontrollable cursing was caused by lesions in the brain, for Billod in 1847 caused by an unchangeable mind, for Roth its cause was entirely muscular. For Dana and Wilkin in North America 1886 uncontrollable cursing which resulted from a “neuro-degenerative” disorder,\textsuperscript{808} for Meige and Feindel in 1907 it was a completely psychological disorder, for Ferenczi it was also purely psychological caused by “bad habits.” For Freud it was part of hysteria and caused by an internalization of Victorian sexual prohibitions, treatable by freeing speech and carefully

\textsuperscript{805} Michael J. Shapiro, \textit{Methods and Nations: Cultural Governance and the Indigenous Subject}, New edition (Routledge, 2003), 49.


\textsuperscript{808} Dana, “On Convulsive Tic with Explosive Disturbances of Speech (So-Called Gilles de La Tourette’s Disease),” 409.
interpreting its meaning, and for Mahler in the U.S. between 1930 and 1950 it was caused by everything from masturbation or the lack of masturbation to bad parenting. These different system repertoires, and the waxing and intensifying of interest in the disorder, reflect the wide array of theories and justifications for intervention. Writing in 1967, it is easy to see why Seeley would assert that use of psychoanalysis in America had created, for the first time, “a highly self-conscious society of highly self-conscious individuals…We are in the process of producing, if we have not already produced, a distinctively American Unconscious.”\(^{809}\) However, at least with regard to TS, Seeley was wrong. By the 1970s in the U.S., physicians like Shapiro declared the cause of TS as irrelevant, the psychoanalytic process of making the unconscious conscious a failure, and simply began treating with drugs. The new American system repertoire still describes patients as a media, but this time chemically rewritable, but since drugs are a form of “automatic questioning”\(^{810}\) they do not need to excite (or extract) discourse like Victorian psychoanalysis in order to intervene in an individual’s expressions.

The deployment of chemical interventions today for TS, while able to mitigate ticcing at least temporarily, is best understood as a resistance to European mental health, or a “counter-script” to the discourses produced by psychoanalysts who came to the U.S. around WWII. While there may not be, as Seeley predicted, a distinctively “American Unconscious” in terms of uncontrollable cursing, the American a ‘symptom repertoire’ of disorders and chemical resistance to European psychoanalysis has become a major export of American culture. Since the 1970s, cases of TS have been increasing in Germany, Britain, Japan, Korea, and even France.\(^{811}\) Much of the nearly $300 billion a year global pharmaceutical industry is driven by American pharmaceutical companies who place a strong emphasis on advertising drugs to physicians and patient-consumers as cures for many disorders.\(^{812}\) According to some estimates, pharmaceutical companies together recently spent 19 times their research and development budgets on marketing to individuals and to physicians in 2013.\(^{813}\) Additionally, the latest version of the Diagnostic and Statistical Manual, produced by the American Psychiatric Association as what they call a “common language and standard criteria for the classification of mental disorders,”\(^{814}\) is currently being translated into Classical Chinese, Simplified Chinese, Croatian, Czech, Danish, Dutch, French, German, Greek, Hungarian, Italian, Japanese, Korean, Brazilian Portuguese, Portugal

\(^{809}\) Seeley, The Americanization of the Unconscious, 16.

\(^{810}\) Foucault, Psychiatric Power.


Portuguese, Romanian, Serbian, Spanish Swedish, and Turkish. The authors of this American “dictionary of disorder” are also mostly on the payroll of large American pharmaceutical companies. Of the 170 panel members responsible for writing the latest version of the Diagnostic and Statistical Manual, 95 had financial associations with companies in the pharmaceutical industry and every member responsible for producing the “Mood Disorders” and “Schizophrenia and Other Psychotic Disorders” section of the Manual, where TS is located, was found to have direct financial ties with drug companies. This combination of American print-capitalism and global drug-capitalism extends far beyond anything Anderson imagined and conditions the possibility for interventions Webster could not see coming in even his wildest nationalistic projections. The American ‘system repertoire’ of disorders and treatments is becoming the global repertoire, the common language, of mental illness.

The institutional interventions aimed and controlling uncontrollable cursing have also contributed to American cultural governance by developing a plethora of techniques for intervening in the language of individuals and, importantly, depoliticizing the application of those techniques. The treatment of people who use racial slurs, for example, often follows the early psychiatric technique of replacing the offending subject’s worldview with that of the enlightened, anti-racist, superior worldview—reducing institutional racism to a mental state held by individuals. The idea that patients are “big babies” or that they have a childlike ability to resist external manipulation also informs the justification of legal prohibitions against taboo language, movie production codes, and broadcast regulations administered by the FCC which justify regulation for the protection of ‘women and children.’ However, the American ‘system repertoire’ of uncontrollable expressions has also introduced a new susceptibility which may, at last, give some credence to the popular justification among regulators that control is necessary to protect vulnerable populations. In 2012, over twenty teenagers, mostly women, in upstate New York attending the same high school suddenly began ticcing and, despite searches for chemical spills or other causes, the appearance of the disorder was never fully explained. A recent documentary, The Town that Caught Tourette’s?, maps the progression of the ‘system repertoire,’ as more and more people in the town began developing tics, back to one teenager who reported that her tics began after she watched a YouTube video on Tourette syndrome. However, just like the PTC report on television profanity posted on their

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website where children could find it or the *Meece Report* examined in the chapter on broadcast obscenity, soon after the documentary aired on television it was uploaded to YouTube where it went viral.⁸¹⁸

Perhaps the biggest contributions to cultural governance made by attempts to control uncontrollable cursing may be in the development of digital language control. Fuller and Goffey point out that computational systems demand, and are predicated upon, the “organization of people and things *as* and *for data.*”⁸¹⁹ Drugs like Adderall keep people sitting in front of their computers using, producing data for the new American Internet technology monopolies, whereas the various methods for indirectly shaping the subjectivity and language of others, explored most fully in psychoanalysis, have become primary techniques of digital language control which uses gadgets and complex databases to modify control user behavior and encourage pre-dicatability. The possibility for confronting the psychiatric distribution of drugged subjects, and the institutional-chemical policing of their language, may still be possible.

Jonathan Crary points out that what has been classified as pathological could a resistance to censoring the world in a useful way,⁸²⁰ one which might make visible what otherwise would have no business being seen. What uncontrollable cursing makes visible is what Latour refers to as “The continuity of a self” which “is not ensured by its authentic and, as it were, native core, but by its capacity to let itself be carried along, carried away, by forces capable at every moment of shattering it or, on the contrary, of installing themselves in it”,⁸²¹ like Kramer’s demon. In other words, uncontrollable cursing makes us aware of how little control we have over our language, that it may be more accurate to say we are spoken by language but that language appears in the form of historically limiting discursive practices, a challenge to Aristotle’s argument that man is an animal who possesses language and uses that language to do politics. Instead, uncontrollable cursing seems to suggest, as Chambers puts it, language is not “an object for human use; it must be understood instead as that medium through which the human political animal emerges and in which it crystalizes.”⁸²² Uncontrollable cursing, itself a disruption of the social and institutional policing of language may say what could not be said—a potential challenge to, for example, the pathologizing of racial slurs made by hate speech advocates and the legal exercise of power over discourse which works to “isolate the ‘speaker’ as the culpable agent.”⁸²³ However, where Seeley might

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⁸¹⁹ Fuller and Goffey, *Evil Media*, 111.
have been wrong about the development of distinct American Unconscious, his concern that a “therapeutic community” might become a “manipulative society” potentially “perfected to the point where resistance is virtually meaningless” seems to have been partially realized in digital systems. It is from the techniques of American medical interventions into the language of individuals, to the digital intervention of mass “dividuals,” where I turn next.

Chapter 5. Digital Language Control and the Politics of Pre-Speech

Imagine what would have happened if Adam and Eve had not lived in a garden but in a smart building. The divine designer would probably have arranged it so that they never saw apples.

—Ursula Franklin

Fucking Eric Schmidt is a fucking pussy. I’m going to fucking bury that guy, I have done it before and I will do it again. I’m going to fucking kill Google.

—Steve Ballmer, former CEO of Microsoft

In December 2014, a couple in Twin Falls, Idaho made a surprising discovery after their oldest child came home from school in a sad mood. “We asked her what was wrong and she said she had been reading a book during library time and it had a few swear words in it. She really liked the book but not the swear words.” The tech savvy parents, wanting to protect their child from future encounters from swear words, imagined there must be an app for that, but when they discovered there was not such app in the Google Play Store for Android devices or in the iTunes store for Apple devices, they decided to build one. A few months later, the couple issued a press release announcing “Clean Reader,” an app which “delivers the opportunity of reading any book without being exposed to profanity” and gives users the ability to select “how clean they want their books to appear,” so that “readers are presented the content of a book without offensive words and phrases.” The innovative feature, the press release announces, is that Clean Reader gives users the ability “To preserve the context of the book, an alternative word with the same general meaning is available for each instance where a word is blocked from display.”

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nearly every state in the United States.\textsuperscript{828} News of the app spread quickly, being featured on popular news sites like \textit{Forbes}, several articles and critical op-eds written by book authors\textsuperscript{829} in \textit{The Guardian}, and celebratory review in \textit{The Christian Science Monitor}.\textsuperscript{830} And yet, after a month of availability, Google reports that the app has only been installed “500-1000” times and Apple ranks it among its least popular apps. Despite very few installs, the app on Google Play has thousands of reviews such as “Sick of Parenting? There’s an app for that” and “An iniquitous app, promoting censorship and solving a problem which doesn’t exist. All lovers of free speech should avoid this app at all costs.”\textsuperscript{831} The iTunes store has similar reviews, some more detailed than others, but the review currently ranked as “the most helpful” by visitors declares, “This app is utterly reprehensible: not only is it a disturbing form of automated censorship, but worse, a MISOGYNIST form of censorship. Their definition of what count as ‘bad words’ is disgustingly sexist, replacing any and every mention female anatomy, be it slang OR appropriate medical terminology with one single word: ‘bottom’… according to the creators of this app: we’re all just smooth ‘bottomed’ plastic Barbie Dolls, our physical reality is too ‘icky’ to think about…Grow up, Clean Readers, and realize that people, all people, are HUMAN BEINGS, and that you cannot simply erase their existence by erasing the words used to describe them.”\textsuperscript{832}

Victorian language prohibition, and the genre of resistance inspired by Victorian language prohibition ridiculing its irrationality and explicitly stating what is prohibited, is alive and well in the digital age. However, there is something strikingly new at play too. When I dictate a text message into my Android handset using the built-in voice recognition software and use the word \textit{fuck}, for example, the phone transcribes my message as f****, but when I type a message into the built-in virtual keyboard the

\textsuperscript{828} Ibid.
phone’s autocomplete feature behaves quite differently. When I begin typing the word *fuck* rather than dictating it, the phone suggests a variety of words to complete my expression based upon my past writing like *full, fun,* and *further* but, even after I type out *fuck* and hit space, the Android keyboard changes *fuck* to *duck.* Not every phone does this however. The Android keyboard builds its predictions using data it collects from my use of the keyboard and other texts I have written.\(^833\) If I change *duck* to *fuck* several times, eventually the keyboard will leave it after I hit space. Is this censorship? The developer of Clean Reader says it is not censorship when they write, in response to the “surprising” reviews of the app, that users have “paid good money for the book, they can consume it how they want.”\(^834\) If I don’t like my Android keyboard, I can download a different one. While Apple only recently allowed third-party keyboards, there are hundreds of alterative keyboards for Android I can choose from. Clean Reader gives users the freedom to install the app or not, select the level of language they would like it to clean (“Clean,” “Cleaner,” and “Squeaky Clean”), and Android gives me the freedom to use an alternative. A recent update for the Android handset even gives me the freedom to turn off the default “Block offensive words” setting for the built-in voice search function. I have the freedom to choose and therefore, argues Clean Reader (and many other tech companies), my freedom of expression is being preserved—maybe even enhanced since technical tools are able to help me express myself better by correcting my spelling and grammar or allowing even those who might be offended by my language to still hear what I have to say. Apple already showed us, as it promised in its famous 1983 Super Bowl commercial introducing the Macintosh personal computer, “why 1984 won’t be like *Nineteen Eighty-Four*.”

Clean Reader and my Android phone’s keyboard show not only how different software treats language, but how the mediation of writing through electronic devices enables a kind of intervention into language Webster, the FCC, and authors of *Words that Wound*\(^835\) could only imagine but which mental health experts treating Tourette syndrome could. Clean Reader, and countless other programs like them, can easily and quickly clean up large repositories of written language. Apps like the keyboard installed on my phone can intervene in my writing as I write or automatically clean up my vocalizations during the process of transcription. If an app or piece of software does something I do not like, or stifles my expression with censorship, I can use a different app or change the settings. This chapter studies how old techniques of language regulation have been technologized for regulating digital discourse and, more difficult to see, how cultural governance is turning towards the regulation of language choice or digital language control. As we will see, technologies which automatically and algorithmically process language


have become useful for determining whose expressions count as politically eligible discourse and which parts of language can be ignored as noise. They are also useful tools for regulating resistance to that determination, channeling and directing discourse. Sometimes digital language regulation and digital language control are overtly nationalistic, for example the parsing of “dangerous” language by the NSA to detect and diffuse “threats to the nation,” and sometimes they are directed towards building and promoting a certain type of culture, for example Silicon Valley corporate geek culture and its values of what I describe as “digital postdemocracy.”

In order to show how digital language regulation and digital language control are used as tools of American cultural governance, I start by examining how techniques developed by graphic language control have been redeployed in the computational treatment of language as data—bad spelling, bad grammar, and other interventions designed to handle bad data. Next, I look at how legislation and juridical conceptions of language as a commodity in the marketplace of ideas has overcoded “free speech” as corporate speech, conditioning what is now “Internet freedom,” by using the now familiar argument that ‘women and children’ must be protected. I then turn to the more difficult study of digital language control by examining technical interventions into the conditions under which expressions can be made, what I referred to in the last chapter as “pre-speech,” and interventions into the “choice architecture” of digital interfaces. Deleuze’s concept of the “dividual” is useful for explaining how users are managed with choice architectures. Robert Williams explains that dividuals, as compared to individuals, are human subjects which can be made “endlessly divisible and reducible to data representations via modern technologies of control” such that information about ourselves, information like that I explored in the chapter on racial slurs concerned with our “preferences” and “character,” separated from us and used in ways we cannot control. As Williams puts it, “the data gathered on us through the new technologies did not necessarily manifest our irreducible uniqueness. Rather, the very way that the data can be gathered about us and then used for and against us marks us as dividuals.” The chapter concludes with a study of recent proposed reforms for ensuring digital free expression with law and computer code, considers alternatives for evading or creating what Deleuze called “vacuoles of noncommunication” before suggesting that a digital politics, a disruption of how the noise and discourse of digital language is sorted, exploiting the tendency of users to make errors or use noncommunicational language and leveraging the “distributed agency” of digital communications networks. This chapter demonstrates that where early forms of cultural governance regulated language

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837 Ibid.
using interventions into print-capitalism and literacy, Victorian language prohibitions, legal codes, and medicine—new techniques for managing digital discourse focus on control and consensus, rather than prohibition and moral discipline, for separating discourse from noise and determining the political eligibility of speaking subjects (“users”). Understanding these new techniques is urgent because they have the potential to radically depoliticize language regulation and diffuse resistance to cultural governance, monopolizing the creativity needed to imagine and enact alternatives.

Internet Freedom and Filtering

In 1994, the U.S. government decided to take the military and research network it had sponsored public—by privatizing its backbone and allowing telecommunications companies to begin building their own backbones.\(^\text{840}\) This decision not only allowed the Supreme Court and other government agencies to think of the Internet as a privately owned, but publicly accessible medium, it also encouraged many people to imagine the Internet as the “cyberspace” described by William Gibson in *Neuromancer*\(^\text{841}\), eleven years before the first web browser was developed.\(^\text{842}\) Tim Berners-Lee, while working at the CERN laboratory in Switzerland, had developed three important components of what would become the World Wide Web; Hypertext Markup Language (HTML) which allowed documents to be published and linked, Uniform Resource Identifier (URI) which gave an address to each document, and Hypertext Transfer Protocol (HTTP) which allowed for links to be retrieved across the Web.\(^\text{843}\) The privatization of the Internet made it open to interested programmers willing to devise new applications for it and, as Jonathan Zittrain has carefully detailed, allowed users to produce their own content without requiring permission from Internet Service Providers (ISPs).\(^\text{844}\) Before the World Wide Web, the Internet users had been capable of transmitting text and images to each other on Usenet groups or peer-to-peer connections, including “ASCII” art,\(^\text{845}\) pictures composed of 95 keyboard characters to form a text-based visual composition. However, with the introduction of the Web in 1991 and the privatization of the Internet in 1994, the wide variety of content available on the Internet became a problem for states like Saudi Arabia.

\(^\text{842}\) Chun, *Control and Freedom*, 41.
\(^\text{844}\) Jonathan Zittrain, *The Future of the Internet-And How to Stop It* (Yale University Press, 2008).
who forced all Internet traffic through one gateway it managed, and for parents alarmed at what they imagined their children could access without supervision.

In the wake of recurring moral panics over the “dangers” of cyberporn, Congress passed the 1996 Communications Decency Act (CDA) to regulate Internet content in much the same way the Federal Communications Commission regulates radio and television, using many of the same arguments about the need to protect children, and criminalized nearly all “indecent” or “patently offensive” online communications. Several content providers and free speech activists immediately challenged the act in court, but this time the Court decided to preserve indecency. In striking down the CDA, Judge Stewart Dalzell argued that indecency proves diversity and is necessary for a healthy democracy, finding that “Speech on the Internet can be unfiltered, unpolished, and unconventional, even emotionally charged, sexually explicit, and vulgar—in a word, ‘indecent’ in many communities” but added that without indecency “the Internet would ultimately come to mirror broadcasting and print, with messages tailored to a mainstream society from speakers who could be sure that their message was likely decent in every community in the country.” Citing Oliver Wendell Holmes’ famous argument that “the best test of truth is power of the thought to get itself accepted in the competition of markets,” Dalzell described the presence of indecency as evidence of a well-functioning democracy. Congress responded to the CDA decision by passing the 1998 Child Online Protection Act (COPA).

Like the CDA, COPA was brought to the Court, but this time the Act’s definition of “free” sites as those which consumers did not pay to access was interpreted as commercial speech not open to regulation by the First Amendment. On this basis, Third Circuit Court of Appeals judge Lowell A. Reed Jr. determined that “community standards,” which had featured so prominently in the trial of Lenny Bruce and several FCC rulings, were overly broad “Because material posted on the Web is accessible by all Internet users worldwide, and because current technology does not permit a Web publisher to restrict access to its site based on the geographic locale of each particular Internet user, COPA essentially requires that every Web publisher subject to the statute abide by the most restrictive and conservative state’s community standards in order to avoid criminal liability.” The problem the Court identified was one of identification which, in the hate speech initiatives was also a problem, but here the issue is not who is present in a total speech situation. Reed refers to the inability of content publishers to identify their

848 Ibid., 116.
849 American Civil Liberties Union v. Reno, 217 F. 3d 162 (Court of Appeals, 3rd Circuit 2000).
users. The CDA and COPA both included provisions for putting content “harmful to children” behind walls and, since the instrument the legislators identified as appropriate for verifying a person’s age was a credit card, that wall soon became a paywall. However, because websites could not identify a user by their geographic location, Reed asserted the content producers could not regulate content according to the “community standards” rule set out by Roth v. United States. Reed’s decision, therefore, makes measuring and taking account of “community standards” the issue where Brennan in Roth simply imagined a community standard and then applied it. As Reed puts it, “the more liberal community standards of Amsterdam or the more restrictive community standards of Tehran would not impact upon the analysis of whether material is ‘harmful to minors’ under COPA.” Thus, he concluded, COPA was unconstitutional because “the interpretation of ‘contemporary community standards’ is not ‘readily susceptible’ to a narrowing construction of ‘adult’ rather than ‘geographic’ standard.” The inability to identify who might access content was, for Reed, the technical barrier which make COPA unconstitutional, but he added (uncharacteristically for judges in decisions), his “firm conviction that developing technology will soon render the ‘community standards’ challenge moot, thereby making congressional regulation to protect minors from harmful materials on the World Wide Web constitutionally practicable.”

Reed was right, that laws would be passed to regulate Internet content, but the failure of the CDA supported the development of filtering technology more quickly, not rendering community standards moot so much as reifying them in code. I have written elsewhere that the porn industry has played a dominant role in developing commercial innovations which are now fixed features of the Internet including online payment systems, live chat, pop-ups, geo-location software, spam, and traffic optimization. Penthouse magazine, for example, sponsored the development of broadband by giving away free modems. However, early Internet businesses had a difficult time figuring out how to monetize online content, especially content provided by users. The CDA and COPA introduced the use of credit cards for online access, but Reed’s decision to strike down COPA because of the “free nature of cyberspace” and the lack of “geolocation” identification technology to judge “community standards” helped spur the development of technologies to collect geographic, and many other, pieces of data in

850 Roth v. United States, 354 US 476 (Supreme Court 1957).
851 American Civil Liberties Union v. Reno, 217 F. 3d 162 (Court of Appeals, 3rd Circuit 2000).
852 Ibid.
853 Ibid.

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order to target advertisements, such as Ethan Zuckerman’s development of the “popup ad,”\(^{856}\) and later as we will see data collection to target drone strikes. The CDA and COPA were both struck down, but these legislative attempts to regulate what could be seen, said, and done online facilitated the monetization of the Internet and the decisions which struck them down codified in law the Internet as a “space” with content the government should keep its hands off since it was already regulated by “The invisible hand of cyberspace.”\(^{857}\) A few months before Reed wrote his decisions, Lessig published *Code and Other Laws of Cyberspace*, \(^{858}\) in which he famously argued that “Code is Law.”

**Laws and Developing Code**

It is important to consider the role of code and to disentangle code from Lessig’s equation of code with law. As the chapter on obscenity details, laws relating to the circulation of potentially obscene language attempt to sort out confused feelings, universalize a judge’s response to a specific word or performance, and protect others presumed to be vulnerable from feeling the same shocked or offended feeling. In order to be sorted, someone must first make a complaint about performance and bring it to a judge. Digital language codes do not require a complaint to be made or a judge to decide whether content is obscene. As Chun puts it, code “is better than law; it is what lawyers have always dreamed law to be: an inhumanly perfect ‘performative’ uttered by no one. Unlike any other law or performative utterance, code almost always does what it says because it needs no human acknowledgement.”\(^{859}\) In other words, code does not need jurisdiction, or contexts within which speech acts are understood as commands, in order to operate and be enforced. Indeed, there are many laws on the books which are not enforced, but code is self-enforcing and breaking code can only be accomplished by technical savvy.\(^{860}\) Like law, code is written in a language inaccessible to most people, but the inaccessibility of code does not preclude its use.

As Saskia Sassen has pointed out with regard to financial trading, the digitization of financial instruments has developed “the capability to reduce the instrument to a piece of software (softwaring, for short), which means that use can be far more widespread than if it required detailed knowledge about


\(^{859}\) Chun, *Control and Freedom*, 66.

\(^{860}\) Ibid., 67.
financial economics and the technicalities of electronic networks” and “softwaring has, in turn, enabled a second capability in that increases in the complexity of the instrument do not constitute a barrier to use. It allows users who might not fully grasp either the mathematics or the software design issues to be effective in their deployment of the instruments.”

In other words, complexity of code and complexity of the Internet are not barriers to use so long as software can be developed to facilitate a users’ use. Code is obtusely technical, and written in English, but a computer operating system, especially one equipped with a Graphical User Interface, allows users to call up different programs for specific tasks without needing the user to understand how they operate. Microsoft Word, for example, allows users to write and save documents without needing to interpret the code which translates electronic pulses into digital signals or the file management system of their computer. Similarly, a user can activate spellcheck without understanding how spellcheck identifies words as misspelled.

Code is also not independent of law. As Deibert and Zittrain point out, devices are increasingly “tethered” or managed directly by corporations, meaning that laws and other barriers prevent users from figuring out codes even if they wanted to. For example, one cannot install unauthorized apps on an iPhone without first “jail breaking” it, which until recently was illegal and is still difficult. The battery of an iPhone cannot be removed without opening the device using a special screwdriver manufactured by Apple. The assumptions behind equating code with law is something I will return to at the end of this chapter, but for now it is sufficient to say that code can be more coercive than law not only because it “does what it says,” but also because it can be built to encourage users to do what it says or have users say what it would prefer them to say.

Early theorists of the Internet believed that the architecture of the Internet prevented it from being controlled by states. For example, John Parry Barlow’s 1996 “Declaration of the Independence of Cyberspace” proclaims, “Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather…We are creating a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity.” Other theorists cited the decentralized organization of the Internet, a later iteration of the ARPANet designed to facilitate communications in the event of a nuclear

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strike, as one which “interpreted censorship as damage and routed around it”\textsuperscript{864} to deliver messages. Decentralized architecture, anonymity, multiple points of access, independence from geography, limitations for identifying content, and encryption are often cited as reasons why the Internet, and much of digital discourse associated with it, is beyond censorship and regulation. In The Future of Ideas: The Fate of the Commons in a Connected World, Lessig identifies protocol, specifically the Transmission Control Protocol and the Internet Protocol (often referred together as “TCP/IP”), as the technology responsible for guaranteeing freedom of expression. Rather than software applications, for Lessig, Internet protocols “embedded principles in the Net” which “constructed an innovation commons at the code layer. Though running on other people’s property, this commons invited anyone to innovate and provide content for this space. It was a common market of innovation, protected by an architecture that forbade discrimination”\textsuperscript{865} of specific messages of data. However, as critical theorists Wendy Chun and Alexander Galloway have pointed out, the Internet may be generally decentralized, but protocols are developed as a series of technical documents, or Requests for Comments, managed by the Internet Engineering Task Force. These protocols allow heterogeneous devices to communicate with each other, and are dependent upon the hierarchical Domain Name Service, today managed by the California-based Internet Corporation for Assigned Names and Numbers (ICANN), but soon to be managed by an organization I helped design at the Berkman Center for Internet and Society during the summer of 2014.\textsuperscript{866} Additionally, the communication of data between computers over non-point-to-point networks, like the Internet, is accomplished by formatting data into “network packets,” which contain two kinds of data, control information and user data. The control information provides details the network needs to deliver the packet, for example the source and destination of network addresses. In other words, as Galloway puts it, “The founding principle of the Net is control, not freedom. Control has existed from the beginning”\textsuperscript{867} As Chun argues, believing the Internet is based on freedom “overlooks the very operation of TCP/IP (Transmission Control Protocol/Internet Protocol).”\textsuperscript{868} However, this only describes the architecture and dependencies of the internet, not when and how control is exercised or where interventions are made.

\textsuperscript{864} A phrase usally attributed to John Gilmore and described in Chun, Control and Freedom, 2.
\textsuperscript{866} The new organization has not been formed yet. Indeed, if the case studies I examined are any indication, it would probably be best if the “multistakeholder model” we were asked to design is never implemented. A full report of the case studies can be found at Urs Gasser, Ryan Budish, and Sarah Myers West, Multistakeholder as Governance Groups: Observations from Case Studies, SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, January 14, 2015), http://papers.ssrn.com/abstract=2549270.
\textsuperscript{868} Chun, Control and Freedom, 69.
Interventions into Bad Language and User Error

The chapters on graphic, legal, and psychiatric attempts to regulate bad language and bad language users demonstrated how variegated social practices and professional conventions, what Bakhtin refers to as “genres” of writing and speaking, create language norms which shape what people can say or write. In his analysis of discourse networks, Friedrich Kittler treats these rules as a kind of programming which also helps determine how sounds, texts, and images are translated across different media. The alphabet, for example, translates sounds into graphical characters and writing translated (or constrained) oral performances into a textual medium. For Kittler, a significant change in the 20th century was the possibility to translate spoken phrases into print using a “typewriter,” which Kittler points out referred to both the machine and the female operator. Women were permitted to write, a practice which had sometimes been denied in Europe during the 17th and 18th century, but not to express their own thoughts, only to transcribe the speech of others, and so became “word-processors.” Kittler provides a detailed history which traces the development of typewriters and word-processors through the history of encryption and computing, showing how different writing and recording technologies have shaped the genres of discourse in philosophy, psychiatry, science, and warfare. However, after Alan Turing built the Oriental Goddess to decode messages encoded with the German Enigma machine and later the digital and programmable computer COLOSSUS, programmers quickly realized “that these new devices were not actually manipulators of numbers, but rather of symbols” and put them to work manipulating written language. Indeed, by the late 1950s early computers were used to aid the printing process, helping with typeset, and in the 1970s literary scholars used mainframe computers to determine the authors of the anonymous Federalist pamphlets and sort out variations between early editions of Shakespeare. However, Ong points out that where language acquires grammars through usage, “Computer language rules (‘grammar’) are stated first and thereafter used,” which means that “natural language” must be translated, or manipulated, into something a machine can understand even if humans cannot and which makes bad language or error something manageable by a computer.

870 Ibid.
872 Ibid.
873 Ibid.
Bad grammar, or in the case of computers, bad rules of programming, is not an issue of muddled communication or class distinction as they were in 17th century Britain, but instead bad rules prevent the machine from completing a computational task or introducing errors which must be managed. Instead, I found that the way computers are designed and how they handle bad language corresponds to the social structures and power dynamics within which computers are embedded, including cultural governance, which has helped determine what types of software get developed and what kinds of discourse digital networks can facilitate. As discussed earlier, the U.S. Congress’ attempt to regulate with the CDA and COPA facilitated the monetization of the Internet and the judiciary’s decisions encouraged the development of data collection. Similar to the way John Dryden corrected the grammar of poems he had written by translating them into Latin, applying the grammatical rules of Latin to his translation, and then translating the result back into English—writing into a computer translates natural language into a form treatable by programs which can be executed or manipulated. Dictionaries and Webster’s rationalized spelling reforms were also technologized in the 1960s and 1970s, when programmers at MIT developed the first spelling checkers and grammar checkers, now a primary feature of most word processing programs, which could “read” translated “texts” and make corrections. Today, even the technical translation of written texts from one language to another relies not on dictionaries or grammars, but statistics and probability. As Kittler points out, electronics made it possible for “Computers [to] write by themselves, without secretaries” and digitization has made it possible for every sound, image, or text to be translated into a universal digital medium of 0s and 1s.

However, as manipulators of signs following pre-determined “grammatical” rules, computers are indifferent to what they are processing and also threatened by the “bad grammar” of conflicting or incomplete programming and the “bad language” of user input or errors. In an operating system, errors are managed by techniques designed to prevent a systemic crash or “exception handling.” I will return to a treatment of bad language as errors in the conclusion when examining potential options for evading control, but what is important to note here is that the word processing and grammar of computers existed before they were technologies as hardware and software. Deleuze and Galloway both describe computers as systems within which ideas, and ideologies, can be modeled, tested, and deployed. In the case of grammar and spelling, computers do not attempt to correct the writer’s behavior, or discipline their writing. Spellcheck in Microsoft Word, for example, throws bad language back to the writer with pre-programmed solutions to choose from or gives the writer the option to ignore the error and continue processing the rest of the document in much the same way Microsoft Windows handles an error “by

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876 Kittler, Gramophone, Film, Typewriter, 246.
passing it from one section of code—one object, often—to another, and ultimately to a block of code
dedicated to exception handling." In other words, rather than intervene in the grammar, or
“architectural” structures, of an operating system or allowing the system to crash, exception handling
intervenes in the flow of program execution. However, exception handling is not simply something which
happens “inside” the computer but extends into other processes of the “real-world,” for example
preventing a crash in the “workflow” of the user or breaking the flow of word-processing. Exception
handling will be explored again later, but here I only want to note that bad inputs from users, or user
error, is managed by a system of control (checks, dialog boxes, prompts) which intervenes in the
wordprocessing or language flows of a user rather than the structures (Word does not rewrite itself) which
mediate their expression.

Contemporary computer-mediated communication then is also involved in shaping the conditions
of possible expressions not because they control language in order to control what can be thought about,
the way for example George Orwell imagined, this also means that digital technologies cannot manage or
transport information without some kind of distortion. Much as dictionaries remove words from their
sentences and treat them as autonomous objects, making some always bad or offensive and putting them
into a kind of circulation, the translation of language into information allows computers to treat words as
“strings” and bundle them into autonomous objects, or “packets,” which can be put into circulation and
exchanged between devices using transmission protocols. This is not simply a translation, as Zittrain
argues, but a warping of language into information which is further distorted in order to be sent
through a communications network as a packet. The idea that the architecture of the Internet, or the ability
to view the “source code” layered on top of that architecture, prevents control is what Latour calls the
“Double Click” or acting “as though technology, too, transports mere information, mere forms, without
deforation” so that language can be treated as discrete packets of content. Making spoken language
into a graphic language, using an alphabet, or some other “channel” as Kittler describes it, also involves
a deformation, but proponents of “Internet freedom” who describe freedom of expression online as
unfettered communication guaranteed by its architecture ignore the numerous deformations which must
occur as spoken language is translated into written language. Scalia similarly used a “Double Click” when
he separated the content of a hate speech from the act of the hate speech and described the fighting words
as “analogous to a noisy sound truck,” assuming that a “mere form” of hate was being transmitted without
considering how it might later be deformed by, for example, a judge later reading a graphical transcription

878 Zittrain, The Future of the Internet-And How to Stop It.
879 Bruno Latour, An Inquiry into Modes of Existence: An Anthropology of the Moderns, trans. Catherine Porter,
2013, 218.
880 Kittler, Gramophone, Film, Typewriter, 124.
of the expression and imagining the speech situations under which its use would enact or excite
violence. Digital writing involves a series of deformations as a communication is entered into computer
language, treated by programs, transmitted by protocols, and displayed on an interface. The content first
entered into a computer thus comes to mean and do different things depending upon how it is used or, as
will be discussed later, tied to a user so their future language can be predicted. In *Nineteen Eighty-Four*,
Orwell describes a world of language control still modeled on what Deleuze calls the “old societies of
sovereignty [which] made use of simple machines—levers, pulleys, clocks” where language is regulated
by an authoritarian institution and therefore finds it appropriate to have his main character exploit “the
passive danger of entropy and the active danger of sabotage” in order to avoid “Newspeak” or control
by the “Thinkpol” thought police. Deleuze contrasts the societies of sovereignty, or discipline societies,
with “societies of control” which “operate with machines of a third type, computers” and “controls are
a modulation, like a self-deforming case that will continuously change from one moment to the other.”

As demonstrated in the chapter on graphic language, the invention of writing and print made
possible the idea that certain kinds of language were “bad” because of their spelling, grammar, or
definitions. However, writing media and writing technologies also condition or prevent different kinds of
thinking because we think through these technologies. Ong has pointed out, for example, that
“Deconstruction is tied to typography,” not only because it is based on textual analysis, but also
because deconstructionists “specialize in texts marked by the late typographic point of view developed in
the Age of Romanticism, on the verge of the electronic age.” Similarly, Galloway points out, post-
structuralism and post-structuralist buildings like the Strata Center at MIT designed by Frank Gehry “are
unthinkable without the computer.” The schematic visualizations of computer networks, and the post-
structural rejection of hierarchy, also condition the possibility of American multi-cultural governance
similarly modeled on a rejection of hierarchy. As Jerry Adler has argued, “It is impossible in
deconstructionist terms to say that one text is superior to another. PC thinkers have embraced this conceit
with a vengeance...It is not just in literary criticism that the PC reject ‘hierarchy’ but in the most
mundane daily exchanges as well.” And yet the computer, and the computer network, does not fully
explain these new techniques of language control. Lessig, for example, might concede that computers

884 Deleuze, “Postscript on the Societies of Control,” 6.
885 Ibid., 4.
886 Ong, *Orality and Literacy*, 127.
887 Ibid., 160.
deform expressions, but argue that as long as the code—which for him is law since that is where decisions once made by legislators and judges are being made—can be viewed and checked for overt and nefarious attempts to interfere with communications we can evade control. However, as Chun explores in detail, “control and freedom are not opposites but different sides of the same coin: just as discipline served as a grid on which liberty was established, control is the matrix that enables freedom as openness.”

**Bad and Taboo Keyword Filters**

The ARPANet, as the pioneering packet switching network, allowed devices to communicate with each other (inter-net) despite being networked to a variety of heterogeneous architectures using protocols. To send packets over the Internet, devices first send packets to the ISP’s computers, which then send them to the backbone network, which then sends them through another series of gateways and networks until they find their destination. Zittrain describes packets moving through the Internet as “a bucket-brigade partnership in which network neighbors pass along each other’s packets for perhaps ten, twenty, or even thirty hops between points…the cobbled-together nature of a typical Internet link from a source all the way to the destination means that there is no easy way to guarantee speed” or delivery of a packet through these several intermediaries and so, “The Internet is thus known as a ‘best efforts’ network, sometimes rephrased as ‘Send it and pray’ or Every packet an adventure.” Because the Internet was set up in this fashion, packets not addressed to a computer or device receiving them were simply passed along the network through a hierarchy of routers. However, some senders were not comfortable with the idea of sending out potentially sensitive information along such an unsecure system and in 1988 engineers from Digital Equipment Corporation developed software which would identify packets from untrusted networks and filter them out, which they called a “packet filter firewall.” These filtering technologies later became important for preventing the spread of computer viruses or for preventing intrusions, but the software was also developed to block packets coming from sources known to contain pornography and thereby block access to the website, either on a specific computer or on a router. Packet filtering also ensured that the “open” Internet was controlled, or sections privatized, as secure networks were separated from the rest of the Internet. The system of transport described by Zittrain is long gone, not only because of packet filtering, but also because many ISPs have private agreements for transporting data and at the transport layer TCP creates a “virtual circuit” between sending and receiving

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891 Zittrain, *The Future of the Internet-And How to Stop It*, 33.
machines. The virtual circuits of TCP enable IP tunneling, which corporations have used to develop “Virtual Private Networks,” within the Internet to secure or encrypt communications between machines. The Internet has always been controlled at all layers; by protocols, routers, and firewalls at the transport level and by content-control software, and more protocols, at the application layer. An interface, a webpage, an email, a file, and the Internet are all products of inter-connected control mechanisms which de-form information and regulate flows of information all the way down. Lessig’s assertion in Code that “We have exported to the world, through the architecture of the Internet, a First Amendment more extreme in code than our own First Amendment in law” is highly problematic. It is better to say we have exported, through mechanisms of control, a highly open and regulated system for managing expressions which can only be imagined as an issue of “free speech” by reformulating it as “Internet freedom”—a privatized, secured, marketplace of ideas rather than speech free from governmental coercion—mirroring the neoliberal fantasy of markets as self-regulating and capable of making impersonally rational decisions, or what Lessig calls “The invisible hand of cyberspace.” As Foucault demonstrated, keeping the invisible hand invisible requires several apparatuses of discipline and control, including techniques for regulating and controlling language. Early on this was accomplished through the deployment of language filters based on blacklists managed by corporations, but lately more sophisticated techniques have been developed.

The first techniques used to block specific words automatically were simple programs installed on a computer designed to identify and prevent users from entering bad keywords, heuristics used to identify and manage content as described in the chapter on racial slurs. What exactly constitutes a keyword is still the subject of some debate, but information retrieval systems treat keywords as terms which capture the essence of the topic of a document. In computer science, a keyword is a word that is reserved in programming languages as expressions with special meanings, expressions that cannot be used as variable names, and words which can be commands or parameters for the execution of a program. As a technology of language regulation, the keyword became useful for identifying objectionable and pornographic content or for signaling the presence of dangerous communications. However, censorship based on keywords requires that someone maintain a list of terms to block, a blacklist, which often accidentally also blocked the wrong content or could be easily circumvented, like Shakespeare evading the Master of Revels, by using a euphemism to replace a blocked keyword.

893 Chun, Control and Freedom, 64–65.
894 Lessig, Code, 2006, 236.
895 Ibid., 6.
In addition to filtering keywords and packets arriving from unsecured networks, a variety of technologies have been developed by corporations to regulate digital language and help governments censor the Internet. Rebecca MacKinnon and Ronald Deibert have discovered numerous instances of companies based in liberal democracies selling, and developing technology, for authoritarian regimes censoring the Internet—often by repackaging filters originally designed to protect children from pornography. MacKinnon, for example, found that China and several countries in the Middle East “have purchased their censorship solutions right off the shelf from American companies. Companies including the California-based Websense, Blue Coat and Palo Alto Networks, Intel’s McAfee SmartFilter, and the Canadian Netsweeper all market products that were originally developed to help households and schools shield children from age-inappropriate content.”

Indeed, Cisco Systems produced Chinese-language brochures advertising the censorship and surveillance features of its routers and suggested their use in helping the CCP manage online content related to the banned Falun Gong religious group. In the U.S., technology companies intervening in users’ communications enjoy considerable legal protection. Deibert details in *Black Code* how an update provided by Cisco for one of its most popular wireless routers required users to agree to a new terms of service agreement which included the requirement that their router not be used to access or share “obscene, pornographic, or offensive,” and which could “infringe another’s rights, including but not limited to any intellectual property rights.” Similarly, in 2010, T-Mobile was sued for blocking text messages sent by a legal marijuana dispensary service, but the case was dismissed because while U.S. law prohibits phone companies from blocking calls using their networks, it does not prohibit blocking data sent through their networks. As part of an agreement with the Special Olympics campaign to “spread the word to end the word,” Blizzard Entertainment (the company responsible for the hugely popular massively multiplayer online game World of Warcraft and StarCraft) began replacing the word *retarded* with *r******** in gameplay chats between users. Blizzard maintains it can censor these terms, and other offensive words like *homosexual* and *transsexual*, because by installing or using Blizzard’s software, users agree to refrain from abusing its services and one another. Corporations, sometimes sponsored by governments and sometimes for their own interests, have developed a wide array of content filtering technologies including packet filtering, deep packet inspection which looks inside packets for bad messages, IP address blocking, DNS filtering and redirection, several

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897 ibid., 170.
methods for cutting off routers and hardware remotely, portal censorship removing links or visibility, denial-of-service attacks which deface websites or overload a server with repeated connection requests, and bandwidth shaping techniques which purposefully show access to specific online content or services. These interventions were all developed as products in the absence of directed state regulation, directed by the “The invisible hand of cyberspace.”

However, states also sponsor the development of circumvention technologies to allow users to bypass or frustrate attempts at overt censorship by states or state-sponsored corporations to regulate digital language. A striking example of the influence of social structures, and American cultural governance, in determining which technologies are developed is the U.S-sponsored creation of circumvention technology for use by activists in authoritarian countries to promote Internet freedom. In 2009, as a result of the Green Revolution, Congress passed the Victims of Iranian Censorship (VOICE) Act and the National Defense Authorization Act for Fiscal Year 2010 authorized the appropriation of “$20 million for a new ‘Iranian Electronic Education, Exchange, and Media Fund’” which would develop anti-censorship technology. To mark the passage for the bill, Secretary of State Hilary Clinton gave a now famous speech “On Internet Freedom” which argued “Today, we find an urgent need to protect these freedoms on the digital frontiers of the 21st century…the internet is a network that magnifies the power and potential of all others. And that’s why we believe it’s critical that its users are assured certain basic freedoms. Freedom of expression is first among them.” However, as part of the Congressional debate, it was agreed that the U.S. should assist Iranians in circumventing online political censorship, but not other content like pornography and many voiced concerns that if the new technology enabled access to pornography, Iranians would be less inclined to use it. A compromise was made that the circumvention technology would include a blacklist of prohibited words in English and in Farsi. The technology was developed, and deployed in Iran, but the blacklist filter had unintended consequences, blocking for example the U.S. Department of State’s online portal for its overseas missions because the URL, usembassy.state.gov, includes the prohibited word ass. It was not “the more restrictive community standards of Tehran” which led to the site being blocked, as Reed’s COPA decision might have it, but the deployment of American cultural standards technologized as circumvention technology to promote Internet freedom in Iran with contradictory results.

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905 Zittrain, The Future of the Internet-And How to Stop It, 115.
As MacKinnon points out, the U.S. Department of State regularly sponsors the development of circumvention technology while U.S. companies produce much of the censorship technology available to states today.\[^{906}\] This is not a mere contradiction, but a feature of American cultural governance. As I have written elsewhere,\[^{907}\] what is often discussed as censorship in the U.S. is thought of as economic and cultural protection by states like China hoping to encourage their own technology companies or prevent the imposition of American culture. While it cannot be denied that China and Iran regularly censor the Internet, the Internet has always been an object of control and in the U.S. is managed by a variety of increasingly sophisticated control mechanisms. In Iran, Internet censorship is managed by Ministry of Culture and Islamic Guidance for the Iranian government. In the U.S., I found, the Internet language regulation is increasingly managed by corporations in Silicon Valley.

**Cultural Governance and Language Regulation, Silicon Valley-Style**

Google’s search engine is a particularly good case study because it enjoys a near monopoly over current searches conducted in the U.S.,\[^{908}\] because part of its early rise to popularity was its ability to filter out pornography, and because it has become the largest Internet technology company in Silicon Valley. Google is notoriously protective over what information it will share about its services and, after several requests for details being forwarded to various legal departments, I decided at the beginning of 2012 to track changes to Google’s treatment of taboo words like *fuck, cunt, shit, bitch,* and *nigger* over time and, by tracking, I hoped to understand how Google’s SafeSearch filter makes decisions about what to display. The SafeSearch filter, which is designed to “keep families safe on the web” by filtering out “objectionable content,” is enabled by default, but in May 2012 users were able to choose between three options: strict, moderate, and off. Google described the difference between these settings as “Strict filtering filters sexually explicit video and images from Google Search result pages, as well as results that might link to explicit content. Moderate filtering excludes sexually explicit video and images from Google Search result pages, but does not filter results that might link to explicit content. This is the default SafeSearch setting. No filtering, as you've probably figured out, turns off SafeSearch filtering completely.”\[^{909}\]

\[^{906}\] MacKinnon, *Consent of the Networked*, 106.
However, at the end of 2012, Google suddenly changed the available settings (as well as where these settings could be accessed) to a simple check box next to “Filter explicit results.”910 Thereafter, a Google Images search for porn, for example, also displayed a fuzzed version of search results and a dialog box with the option to “Continue to results” before the search would clear. This sudden change not only destroyed the continuity of the data I had collected, but Google also began altering search results based upon the location of the device doing the searches. It quickly became clear that I would not be able to figure out how SafeSearch decides what to filter out by tracking its response to typically blocked terms. For example it blocked slut and allowed whore in May 2012, but then blocked whore and allowed slut in August 2012. However, the inability to collect data and figure out the filter itself became useful for figuring out how American cultural governance, especially the libertarian and geek culture of Silicon Valley, controls digital discourse.

Enforcing Yesterday’s Community Standards

Google is not a dictionary, ascribing meanings to words by giving them a context-free definition, but instead displays the sum of all uses of a particular keyword and all the contexts in which it is used on the Web. However, search engines do not search the Internet, they search a database created by “spiders” or “robots” which “crawl” the Web and make copies of pages.911 A keyword search on Google therefore is a keyword search on the database Google’s spiders have created, but even the most laborious spiders cannot record all of the changes made to a website as they occur. This means that Google search is always searching past copies of the Web. It is perpetually out of sync with the “real-time” activities of the Internet, and it is always being updated piece meal, but where dictionaries include publication dates Google does not indicate the age of its database when displaying results. The results of expressions it displays are then always presenting a continually deforming hierarchy of information, time-shifted and never complete. Google’s asynchronous database makes possible interventions into language not unlike the way a seven second delay between recording and transmission makes it possible to bleep out offensive language on a live television broadcast. The claim made by Google’s head of consumer electronics, Marissa Mayer, in 2010 that “Our role in the system [is] to constantly be innovating and be updating what our system is to reflect what the current social norms are”912 is an impossible one. Google does have a system in place for webmasters to notify Google of content changes, but there is no way to predict when a

911 Chun, Control and Freedom, 107.
website will be crawled. Popular websites are crawled more often, but since Google keeps a copy of past web content in its database as well, it is difficult to know how much of a recent search query is based on new or old content and Google does not reveal that information. While we do not know the frequency of updates for specific pages, Google always reflects past content and past social norms, enforces them, and enforces some of its own norms.

Google search relies upon a large number of language and content policing mechanisms. While it is extremely difficult to find much detail about how the SafeSearch filter makes decisions, Google does often directly intervene in search results. For example, Google regularly removes links to copyright infringing material and when Google rolled out its “Instant Search” function in 2010, searching before a user hits the enter key, the journal 2600: The Hacker Quarterly discovered a surprising number of words which would not display results unless the user explicitly hit enter or clicked the search button. Included in the blacklist are words like anal, big tits, dick, scat, teen, and xx. Again, determining why these terms would not complete while others like bastard, breast, erection, gook, oral sex, peep show and whore will automatically search is difficult to determine. However, the pornography filters for Google Image seem to determine what counts as pornography by calculating the probability that an image contains nudity based upon the amount of skin-colored pixels an image contains, the space between faces, image filenames, and the words appearing on the same page as the image.

Intermediaries like Google and Apple also sometimes impose their norms on users. This is obvious in several recent examples where language filters managed by private corporations have prevented users from writing “offensive” words into devices and steered them away from “bad language” using search engine algorithms. A recent update from Apple to the iPhone keyboard, for example, stopped fixing the bad spellings of the terms abortion or suicide into their smartphones. The debate which this update sparked was largely concerned with whether or not the dictionary loaded into Apple iPhones reflects Apple’s own political stances than whether or not blocking these terms constitute infringements on free expression. Similarly, researchers discovered a blacklist of over 165,000 terms in the source

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913 The Google “Webmaster Account” will show the date of a past craw, but does not give any indication when the next crawl will be performed and only notes that “popular cites are crawled more often.” See: https://support.google.com/webmasters/answer/6065812?rd=1
code of a recent Android handset update, made by Google as part of its “open handset” initiative. The blacklist did not prevent users from entering the terms, but did prevent the built-in predictive keyboard and spellcheck from suggesting the words. These terms included words like preggers, intercourse, lovemaking, butt, geek, thud, LSAT, pizzle, and all seven of George Carlin’s dirty words.917 Google and Apple did not prevent users from entering the terms into their devices, or replace them with graphical characters which would suggest censorship, but they did not help users find content they had determined was not in their best interest to find by spellchecking their query. A user could still find the content, but they had to spell it correctly on their own.

Several years ago Google redesigned its cafeterias to encourage nutritional eating by performing data collection and observations run by its Human Resources department, called “People Analytics.” The People Analytics team discovered that cafeteria visitors tended to fill their plates with whatever they saw first when entering the cafeteria and so put the salad bar near the entrance and deserts behind the salad.918 Visitors could still have a donut, just as they could still search for lovemaking on their phones, but they had to go out of their way to get it. Google used the libertarian paternalism of choice architecture in its cafeteria and in its Android keyboard to “move people in directions that will make their lives better.”919 Just as Google revises its search results to keep users from being offended and leaving its services, making it harder to collect their data and produce Google’s main product, the Googleplex at Mountain View also gives its employees free 24 hour access to the cafeteria (as well as haircuts, dry cleaning, gym access, electric vehicles, and “EnergyPods” for napping) to gently encourage employees to stay on campus and do a little more work. In Nudge, Thaler and Sunstein describe an initiative to reduce splattered urine at the Schiphol Airport in Amsterdam which uses an etched image of a black housefly drawn inside the urinal to give men something to aim at.920 Google launched a similar bathroom initiative, but this one places coding tips and puzzles above the urinal or on the inside of stall doors as a “fun way” to make sure toilet breaks are productive.921

However, Google is sometimes more overtly coercive, especially when compelled by law. For example, in mainland China, searches for “human rights” returns cooking recipes for dishes using “hunan

920 Ibid., 5.
“rice” as an ingredient. When asked about this obvious intervention, and after being accused of facilitating PRC censorship, a Google representative in China replied that, “It’s legitimate to ask if someone was searching for hunan rice. People here like rice, a lot.” Directing users away from prohibited, or at least politically sensitive subjects, is an important part of Google’s online and offline architecture. The limits of defining code as law becomes problematic when considering how laws, like the censorship laws of China, and norms which help shape users’ preferences are encoded in digital technology.

Collaborative Filtering and Filter Bubbles

Google relies heavily upon user input and provides a variety of opportunities for users to “report offensive content” or “report abuse” to Google’s terms of service agreements. “Flag wars” have broken out on YouTube, for example, over content which users object to for other reasons such as the case of radical conservative Michelle Malkin’s videos depicting violence by Muslim extremists, but it is unclear how Google and other online platforms treat flagged content. In their recent study of flagging across multiple social media, search engine, and forum platforms, Tarleton Gillespie and Susan Crawford found little information about how any of them handle flags and very little agreement between platforms about what constitutes abuse or offensive content. They point out that another major issue when evaluating flagged content is that users do not agree about what constitutes offensive content or abuse: “Some may flag religious videos as spreading hate speech, while religious groups may flag political content that they perceive as blasphemous.” Gillespie and Crawford warn against the power of companies to censor by relying upon poorly defined and obscure flagging policy, going so far as to describe the Google-owned “YouTube’s current system of content determinations is politically closer to a monarchic structure, in the traditional sense of the ‘rule of one.’ A plea can be made, but the decision to remove or suspend is solely up to the platform.” While a clearer or more uniform flagging policy might make for fewer instances of accidental censorship and make adjudication processes invisible, Gillespie

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923 Ibid.
926 Ibid., 11.
927 Ibid.
and Crawford’s argument does not account for the collaborative effect of user input and describes
censorship in terms of due process.

Perhaps more importantly, Google relies upon the “net effect” when ranking websites in its
search results, as it does with its flagging system, meaning that even without mechanisms in place for
users to police content, its visibility can still be controlled. Controversial and contentious websites often
draw more attention; often increasing the visibility of content censors who would rather have hidden. For
example, in his 2010 presidential run Rick Santorum asked Google to take down links to a website created
by gay rights activist, Dan Savage, which posted at the top of the page a definition for the word santorum
as “1. The frothy mix of lube and fecal matter that is sometimes the byproduct of anal sex. 2. Senator
Rick Santorum.” When I searched for santorum on Google in 2010, the site typically appeared as the
fourth website, but after Santorum made his public request for the takedown, the site quickly jumped to
the top of Google’s results.\footnote{Also known as the “Streisand Effect” after Barabra Streisand tried to suppress photographs of her home in
Malibu and inadvertently drew further public attention to it online in 2003.} Google refused to take the site down, stating in a press release that Google
doesn’t “remove content from our search results, except in very limited cases such as illegal content and
violations of our webmaster guidelines,”\footnote{Alexander Burns, “Rick Santorum Contacted Google, Says Company Spreads ‘Filth,’”\ Politico, accessed
November 28, 2011, http://www.politico.com/news/stories/0911/63952.html.} drawing even more attention to the site and further increasing
its ranking. Similarly, websites which do not correspond do the preferences of the Google search
algorithm are likely to languish in obscurity. For example, Google tends to reduce the ranking of sites
which use Adobe Flash elements, have content behind paywalls (which their spiders cannot crawl),
iccorrectly label images, have no or poorly written descriptive meta-tags, and contain too little text.\footnote{Evan Bailyn and Bradley Bailyn, Outsmarting Google: SEO Secrets to Winning New Business, 1st ed. (Que, 2011).}
Additionally, webpages are able to purchase advertising on search results for specific terms, a service
called AdWords, which can draw more attention to a website and increase its “natural” ranking.

Google’s sorting of the Web and digital language using the net effect has a profound impact
outside the Internet as well. For example, Google Scholar organizes information and displays results in a
similar process to Google Search, but equating citations and popularity with “relevance” can be
problematic. When it was first developed, Google Scholar simply ranked articles according to their
citations. Articles which have made it to the top, because they are well written according to Google’s
standards (or by sheer luck) receive a higher ranking on Google. However, because Google could only
crawl articles not behind a paywall, the vast majority of articles in subscription journals, Google Scholar
privileged articles published online. It also privileged articles in a format it could crawl easily, such as
HTML instead of PDF, and articles which were cited often as examples of a bad idea or something which

\footnote{Also known as the “Streisand Effect” after Barabra Streisand tried to suppress photographs of her home in Malibu and inadvertently drew further public attention to it online in 2003.}


\footnote{Evan Bailyn and Bradley Bailyn, Outsmarting Google: SEO Secrets to Winning New Business, 1st ed. (Que, 2011).}
had been since disproven. However, being ranked higher, these articles are read more often and become
cited in other scholars’ articles. Because of the network effect, these articles, which may have only been
listed higher for an arbitrary reason, are cited and keep their high ranking. The result is Google’s
bibleometric understanding of relevance is replacing other standards for “impact” or “value” in scholarly
communities. Articles Google likes become increasingly relevant to their scholarly community, shapes
what is researched, and contributes to decisions about which research gets funding or who is eligible for
tenure. Google Scholar does not shape discourse through direct manipulation, but works through the net
effect to multiply its influence on what is valued in academia and ties funding to easily measured outputs.

The net effect is something which can be exploited by “search engine optimization” techniques,
basically writing a website for a search engine rather than visitors, and by a practice called “Google
bombing” or “Googlewashing,” which associates sites with unfavorable searchers, for example linking to
George W. Bush and Michael Moore’s personal homepage when a search for miserable failure is entered.
While Google problematically claims to be a mirror of the Web and of current social norms, and often
claims that its algorithm is “objective” and “neutral” when deciding what to present to users, the search
engine also deploys what the libertarian rational-choice theorists Richard Thaler and Cass Sunstein call
“collaborative filtering.” According to Thaler and Sunstein, collaborative filtering uses “the judgments
of other people who share your tastes to filter through the vast number of books or movies available in
order to increase the likelihood of picking one you like.” A number of Internet services rely upon
content filtering to personalize suggestions to users. Netflix, for example, compiles lists of movies
watched by people on their online services and then uses a collaborative filter algorithm to compare
similarities between accounts to suggest which movie a user might like watching. A primary motivating
factor behind collaborative filtering is not simply that they make “difficult choices easier,” as Thaler and
Sunstein continually repeat in Nudge, but because it encourages users to stay interested in an online
service and keep using it. Facebook, for example, uses a Newsfeed algorithm to promote posts made by
friends whose articles and updates a user has clicked on or “liked” in the past, and demoting or hiding
posts a user is not likely to enjoy seeing.

931 Vaidhyanathan, The Googlization of Everything, 188.
933 Thaler, Nudge, 96.
934 Ibid.
Eli Pariser has described this kind of personalization as a “filter bubble,” insulating users within a bubble of content they will tend to agree with or enjoy. Facebook deploys these filters in an overt attempt to keep users on Facebook by managing the conditions which might encourage users to leave the service, be they offensive posts or obtrusive censorship. In other words, collaborative filters and filter bubbles are designed to keep users using. Following Chun’s assertion that “Users are created by ‘using’ in a similar manner to the way drug users are created by the drugs they (ab)use,” we can say that language control is far more successful at framing users’ fears and desires than language regulation which focuses on prohibiting or moralizing those fears and desires. Digital language control tracks each person’s language—good, bad, and taboo—without needing to identify that person as an individual subject whose expressions are noise or speech. Instead, digital language control simply counts every expression made by every user and, as Deleuze puts it, “substitutes for the individual or numerical body the code of a ‘dividual’ material to be controlled.” This data does not necessarily make us unique, but it is used in ways which are beyond our control. The use of taboo language is sometimes a problem, something to be regulated by language filters and terms of service agreements, but in computational systems of control all expressions are counted as a matter of preference. Thus, the keyboard on my Android phone will eventually allow me to use fuck without changing it to duck once my use of fuck is counted as part of my language preference. My keyboard, and the predictive algorithm it uses, treats me as a human subject, but the data it collects about me separates my preference from myself in ways I cannot control and my preferences are not used to identify me as irreducibly unique. Reformulating Shapiro’s observation that “preferences have people,” in this case it is more accurate to say that preferences have dividuals. To see how preferences gather dividuals, it is useful to see how what is important enough to count determines what is important enough to temporarily separate information from the noise of collected data.

Counting User Expressions of “Preference” in the Digital Postdemocracy

The academics and engineers responsible for much of the Internet’s design showed little interest in regulating the Internet, but in 1992 the Internet Engineering Task Force (IETF) articulated a motto which belies an interest in consensus and control for governing the Internet: “We reject: kings, presidents,

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936 Chun, Control and Freedom, 249.
937 Deleuze, “Postscript on the Societies of Control,” 7.
938 Michael J. Shapiro, Methods and Nations: Cultural Governance and the Indigenous Subject, New edition (Routledge, 2003), 23.
and voting. We believe in: rough consensus and running code.”\textsuperscript{939} This early articulation of consensus and control, which they imagined in 1992 to be liberating and democratic, but as the Internet became a “marketplace of ideas” or a technologized self-regulating free market, the meaning of “consensus” and “democracy” have changed. For Google, the net effect and collaborative filtering are taken as evidence that “democracy on the Web works,”\textsuperscript{940} but it is an odd kind of democracy which equates clicking links and liking posts with voting. Google might be innovating on earlier bureaucracies of statistics which, following Ian Hacking, proved successful for “determining classifications in which people must think of themselves and of the actions that are open to them.”\textsuperscript{941} It is, in other words, the very description of what Rancière calls “postdemocracy,” or “a democracy that has eliminated the appearance, discount, and dispute of the people”\textsuperscript{942} Users are “represented” in Google’s postdemocracy by the data they leave, their “mouse droppings,” as they use online services. Google’s ranking algorithm counts these representations of users and prevents any expressions by a user from not being counted. The uniqueness of individual users is not what is subjectivied, nor is it any particular “characteristic” they hold as is the case with the political subjectivization described in the chapter on racial slurs, but it date separated from the user and recombined in ways which are beyond the user’s control.

Galloway points out that Gayatri Chakravorty Spivak’s famous cultural politics question “Can the Subaltern Speak?”\textsuperscript{943} does not apply in the digital world. Galloway argues that “The question today is not so much can the subaltern speak, for the new global networks of technicity have solved this problem with ruthless precision, but where and how the subaltern speaks, or indeed is forced to speak. It is not so much a question of can but does, not so much a politics of exclusion as a politics of subsumption.”\textsuperscript{944} Similar to my findings regarding racial slurs, the technical collection of data about users involves political subjectivization, putting the racialized user in their place, but instead of policing the intelligibility of racialized subjects the “new global networks” simply collect all of their expressions and manage them as individuals. In terms of search engines, knowing more about individual users both allows searches to be customized and provides a pretext for gathering more data. Data mining is often thought of as extracting bits of information from a mass of background noise, but this is not accurate. As Galloway puts it,

\begin{footnotes}
\item[944] Galloway, The Interface Effect, 128.
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“Making a phone call from the slums of Cairo or Mumbai or Paris, the subaltern “speaks” into a database—just as much as I do when I pick up the phone. The difference is no longer actual, it is technical. The subaltern speaks, and somewhere an algorithm listens.”

The problem is no longer simply political subjectivization and the policing of which expressions a racialized subject says make sense, or a “silencing,” but that the subjectivied must now continually produce noise which can be sorted later for discourse or useful information: their browsing history, purchases, language preferences, geographic location, and thousands of other pieces of data are used to “identify” the subjectivied. Google Analytics, a service which Google offers to webmasters interested in tailoring content towards specific target populations, reveals a trove of information about every user to a website, including information about users who are not signed into a Google account while visiting. Google correlates and guesses things like gender, race, age, income, education, and a host of other categories so a webmaster can use to sort out content users seem to like and content they seem to ignore. While this reveals only a fraction of what Google counts, and what categories it thinks matter, this points to a new kind of subjectivization in which users are ascribed intelligibility or significance based upon their representation in data. Extending Galloway’s argument, we can say that it is not only that the subaltern must speak, or using Rancière’s theory of political subjectivization that the subaltern must reassert their inequality by speaking as the subaltern, 946 but that everyone must speak so that our dividual characteristics can be counted, measured, and directed. The way data is gathered about us, the “signals” we send, “and then used for and against us marks us as dividuals.”

Pariser found that Google also uses at least 57 signals to determine what kinds of results to display to a user, including things like location, type of device, operating system, and search history when organizing search results regardless of whether a user has signed into their Google account. 948 Even if a person has never used Google, their interactions with other Google users are counted, and if a person has never used a computer their absence is counted. As Rancière puts it, “They are entirely caught in a structure of the visible where everything is on show and where there is thus no longer any place for appearance.” 949 This is not the institutionalization of a new regime, but a postdemocratic governmentality in which users are represented and managed by indirect methods. Data collection creates users about which “Everything is already understood, predefined; one is always already a consumer; what one wants is only a function, a combinatorial variant of what is already on offer, the corporation deciding in advance

945 Ibid., 137.  
946 Rancière, Disagreement, 33.  
947 Williams, “Politics and Self in the Age of Digital Re(pro)ducibility.”  
948 Pariser, The Filter Bubble, 12.  
949 Rancière, Disagreement, 103.
the reality within which the consumer will then exercise his or her sovereignty." Thaler and Sunstein describe this as choice architecture—the design of structures, interfaces, and systems which nudge people towards certain decisions without coercion, which they argue is superior to “commands, requirements, and prohibitions.” In other words, rather than attempt to codify the contexts under which language can be offensive or injurious, the point of legal regulations on obscenity and hate speech, data collection and the representation of users as their preferences organizes the conditions under which expressions are made. Google’s search database is a postdemocracy of “community standards, “counting what Reed thought necessary to justify governmental regulation of content, but it is determined by extracting character preferences from the “big data” emitted and collected from dividuals rather than a judge imagining a community with uniform standards.

A good example comes from the public launch of his new book in 2013 which I attended in Boston. As part of the launch, Zuckerman demonstrated how data could help make Twitter less biased in who they followed online. Zuckerman demonstrated a serendipity tool recently developed by some of his students which determined the race and gender of the people he follows on Twitter called “FollowBias,” which helps “calculates the gender diversity of who you choose to follow. It accesses the public list of accounts you follow and estimates gender based on first name.” In the demonstration, the embarrassed Zuckerman found that out of 1,100 people he followed, 56% were men, 27% were women and 18% were bots or brands and suggested that he should follow more women to make sure he was not biased. However noble the intention, what Zuckerman’s tool does is to identify a “characteristic” of users, this time their first name, assume that name represents the user and that the name is attached to a gender, and then use that data to calculate “gender diversity.” Gender, extracted from a first name, becomes the most important characteristic—in this case the only important characteristic—of Twitter followers. The assumption that Zuckerman is biased leads him to “estimate gender” from his Twitter followers, essentializing a first name is the only thing which counts in the calculation of “gender diversity.”

As Galloway points out, the gender difference is no longer actual, since the woman “speaks, somewhere an algorithm listens.” Zuckerman has rendered gender diversity into a technical difference and therefore imagines a technical solution. His goal to “diversify” his Twitter followings is to make the ration between men and women a 50/50 ration—in the name of gender diversity he essentializes gender, using the data of names, and then sorts his followers based on that essentialization. The next step

950 Fuller and Goffey, Evil Media.
951 Thaler, Nudge, 10.
953 A recording of the launch can be viewed at “A Book Launch with the Author, Ethan Zuckerman, Director of MIT Center for Civic Media,” accessed January 25, 2015, http://cyber.law.harvard.edu/events/2013/06/rewire.
Zuckerman imagines is to automatically enforce a diversity ration for other characteristics, curating the things users see and what they write with diversity algorithms. The developer of the GenderBias tool and student of Zuckerman, Nathan Matias, is now working on a program which “aware” journalists will install into their wordprocessors, designed to remove bias in news sourcing by identifying the gender of sources, this time by scraping the names and genders from a database of birth certificates in the U.S. assuming the sex a doctor marks at birth is a person’s gender, and intervening in the articles as they are written by checking the names against this database, managed by the company NamSor, and suggesting an alternative source in order to maintain a 50/50 ratio. One of Matias’s recent projects was to design the predictive algorithm for SwiftKey, the Android handset keyboard whose aversion to *fuck* I described in the opening to the chapter.

A similar technical logic motivated Google last year when they published a diversity report of their workforce, after a push by Jessie Jackson and other activists to address inequality in Silicon Valley, which found that of its 26,600 U.S. employees, 61% are white, 30% Asian, 3% Hispanic, and 2% black. Google cited the lack of diverse qualified graduates, for example arguing that only two black Americans graduated last year with PhDs in computer science, but attributed the statistics to “unconscious biases” and had more than 20,000 of its employees take 90 minute training sessions designed to uncover these biases. The chapter on racial slurs argues the psychologizing the harm of racism and describing that harm by tracing the violence of a speech act fails to address the institutional forms of racism. In this case, Google is similarly treating “bias” as a mental condition, but also plans to use this data to hire underrepresented races. However, rather than addressing why only two black Americans graduated with PhDs by, for example, offering scholarships to black Americans and addressing its race (and gender) problem as a political one, Google’s attribution of its lack of diversity to “unconscious bias” contributes to what Shapiro describes as policies for “managing racial diversity,” which have been “involved in [the] inter-articulating ‘character’ with national-racial boundaries,” this time making actual difference a technical as well as psychological one. In contrast with the political subjectivization examined in the chapter on racial slurs, this time the raced subjects of Google’s calculations do not appeal to the “racial state” for equality, or seek “a model of justice and fairness that does not discriminate on racial grounds” in response to a “wrong” using “rights,” but the question is now “What happens when the

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954 Matias has not make a public release of this program yet, but explained its operation in a presentation given at the Berkman Center for Internet and Society, Harvard University on July 4, 2014.
956 Ibid.
958 Ibid., 20–21.
entity seeming to enforce equality and equal rights is the private corporation instead of the state? What happens when democratic disincorporation stems from consumption rather than voting—when equal rights seem mainly to guarantee access to buying” or the hiring process?959

As discussed in the chapter on racial slurs, the racial state manages diversity by giving a dehistoricized perspective “involved in inter-articulating ‘character’ with national-racial boundaries.”960 The postdemocracy of Google represents people as their character preferences, a neo-liberalized and dividualized set of characteristics, and then algorithmically distributes what can be seen (search results), said (autopredictive keyboards), or done (workflow becomes emptying ones Gmail inbox). The preferences of users who sign in, or “super-users,” and users who frequently use Google’s services are weighted more heavily when sorting which results appear for other users, but language prohibitions have been replaced with endless options. Pariser’s filter bubble is not restrictive. A determined user could see every use of a search term contained within Google’s database of web content. Victorian language prohibitions excited discourse with an explosion of discourse and resistance decrying its irrationality. Digital language control excites discourse by making suggestions. The digital postdemocracy is not Nineteen Eighty-Four, it is more similar to Huxley’s Brave New World961 where the user is presented with a never ending options for consumption tailored with data collected about their dividual preferences. While censorship does still happen in digital discourse, the ability to steer users through the choice architectures of online services is far more powerful for controlling language and preventing the possibility for resistance or, in Rancière’s sense of politics, the disruption of language policing or a disagreement over who should do the counting.

Coercive Ergonomics and Steering User Discourse

Google, Microsoft, Apple, Facebook, and Twitter have all recently demonstrated their willingness to lend considerable resources to pursue enemies of the United States and share intervention techniques with authoritarian governments abroad. Even when not participating in the nebulous and ill-defined “Internet,” the mediation of language through digital devices, and the increasing extent to which these services are becoming the obligatory point of passage for Internet communications, allows for the control of expressions as data and makes possible a kind of surveillance Reed could not have imagined when he wrote the COPA decision, mass surveillance in which everyone is tracked without being identified. The chapter on graphic language demonstrated how earlier forms of language regulation focused on

959 Chun, Control and Freedom, 72.
960 Shapiro, Methods and Nations, 21.
regularizing expressions and the conditions under which certain terms were offensive, but the translation
of language into 0s and 1s has conditioned new techniques for steering discourse, and users, which focus
on regulating data and managing unexpected “errors.” As Matthew Fuller and Andrew Goffey put it in
Evil Media, old techniques for regularizing expressions have been augmented with “tricks like
personalization, variegated security permissions and user profiling [which] can be adopted to facilitate a
more constrained production of regularized statements, thus making less formal processes of
communication more amenable to treatment in formal informational terms.” In other words, new
techniques do not focus so much on regulating what is discussed, but how it is discussed, ensuring that
expressions are amenable to treatment as data for computation. Treating people and their expressions as
data enables interventions into the “pre-speech” and “pre-dictability.” These interventions can be
purposefully directed by an engineer or an institution, but as we will see they can also be emergent or
exceed the control of any readily identifiable and culpable agent. A good example can be found in the
anti-spam filters developed by the Silicon Valley tech companies.

Automating Serendipity and Managing Surprise

In the early 1990s, the language bloggers used was typically policed only by their Internet Service
Providers, their hosting companies, and potentially by sponsors for whom they displayed advertisements.
Today, by contrast, many blogs are run on corporate software called “content management systems”
which handle most of the HTML coding requirements and make blogging much more like working with a
word-processing program. Popular examples of CMS platforms include Google’s Blogger, WordPress,
Squarespace, and Tumblr. These platforms not only made blogging easier for people not interested in
learning to code, but also made it easier to set up commenting systems for visitors. Disquis, for example,
is a piece of software webmasters can install on their CMS to allow users to comment without knowing
anything about how commenting is coded in HTML. A major problem with online commenting is spam,
or comments made automatically by “bots” across thousands of websites to advertise products or increase
the ranking of other websites by linking to them (called “backlinks”). For the past decade, large
companies have dedicated employees who filter out spam and potentially offensive content, with the help
of users. For example, Facebook has a staff of around 1,000 people who do nothing but find and remove
spam on their services. Small blogs did not have that option and so to manage spam, just like early

962 Fuller and Goffey, Evil Media, 144.
963 Shayndi Raice, “Social Spam Start-Up Gets $8 Million In Wake of Facebook Attack,” WSJ Blogs - Digits,
facebook-attack/?KEYWORDS=SHAYNDI+RAICE.
language filters, web hosts and CMS platforms began offering blacklists of known malicious commenters and later more sophisticated technologies for blocking spam, including third-party companies who offered plugins with could be installed onto a CMS platform and independently (mostly automatically) prevent spam comments from being posted, for example the screening service Askimet which publicly maintains a growing blacklist.

However, in 2010 a new startup named Imperium took fighting spam one step further and developed technology, with $9 million in investments from venture capitalists, to “identify not only spam and malicious links, but all kinds of harmful content—such as violence, racism, flagrant profanity, and hate speech—and allow site owners to act on it in real-time, before it reaches readers.” How Imperium determined what constituted violent, racist, and profane comments was never disclosed (I unsuccessfully tried contacting them about their service in late 2013) except that the company was using “big data techniques” to fight online abuse. Indeed, very little about the company was ever published, except that in 2012 Obama’s senior director for cybersecurity left the White House to become the company’s chief operating officer. By early 2014 Imperium was intervening in comment posts for at least 1.5 million websites and had processed some 8 billion “transactions” or comments after its services were automatically integrated into several CMS platforms including Disqus, Pintrest, Tumblr, Livefyre, and Squarespace. A single company in Silicon Valley controlled a vast amount of social communication without ever disclosing any details about how its algorithms shaped the visibility of comments. In January 2014, Google acquired the company for an undisclosed amount and integrated its products into their own suite of services. In a press release about the acquisition, Imperium’s former CEO commented that “By joining Google, our team will merge with some of the best abuse fighters in the world. With our combined talents we’ll be able to further our mission and help make the Internet a safer place.” This is not just a better disciplined Internet they imagine, but one which is policed without the possibility of disagreement over which parts of online activity should count as intelligible discourse and who should do the counting. A single company in Silicon Valley and its algorithms decide which expressions count as noise for millions of online services, but it is extremely difficult to find any information about how it operates or even who is in charge of its operations. The confrontation between

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965 Cited in Evgeny Morozov, To Save Everything, Click Here: The Folly of Technological Solutionism (PublicAffairs, 2013), 165.  
968 Ibid.
the police and the policed Rancière calls the political is more difficult when even the police underlings, in this case Google’s legal department, not sure who to confront (or possibly how the algorithms work). Rather than confront the algorithmic distribution of intelligibility, many have suggested technical solutions to both emergent and constructed filters.

One popular solution offered to combat the formation of filter bubbles, promoted most by the Director of the MIT Center for Civic Media Ethan Zuckerman, is the introduction of serendipity into the choice architecture of web platforms and interfaces. Drawing on examples such as Facebook’s ability to make suggestions of people its users might like to “friend” and Amazon’s suggestion of products users might like to purchase, Zuckerman suggests building a “serendipity engine” into platforms which would suggest they add friends they might otherwise not encounter or consume news curation algorithms might have excluded. Zuckerman analogizes the potential architecture of online services with the organization of a city, arguing that one of the virtues of cities is the likelihood of surprise encounters which might be recreated online with “structured wanderings.” For example, a tweak to Facebook’s algorithm which suggests users in rural Kansas become friends with users in Accra, Ghana, or the app Serendipitor which interferes with Google Map directions to provide a meandering route home from the office. By engineering serendipity, Zuckerman argues, users can break out of algorithmically imposed filter bubbles and become truly cosmopolitan. He predicts that new serendipity tools will incorporated into most consumer technologies within the next ten years and argues that “Our first steps to designing for serendipity start with realizing that the ability to make novel connections is a new form of power.”

Morozov has critiqued Zuckerman by arguing that “the quest for engineered serendipity can become just another excuse for Facebook and Amazon to collect more information and hone their algorithms” and calls Zuckerman a xenophile hoping to use the Internet to speed up the process by which

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969 I contacted Google several times and asked about the Impermium merger and how it operated, but was simple referred back to the one page description of the merger on Google’s website or referred to the legal department where I was told its operations were a “trade secret,” but that Google would be releasing an FAQ sheet on Impermium “soon” in December 2014 when last I contacted them. However, I am working with a few colleagues from the Berkman Center to see if we can bring, or threaten, a legal suit and in that way gain access to the information or, I would prefer, making the argument that since Google indexes public documents and official government websites its records might be accessible by making a Freedom of Information claim on federal government interactions with Google. We plan to attempt both actions in fall 2015.

970 Ibid., 125.

971 Ibid., 134.

we are forced into an imaginary cosmopolitanism of xenophilia.\textsuperscript{974} As discussed in the chapter on racial slurs, xenophobia and xenophilia are both treated as psychological symptoms of racism. Zuckerman’s argument participates in the psychiatric suggestions for treatment which suggest bad thinking, racism, can be corrected by exposure therapy to the cause of the phobia. Novelty, in this case, is a point of data about users which his algorithm deploys to treat users with an encounter with someone of a different race. This is not an attempt to engineer users, but to frame their fears and enthusiasm—steering and nudging users through choice architecture rather than subjecting them to enclosures and discipline. Thaler and Sunstein propose the same kind of interventions, arguing that since no designs are neutral that authorizes the use of design for nudging without necessarily telling the subjects they nudge why they must be pushed, but Zuckerman’s intervention is different in that it is in part educational. Like the use of symbols like $\dagger\dagger\dagger\dagger$, regulating and letting the regulated know why, Zuckerman wants his serendipity algorithm to force encounters between people his data indicates are different and know that it is being done for their own good. In fact, Zuckerman argues that as users we should “take control of our technologies”\textsuperscript{975} and the first step towards taking control, and popping filter bubbles, is what he calls “cognitive tracking.”\textsuperscript{976}

Zuckerman explains cognitive tracking as a kind of consumer technology enabled self-surveillance where people record everything from how many steps they take each day and how long they spend on “junk food” websites online, to what they’re thinking about and who they’re talking to. The “Quantified Self Movement” is what Deleuze described as the “corporate spirit” whereby the old factory which “constituted individuals as a single body to the double advantage of the boss who surveyed each element within the mass and the unions who mobilized a mass resistance” is displaced by “the corporation [which] constantly presents the brashest rivalry as a healthy form of emulation, an excellent motivational force that opposes individuals against one another and runs through each dividing within each” to produce individuals.\textsuperscript{977} Yet an important need of serendipity, and of these new mechanisms of control, is surveillance—but not the Panopticon which Foucault associated with the discipline society. Chun points out the many incongruities between Bentham’s Panopticon and the Internet, for example, the “time shift” of the panoptic gaze as one which makes users inspected only when the inspector wishes to dig through their past and prevents the observed from feeling the gaze of the tower or the failure of visibility to guarantee discipline and often encourage the observed to perform against norms as Webcams pornography and five minutes on Chatroullette can demonstrate.\textsuperscript{978} Nor is the Internet a Panopticon where

\begin{footnotes}
\item[974] Morozov, \textit{To Save Everything, Click Here}, 290.
\item[975] Zuckerman, \textit{Rewire}, 152.
\item[976] Ibid.
\item[977] Deleuze, “Postscript on the Societies of Control,” 4–5.
\end{footnotes}
everyone sees everyone else, as is often argued, because most users are not “visible” to each other online and when they are it is as data or asynchronous deformed information. Instead, data about data (metadata) is used to parse and sort. This is not surveillance where one is watched, but dataveillance where the data one generates through the use of digital technologies is used make decisions or sort the distribution of subjects and make use of everything they say. This represents, I argue, a subtle shift away from surfing toward goal oriented activity which makes users more predictable. Dataveillance collects data about user behavior in order to predict user behavior. Dataveillance and serendipity are mechanisms of control which place adaptive parameters on what can be encountered, which discourses are politically eligible among the noise of “online chatter,” and which expressions count as dangerous.

Nudging Users toward Pre-Dictability

My research into digital language control agrees with Chun’s observation that “Before September 11, 2001, those seeking to censor the Internet, through public or private means, claimed without fail to be protecting children from the seamier sides of human sexuality” and that after 9/11, “the emphasis moved from bad content to bad people.” Many today still worry about what children will find online and justify the regulation of language in all media as necessary for the protection of ‘womenandchildren.’ Until now, this study of language control has focused on the growing power of non-state, mostly corporate, intermediaries shaping digital discourse. However, after 9/11 there has be a resurgence of state interest in nation-building abroad, especially in Iraq and Afghanistan after the U.S. destroyed the previous state(s) and has tried to create replacements, and domestically as the war on terror sponsors the development of new control mechanisms. One of the most significant mechanisms of cultural governance has been the rapid growth of mass surveillance and the explosion of predictive analytics designed to comb through the noise of electronic communications across the world and identify language and behaviors associated with terrorism. The first programs used to monitor mass communications to protect the nation from terrorism were the opposite of those designed to protect children from pornography, built to identifying bad keywords and filter them forward rather than filter them out. During the 1990s, William Knowles compiled a list of words known to trip early keyword detection programs, which included obvious terms like plutonium, nuclear, assassinate, and mailbomb. The list also includes terms not typically associated with nefarious activities like dictionary, freedom, and Fax—as well as several terms

979 Vaidhyanathan, The Googlization of Everything, 121; Morozov, To Save Everything, Click Here, 77.
980 Chun, Control and Freedom, 13.
981 Ibid., 255.
which might indicate other anti-normative behavior like *Porn, Sex, Pornstars, Fetish* and *redheads.*

Like the filters designed to protect children, security filters quickly became more sophisticated and more secretive.

The Defense Advanced Research Projects Agency, the same agency which sponsored the Internet, in 2002 formed the Information Awareness Office and launched the Total Information Awareness (TMA) program to “revolutionize the ability of the United States to detect, classify and identify foreign terrorists” which, though defunded in 2003, still managed to develop data mining software used in other government agencies. After the Snowden PRISM revelations, it became clear that TMA had not disappeared, but became part of the NSA, FBI, and CIA. A detailed study of PRISM is beyond the scope of this project, but what is significant in terms of controlling digital language is that the NSA had the ability to collect data directly from the nine biggest technology companies—Google, Facebook, Microsoft, Apple, Yahoo, AOL, Skype, PalTalk, and YouTube. This was possible only because over the past decade Internet companies had managed to centralize and monopolize the decentralized networks of communications and broad array of services people used online. Indeed, since the NSA documents revealing these data collection sources Google has purchased YouTube, Microsoft has purchased Skype, and AOL merged with Time Warner. Surveillance is the business model of the Internet, so it makes sense that the U.S. government would piggyback off the biggest Internet businesses if it wanted to engage in mass surveillance. Greenwald points out that surveillance of foreign heads of state is nothing new, despite the recent controversies over whether or not the NSA had tapped German chancellor Angela Merkel’s cellphone, but that mass surveillance of nearly all communications emanating from specific countries is new.

Competing reports have determined that mass surveillance has likely not foiled any significant terrorist threats—failing to detect Adam Lanza, James Holmes, and the Tsarnaev brothers’ planned attacks—but the programs seem unlikely to be discontinued anytime soon.

Chun theorizes about control and freedom as they relate to paranoia, nothing that “Automatic digital storage and networks enable a postevent traceability that buttresses ‘prevention,’ for a digital mass of information can always be minded for warning signs read in, but not ‘read’ (search terms only become self-evident after an event). Paranoia…thus becomes a way of generating keywords in advance—a human

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985 Ibid., 96.
986 Ibid., 112.
response to an inhuman mass of information that belies rational analysis.” A good example of dataveillance is used to increase user-predictability by generating keywords in advance and predicting after the event can be seen in the response of the NSA following Boston Marathon Bombings. After the Bombings, an article published in *The Atlantic* accused the NSA and FBI of missing posts on Twitter by Djohar Tsarnaev like “I will die young” two days before bombing the Boston Marathon, “stay safe” the night before, and posted a story about a victim immediately after calling it a “fake.” When it was discovered that airport security had failed to prevent Tamerlan Tsarnaev from entering the country, after Russian intelligence warned he was a “radical Islamist” and potentially dangerous, because his last named had been misspelled in an interagency security database, the House Homeland Security Committee launched an investigation into the events and compiled a report. The censored report, titled *The Road to Boston: Counterterrorism Challenges and Lessons from the Marathon Bombings*, describes the misspelling incident as a “lesson” to be learned, in much the same way Noah Webster prescribed his Speller as a remedy for bad language in the classroom, and gives a detailed history of the many “early warnings” which indicate the brothers had decided to conduct the attack, in much the same way psychiatrists find evidence for the causes of Tourette syndrome in a patient’s troubled upbringing and irrational beliefs. The evidence and reasons for the terrorist attack are found after the decision has been made.

In this case, the report found that dataveillance revealed evidence of an imminent terrorist attack and information about childhood experiences revealed evidence of terrorist intentions, supporting facts which made the Committee “concerned that officials are asserting that this attack could not have been prevented, without compelling evidence to confirm that this is the case.” Instead of questioning whether analyzing the digital emissions of users’ activities can predict terrorist attacks, the Committee finds evidence that the brothers would carry out an attack and then conclude that the attack was predictable. Just as we saw Victorian moralists and judges regulating language by linking morality with rationality, today we see what Fuller and Goffey identify as a “decision support system” which complicates Carl Schmitt’s theory of the political as the ability to distinguish between friends and

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990 Ibid., 37.
991 Fuller and Goffey, *Evil Media*, 137.
enemies\textsuperscript{992} since the reasons for a decision are found after the decision has been made and “mythologize decision making” by identifying an agent capable of making sovereign decisions.\textsuperscript{993} Here, the Committee had already assumed terrorist attacks could be predicted and so found evidence to support that assumption, but mythologized the process by creating profiles, making correlations, and compiling with would otherwise be considered circumstantial evidence. The profiling techniques used by the law enforcement and military institutions to identify threats during the Cold War are being augmented with “signature” databases which mark targets for drone strikes based upon their habits and their communicative degrees of separation, known as “hops,” from known terrorists.\textsuperscript{994} The CIA does not always know who it is killing or identify its targets before launching a strike. Just as Scalia argued that the content of a message was unimportant when determine whether or not a speech act could justify violence in \textit{R.A.V. v. St. Paul},\textsuperscript{995} the content of the potential terrorists’ conversation is irrelevant when deciding who the signature database marks for death. If innocents are killed, databases can be searched and evidence found to support the decision.\textsuperscript{996}

A decision support system is one way to manage unpredictability, but another emerging technique is to encourage users to behave more predictably and speak according to preferred lines of diction. Facebook, for example, collects data about users in order to better message them with tailored advertisements and sells the data they collect to other businesses which do the same. User data is Facebook’s product, which it can only generate by getting users to keep using. One way Facebook does this is by altering its choice architecture in ways which prevent users from leaving, curating posts which are not likely to offend users and make them leave, but also introducing functions like providing a snapshot of a posted article so users seeing the post will not have to leave Facebook in order to see what the article is about. Facebook has recently introduced the ability to buy products and suggests purchasing gifts on friend’s birthdays without having to leave the site. Similarly, Facebook sponsors “addictive” games like FarmVille and Mafia Wars, and provides API access for several other games, because they

\textsuperscript{992} Carl Schmitt, \textit{The Concept of the Political}, trans. George Schwab, Expanded (University Of Chicago Press, 2007), 27.

\textsuperscript{993} Fuller and Goffey, \textit{Evil Media}, 132–133.


\textsuperscript{996} While the number of “signature targets” is classified, the human rights group Reprieve found that 41 men were targeted by name and that, in single strike attacks where some of the men were killed, the drone strike also killed at least 1,147 people as well. The U.S. Department of State classified those killed after the strikes as “enemy combatants.” Spencer Ackerman in New York, “41 Men Targeted but 1,147 People Killed: US Drone Strikes – the Facts on the Ground,” \textit{The Guardian}, accessed March 31, 2015, http://www.theguardian.com/us-news/2014/nov/24/-sp-us-drone-strikes-kill-1147.
open users to continuous mining. The Facebook mobile phone and tablet app, and the now separate Facebook Messenger app, not only keeps mobile users open to mining, but the terms of service agreement also allows Facebook to download stored text messages, phone logs, stored contacts, lists of accounts for other services, and other data from the devices.\textsuperscript{997} The reason is, as Deleuze puts it, that “disciplinary man was a discontinuous producer” the “man of control is undulatory, in orbit, in a continuous network” and always producing\textsuperscript{998} or as Fuller and Goffey write “The\textit{ regularization} of expression, by contrast, is a broader tendency evident in practices of the organization of people and things\textit{ as} and\textit{ for} data in computational culture, following the general principle that structured data are more tractable to processing than unstructured data.”\textsuperscript{999} The intent of all these features is to provide Facebook its product, but the choice architecture Facebook has engineered also hopes to make users more predictable by framing their fears and enthusiasm, providing an outlet for “Nervousness, time wasting, irritation, the ability to draw out or to dither the moment when unwanted but obligatory activities start, to combine idleness with something partially purposive…turning lives of clickwork into a yield”\textsuperscript{1000} and nudging users towards behaviors or modes of communication Facebook can sell. Presuming that users are self-interested and rational shapes the legal and social institutions which rely upon Facebook or purchase their services. If users do not behave or express themselves in a self-interested and rational way, they can be nudged into doing so using techniques of language control, making neo-liberalism seem like the only option and monopolizing creativity. When companies like Google and Facebook are the supporters of Internet freedom, and expression is mediated through their services, the question then becomes (again following Chamber’s reading of Rancière): what is the possibility for a confrontation between the technical police order that keeps the “user” in their place and the logic of politics which asserts the fundamental equality of subjects “\textit{given} these existing discourses”?\textsuperscript{1001}

\textbf{Digital Language Control and the Possibility of Digital Politics}


\textsuperscript{998} Deleuze, “Postscript on the Societies of Control,” 5–6.

\textsuperscript{999} Fuller and Goffey,\textit{ Evil Media}, 111.

\textsuperscript{1000} Ibid., 67.

\textsuperscript{1001} Samuel A. Chambers, \textit{The Lessons of Ranciere} (Place of publication not identified: Oxford University Press, 2014), 119.
Aristotle based his theory of politics on the distinction between animals capable of speech and animals capable of only making noise. In *The Politics* he argues that Nature “has endowed man alone among the animals with the power of speech. Speech is something different from voice, which is used by them to express pain our pleasure…Speech, on the other hand, serves to indicate what is useful and what is harmful…humans alone have perception of good and evil.”\(^{1002}\) In his genealogy of morality, Nietzsche determined that the development of the “conscience” was conditioned by the need “To breed an animal with the right to make promises,”\(^{1003}\) and the “bad conscience” conditioned by feeling responsible for breaking promises. For Nietzsche, morality required that “Man himself must first of all have become calculable, regular, necessary, even in his own image of himself, if he is able to stand security for his own future… in general be able to be calculable and compute.”\(^{1004}\) Punishment was a means of creating “a memory for the human animal” the best mnemonic technique was pain.\(^{1005}\) In order to be free to make promises, the human animal had to become “master of a free will”\(^{1006}\) and the criminal deserving of “punishment because he could have acted differently.”\(^{1007}\) Similarly, in his genealogy of prisons and discipline, Foucault found “That punishment looks towards the future, and that at least one of its major functions is to prevent crime had, for centuries, been one of the current justifications of the right to punish”\(^{1008}\) and that punishment was in the 18\(^{th}\) century was dependent upon a series of calculations by the criminal—the advantages one might procure from committing a crime and the disadvantages one might prevent by committing a crime—and the judge’s calculation for how much pain/punishment would fit the crime and how much the punishment might hurt others than the criminal.\(^{1009}\)

For Foucault, the networked power-relations of discipline conditioned the possibility for escaping them because power-relations depend “on a multiplicity of points of resistance: these play the role of adversary, target, support, or handle in power relations…And it is doubtless the strategic codification of these points of resistance that makes a revolution possible, somewhat similar to the way in which the state relies on the institutional integration of power relationships.”\(^{1010}\) William Burroughs, grandson of the inventor of the Burroughs Adding Machine and the theorist who inspired Deleuze’s conception of the control society, argued that words “do not stem from the need to communicate but rather the need to

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\(^{1004}\) Ibid., 494.

\(^{1005}\) Ibid., 496–497.

\(^{1006}\) Ibid., 495.

\(^{1007}\) Ibid., 499.


\(^{1009}\) Ibid., 94–97.

control animals capable of resistance.” Burroughs, and Norbert Wiener, conceived of language as commands or what we would now call code. To explain his “scientific study of control and communication in the animal and the machine,” Wiener modified the ancient Greek words for kybernetike (or to govern) and kybernao (to steer, navigate or govern) to come up with “cybernetics.” Wiener’s science was aimed at describing self-organizing systems and designing human institutions or machines which incorporated mechanisms for feedback and learning to govern and steer society.

Deleuze’s control society is the cybernetic society, one which steers society and also governs resistance.

For Deleuze, resistance is simply incorporated into the control society and thereby diffused, especially after the collapse of communism seemed to end alternatives to capitalism. As he put it in an interview with Antonio Negri, “You ask whether control or communication societies will lead to forms of resistance that might reopen the way for a communism understood as the ‘transversal organization of free individuals.’ Maybe, I don't know. But it would be nothing to do with minorities speaking out. Maybe speech and communication have been corrupted. They’re thoroughly permeated by money—and not by accident but by their very nature.” The chapter on racial slurs examined how “minorities speaking out” has been “overcoded” by law as a matter of free speech and equal protection, matters which the judge must decide. The Internet is a channel of communication which is permeated by money, both in terms of access and in terms of its nature being “overcoded” by law and neoliberal fantasies as a self-regulating marketplace of ideas. Computers track both good and bad behavior, good and bad language, and manage resistance by suggesting options which allow one to express oneself without crashing the system (exception handling), steer resistant subjects around bad behavior (nudge), or manage the conditions of possibility for resistance (pre-diction). These systems of control make it seem as though neoliberalism is the only option or, as William Connolly recently put it, the “danger of ‘serfdom’ today…is the emergence of a regime in which a few corporate overlords monopolize creativity to sustain a bankrupt way of life…to cling to American hegemony in a world unfavorable to it…in which the ideology of freedom is winnowed to a set of consumer choices between preset options.”

Google and Facebook, for example, have been enormously successful at monopolizing Internet services and monopolizing creativity. Both

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1011 Chun, Control and Freedom, 272.
1014 Deleuze, Negotiations 1972-1990, 175.
companies regularly buy out the competition or leverage their market dominance to undermine alternative innovations, effectively “colonizing the future”\textsuperscript{1017} of digital language.

However, Deleuze also suggests that to make alternatives possible, “We’ve got to hijack speech. Creating has always been something different from communicating. The key thing may be to create vacuoles of noncommunication, circuit breakers, so we can elude control”\textsuperscript{1018} I conclude this study of language control by suggesting several methods for hijacking speech and strategies for using the presumed noncommunication of taboo language as a means of eluding, and irritating, digital language control. Rancière’s argument that Aristotle fundamentally misidentified politics as policing, or more specifically Samuel Chamber’s reading of Rancière as arguing that “There is no pre-given subject who uses language to declare a political wrong, because before the wrong, there is no subject for us to speak of and “Language can therefore no longer be thought as an object for human use; it must be understood instead as that medium through which the human political animal emerges and in which it crystalizes” also suggests some alternatives for evading digital language control. That the mnemotechnics of pain Nietzsche discussed as necessary for creating an animal capable of making promises, and the economies of pain in punishment and discipline Foucault describes, often involved cries and curses was not always the emission of noise. Often, as explored in detail in the chapters on Tourette’s syndrome and hate speech initiatives, discipline has never managed to stamp out taboo language and, as we saw, language has always in some ways been out of control. The first way we might begin to create something new is by re-examining the assertion that code is law and that its operations can be ascribed to, or blamed upon, sovereign and responsible agents.

Reading and Regulating Code

Lessig, Deibert, MacKinnon, and Morozov all argue that freedom of expression online requires that the codes which control and sort language be visible to the public. They reject the notion that algorithms can be trade secrets and decry recent trends towards making hacking, or peering into devices to see the code, illegal. Deibert, for example, argues that “Never before have we been surrounded by so much technology upon which we depend, and never before have we also known so little about how that technology actually works…[the] intimate and ongoing understanding of what’s going on beneath the surface of the systems upon which we have become so reliant in order to communicate and remain

\textsuperscript{1018} Deleuze, Negotiations 1972-1990, 175.
informed.”\textsuperscript{1019} The title of Deibert’s book on the subject, \textit{Black Code}, is meant to convey the urgency with which the securitization and commercialization of digital communications are being made opaque. Some are willing to accept that businesses can keep their software hidden as a trade secret, but suggest that trusted experts should be called in to verify that the code does what its designers say it does. Morozov, for example, argues that Google’s search algorithm be regularly audited by experts, whose signatures on non-disclosure agreements can protect it as a trade secret, but also verify that it works in the public’s best interest.\textsuperscript{1020} Similarly, MacKinnon argues that institutions governing the Internet are increasingly hidden from public scrutiny, pointing out that “Most of the world’s Internet users have never heard of ICANN, the DNS, or RIRs, [Regional Internet Registries]” despite their “claim to be representing the interests of people who have no idea that they exist, and who likely would not trust them if they were aware.”\textsuperscript{1021} In all cases, the solution to opaque code and institutions is “transparency.” In 2011, President Obama and seven other governments signed an “Open Government Declaration” and launched a series of directives designed to increase the transparency of the executive branch. In 2012, Google and Twitter began publishing “Transparency Reports”\textsuperscript{1022} which disclose the number of takedown requests made by governments, followed by Facebook and Apple in 2013, and Microsoft and Yahoo in 2014.

And yet there is no guarantee that transparency and visibility makes something intelligible or predictable. The Obama administration, while pushing for government transparency, has expanded government classification, aggressively prosecuted whistle-blowers, and even prevented reporters from revealing the names of the federal employees working on its open government initiatives.\textsuperscript{1023} Google’s first Transparency Report cited receiving 2,285 takedown requests for search engine links from governments across the globe, and 771 requests from the U.S. government. While the Report interface does not allow users to compare government takedown requests with other takedown requests during a specific period of time, in the single month of March 2013, Google reported nearly 4.5 million takedown requests made by entities alleging copyright infringement,\textsuperscript{1024} far more than governmental requests, but most news media coverage focuses only on government requests and frame the issue as a matter of governmental censorship.\textsuperscript{1025} The transparency reports from Google, Twitter, Apple, Microsoft, and Yahoo similarly separate government from copyright takedown requests, but no report discloses how

\textsuperscript{1019} Deibert, \textit{Black Code}, 6.

\textsuperscript{1020} Morozov, \textit{To Save Everything, Click Here}, 186.

\textsuperscript{1021} MacKinnon, \textit{Consent of the Networked}, 213.


\textsuperscript{1023} Morozov, \textit{To Save Everything, Click Here}, 95.

\textsuperscript{1024} “Google Transparency Report.”

these companies responded to the requests or how decisions are made about what to remove. Transparency does not guarantee accountability and, as Morozov suggests, “open government” may simply be a metaphor for “small government.” If, after all, the structures organizing political and social life were transparent, they would be invisible.

The assumption that transparency leads to visibility, perhaps another answer to post-structuralism with a return to Enlightenment principles (transparency makes the structures visible), is better understood as what Ranciè re describes as a regime of organization which encompass forms of visibility, ways of making and doing, and ways of conceptualizing these. The Google transparency shows what is important, the takedown requests from governments who would censor the web if Google was not there to protect Internet freedom. Issuing a transparency report is also a useful strategy for policing, not only because being a transparent intermediary wards off accusations of active manipulation, but because it removes the potential for contestation on the basis of incompetence. There is evidence to suggest that not even Google understands how its search algorithm works or how it will sort dissimilar languages and content of the web.

For example, searching for the term fuscia, an alternate but “correct” spelling for the color, Google shows results the results for fuschia, and includes at the top of the page the question “Did you mean: fuschia.”? Google’s help documentation for the “did you mean” function states that “Google uses spell checking software to check queries against common spellings of each word...Please note that our spell check feature is completely automated, and we cannot make manual changes to individual queries.” If we assume that common spellings mean the most common way the term appears on the Web, we would be surprised to find that the term fuscia returns 14,200,000 results whereas fuschia, Google’s preferred term, returns 14,000,000. Engineers at Google might be able to explain why its algorithm prefers fuschia over fuscia by looking at how it ranks the terms, and could undoubtedly intervene and increase the weight of fuscia, but reading the code alone is not enough for explaining why those results and not another.

Transparency, and the ethical and aesthetic regimes which creates it, holds that seeing code makes it legible and open to intervention in much the same way physicians look for physical signs of the invisible causes of uncontrollable cursing. Like mental health experts, Lessig, Deibert, MacKinnon, and Morozov look for ways to control what might be uncontrollable and, failing that, isolate the company

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1026 Morozov, To Save Everything, Click Here, 97.
running code “as the culpable agent.”\textsuperscript{1029} Just as we must reject the idea that the architecture of the Internet guarantees communications will be mediated without deformation (“net neutrality”), we must also reject the neutrality of machines as mere subjects to human goals and the clear identification of agents responsible for making decisions. Seeing code no more guarantees control over code than reading law guarantees control over law, which is why so many of the judges and lawyers examined in this project call for a return “transcendent singularity of Machiavelli’s prince”\textsuperscript{1030} to issue a final judgment on how it should be read. Understanding why a Google search for Asian woman returns more results for pornography than a search for pornography is not simply a matter of its code or the intentions of Google. In heteroglossic assemblages like the Internet, code and language is always in some ways out of control. As Fuller and Goffey point out, “When systems interact, the patterns of behavior that they exhibit, their potential for mutual misinterpretation, grow from something arising between them, a crack, a fault, or a translation failure, which then becomes a critical factor composing their subsequent internal states and mutual change.”\textsuperscript{1031} Google might be better thought of as what Jane Bennett has described as “An understanding of agency as distributive and confederate [which] thus reinvokes the need to detach ethics from moralism and to produce guides to action appropriate to a world of vital, crosscutting forces.”\textsuperscript{1032} A political contestation of digital language control might then leverage distributed agency to make visible what should not be seen, hear what should not be heard.

For example, in May 2013, former first lady of Germany Bettina Wulff sued Google for automatically completing search terms entered into the company’s German search engine that associated her name with “escort,” “prostitute,” or “past life.”\textsuperscript{1033} For years, rumors had been circulating that Wulff had worked as an escort before meeting her husband (and future president) Christian Wulff. Before Wulff, Google’s main defense had been, as explained by the company’s Northern Europe spokesperson Kay Oberbeck, that the predictions come from “algorithmically generated result of objective factors, including the popularity of the entered search terms.”\textsuperscript{1034} Google argued it was not responsible for simply displaying the mass input of users, but the German courts disagreed and made them disable the autocomplete feature for keywords related to Wulff’s name. The issue at stake with autocomplete was primarily one of Google’s responsibility for controlling digital language, and the

\textsuperscript{1031} Fuller and Goffey, \textit{Evil Media}, 31.
\textsuperscript{1032} Bennett, \textit{Vibrant Matter}, 38.
solution was to call upon institutions to better regulate Google—an attempt to control the controller by leveraging the policing logic of law. A political event, by contrast, occurred in 2010 when Internet marketing expert Brent Payne paid several assistants to repeatedly search, from a variety of locations and devices, for “Brent Payne manipulated this.” For a time, typing “Brent P” into Google autocomplete “Brent Payne manipulated this.” When Payne advertised what he had done, Google removed the autocomplete suggestion just as it had done when ordered by the court for Wulff, but Payne had disrupted Google’s control over language and made visible what had no business being seen, hijacking the distributed agency which comprises Google autocomplete suggestions. Similar hijacks have been used to promote articles or scholars on Google Scholar by submitting hundreds of nonsense and cross-linked articles to the journals Google crawls for its database, but cannot read for intelligibility or determine scholarly value. By using noncommunicational language, Google’s algorithm is confused and its distributed agency leveraged to make visible what should not be seen. Another potential exploitation is the political eligibility ascribed by the subjectivization of “users” and their tendency to make errors or use noncommunicational language.

**Errorism and Disrupting Algorithmic Policing**

There is a tendency to think that hacking requires a sophisticated knowledge of code in order to exploit a digital system. However, just as the digitization of word-processing allows users to use spellcheck without knowing how it works, the conventions of good language can be enough to hijack communication. In Syria, numerous groups made use of Twitter’s font choices which made the letter i indistinguishable from the letter l. By substituting letters they were able to create Twitter accounts and send tweets which seemed to be coming from official organizations or politicians and send agonistic messages. After someone used this method to send fake tweets from New York Times columnist Bill Keller attacking the White House in 2012, Twitter finally changed their font. This required no knowledge of code, but is a good example of hijacking the conventions of printed language with an exploit of graphic language. These spelling “hackers” subverted an official channel of communication and, for a time, hijacked the speech of the official in Syria to issue commands and disseminate information the Syrian government classified as bad. In Rancière’s terms, the Syrian font hackers

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“hackers” required the Syrian government to pause their “conflict over the existence of a common stage and over the existence and status of those present on it” with petitions to Twitter, a company in the U.S., for a change to the fonts of its entire system.

The assigned political eligibility of “users” by software engineers and technology companies, the political subjectivization of users as those who only use/consume code without seeing/understanding code, also opens the possibility for evading control. Software engineers work to limit user errors and frustration by developing “user friendly” interfaces, but also assume users are prone to errors and stupidity. The sociologist Jean Meynaud’s study of technocrats in France concludes “one of the most important components of the technician’s mentality is his belief that rational analysis and interpretation of facts are liable to bring about unanimity, at least among men of good will. The technician who believes that he has arrived at a full understanding of questions is always surprised and often grieved when he encounters opposition to his theories; inevitably, he is tempted to attribute this to ignorance or ill-will.”

The NSA recently discovered, by analyzing laptops taking from Afghanistan after 9/11 owned by Taliban members, that terrorists had been purposefully using keywords in emails known to trip spam filters like “CONSOLIDATE YOUR DEBT.” Filtering algorithms make sorting huge amounts of data easier, but using the bad language they filter out also makes it possible to evade detection and control without seeing, knowing, or understanding code. Stupidity buried in intelligence can easy translate into errors or noncommunication, which allows terrorists to evade control and hijack communications. Fuller and Goffey would describe the purposeful spam as a strategy which, “While your enemies are still trying to figure out the thinking behind your next stupid move—making themselves look a bit slow-witted in the process—you can move on. Next project. Next target. Next goal. Click, click, click. And, of course, when confronted with stupidity’s consequences, you can always point to an error.”

The response to the NSA’s discovery has been to change the words its algorithms monitor, meaning that the next “terrorists” need only choose a new set of bad words to avoid detection which will again allow them evade control for a time. If Google builds profiles for users based upon their searches, one way of creating useful errors is to increase the amount of stupid searches Google must sort. The Chrome and Firefox plugin “TrackMeNot,” for example, confounds data-profiling not by encrypting or concealment, but by

1038 Rancière, Disagreement, 26.
1041 Fuller and Goffey, Evil Media, 199.
continually querying Google with searches for a randomized list of stupid terms.\textsuperscript{1042} The version I have installed on my browser searched for “Miley Cyrus and Justin Bieber love-affair,” “What time is it in Mississippi?” and “new iPhone features” while I searched for the NSA report about spam discussed above. These stupid searches increase the amount of noise Google receives and hides my searches in plain view.

Another way to hijack user error is to leverage the collective stupidity of millions of users. In order to tell the difference between human users and computer programs designed to spam websites, computer scientist Luis von Ahn created CAPTCHA, which presents users with a challenge-response test, usually a simple mathematical operation or an image of obscured text not readable by a computer, which a user must answer or interpret to proceed. Recently, Deibert and researchers at the Citizen Lab at the University of Toronto discovered that the cybercriminal group Koobface got around CAPTCHA requirements by “crime-sourcing” the task of entering millions of CAPTCHA codes to unwitting users with malware installed on their computers. A fake popup window asking users to enter the code was used to create a database of answers which Koobface could use to create fraudulent Facebook accounts.\textsuperscript{1043} User error and stupidity allowed Koobface to make at least $2 million by selling of bits of data about users to interested parties, coopting Facebook’s primary means of revenue generation.\textsuperscript{1044} Other examples of exploiting user error and stupidity include numerous websites masquerading as Google which, when searches are entered redirect to Google and make a legitimate request in order to capture advertising revenues which would otherwise have gone to Google Inc., and other websites designed to imitate legitimate services but steal login or credit card information, techniques known as “phishing.” Hackers wanting to trick users into installing Trojans, malicious software which collects computer information and sends it over the Internet back to the hacker, sent a report to users which looked as though it had come from the security company Symantec about their own hacking groups and asking them to install the Trojan to prevent being hacked. In another example of hijacking language, one of the hackers responsible for the report used the codename handle “Google,” naming themselves after the company, making it very hard to find or track their activities.\textsuperscript{1045}

The taboo words assumed to have no communicative value can also be used to avoid language control. For example, Google has recently rolled out a new feature for search called “semantic search” which, rather than pointing at the use of entered keywords in webpages, attempts to answer user questions directly. For example, a search for “renaissance painters” will return, on the right side of the interface,

\textsuperscript{1043} Deibert, \textit{Black Code}, 136.
\textsuperscript{1044} Ibid., 137.
\textsuperscript{1045} Ibid., 146.
information about prominent renaissance painters, such as their birth and death dates, and thumbnails of famous paintings from the renaissance. Instead of using the distributed agency of the net effect, semantic search decides what is important for the users, assuming that what is most important about Leonardo DaVinci, for example, is that he died in 1519. One reason for the development of semantic search, as noted with Facebook, is the desire to keep users from leaving the Google interface where data can be collected from them as they use. Semantic search is left on by default and there are no settings users can adjust to opt out of its use. However, because SafeSearch filters out taboo words like *fuck*, a search for “*fuck Renaissance painters*” returns results for “Renaissance painters,” pointing users to the use of the terms in its database rather than display what semantic search has determined users want to know about the subject. In this case, the use of taboo language frustrates Google’s ability to control digital discourse. This may become an especially valuable hijack as search engine companies begin rolling out what they call “autonomous search,” which according to the director of Microsoft’s Bing, will operate “on your behalf—without an explicit request—without you initiating it via a query…Today the trigger is ‘keyword’ plus ‘enter.’ But tomorrow…we’ll be told what we want before we know we want it.”

This new kind of pre-dictive search will likely be as susceptible to as Google search, KnowledgeGraph, SafeSearch, Instant Search, autocomplete, and other language control technologies which ascribe fixed political eligibility to users and underestimate the ability of bad or taboo language to open vacuoles of noncommunication.

**American Cultural Governance for a New Digital Age**

In my study of digital language regulation and digital language control, I found that the legislative attempts to regulate Internet content in the late 1990s, specifically the CDA and COPA, introduced financial instruments to the Internet for identification of users and the juridical decisions to strike down these laws facilitated the overcoding of Internet expression as corporate expression circulating in the “marketplace of ideas.” These attempts to regulate, and then deregulate, the Internet also made possible the development of censorship technology which updated old techniques and justifications for language regulation, like keyword filters designed to automatically protect children from cyberporn, which used later as overt government censorship. Next, I considered how private Internet companies, mostly based in Silicon Valley, enforce a perpetually out of date “community standard” by keeping a

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1046 This worked until March 30, 2015. Now a search for “*fuck Renaissance painters*” with the SafeSearch filter on simply filters out the term “*fuck*” and resumes the semantic search, showing the same results with and without the search term “*fuck*.”

database of crawled websites and looked at the development of collaborative filtering. I argued that the representation of user “characteristics,” and their management as “dividuals,” lends itself to the establishment of a digital postdemocracy where language prohibitions have been replaced by a plethora of language choices to excite, and direct, discourse. I then looked at interventions which use dataveillance to control dividuals and manage the “choice architectures” of digital discourse to encourage users to speak more “pre-dictably.” Finally, I challenged the idea that “transparency” could be used to hold decision makers or corporate institutions as culpable for their algorithms, and presented several examples of confrontations between users and systems of language policing which exploited noncommunication and user error to, temporarily, evade digital language control.

Digital language regulation and control techniques allow the state to direct users’ discourse along state-sanctioned lines, but the state does not have a monopoly over cultural governance. The commercialization of the Internet made possible by recurring moral panics related to dangerous expressions, related to cyberporn and terrorism, has given corporations an unprecedented ability to directly and indirectly shape the political subjectivity of users. The belief that people are primarily motivated by rational self-interest, a belief promoted by social scientists explaining behavior using computational models, and the idea that horizontal networks could resist hierarchies were technologized in the hardware, software, and protocols of the Internet. I have suggested here that Silicon Valley geek culture—a mixture of neo-liberal and libertarian attitudes on freedom—helped produce self-interested and rational users who made regularized expressions computational treatments of data required. These presumptions and models have been criticized for ignoring the influence of forces like modern capitalism, which help determine why self-interest\textsuperscript{1048} is valued and neuro-scientific findings have complicated the very idea of rationality.\textsuperscript{1049} Additionally, I argued that seeing code was not sufficient for policing code, suggesting that what was more important in the proposals for “transparency” was their attempt, as in the case of uncontrollable cursing, to reduce the complexity of heterogeneous assemblages of networks, devices, and users to a company running code as “as the culpable agent.”\textsuperscript{1050} However, I wish to end this chapter by considering what a non-human or distributed agency policing the digital distribution of speaking subjects might also mean for Aristotle’s distinction between animals capable of only making noise and political animals capable of making speech.

Thus far, I have described “the algorithm” primarily as a sorting mechanism, but it is increasingly obvious that the human political animal is no longer the only animal capable of writing or being

\textsuperscript{1048} Duncan K. Foley, \textit{Unholy Trinity: Labor, Capital and Land in the New Economy} (Routledge, 2003).
\textsuperscript{1050} Butler, \textit{Excitable Speech}, 39.
addressed by writing. In March 2014, following a small earthquake in southern California, an algorithm
designed to write news articles faster than a human reporter automatically published a news story in the
Los Angeles Times less than 20 minutes after the quake registered on U.S. Geological Survey
instruments. In 2012, a marketing professor patented a system for algorithmically compiling data into
book form and used that algorithm to write, and sell on Amazon, over 800,000 books. Also in 2012,
“bot” Internet traffic exceeded human Internet traffic. The company Narrative Science has also
developed a book and article writing algorithm call “Quill” and allows anyone to purchase a subscription
to their automatic writer. There has been speculation that Jeff Bezos, the founder of Amazon, plans to
use Quill to write for his newly acquired newspaper, The Washington Post, and one reason devices are
being built with a front-facing camera is to track eye movements of readers. It is not hard to imagine,
as Morozov has done, that Amazon might combine these technologies and rewrite books as users read
them—using the front-facing camera to monitor eye movements and modifying the text to sustain the
readers interest. Morozov fears this will lead to an end of reading publics, and rightly so, but these
developments also open new opportunities for non-human to engage in their own confrontations with the
logic of policing, following Rancière, asserting their own fundamental equality to human speaking or
writing beings. Today there are numerous agents and forces participating in language regulation. While
the dictionary-writer, the moralist, the judge, the mental health expert, the corporation, and the algorithm
all participate in determining whose expressions count as discourse and which expressions can be
discounted as noise, each also helps condition the possibility for alternative counts, making heard what
had no business being heard, and seeding political “conflict over the existence of a common stage and
over the existence and status of those present on it.” Next I present my final conclusions to this

1051 Gregory Ferenstein, “An Algorithm Wrote The LA Times Story About The City’s Earthquake Aftershock Today,”
about-the-citys-earthquake-aftershock-today/.

1052 Grant Bunner and 2012 at 2:29 Pm, “Programmer Creates 800,000 Books Algorithmically, Starts Selling Them
on Amazon,” ExtremeTech, accessed March 31, 2015, http://www.extremetech.com/extreme/143382-
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1053 Alexis C. Madrigal, “Welcome to the Internet of Thingies: 61.5% of Web Traffic Is Not Human,” The Atlantic,
thingies-615-of-web-traffic-is-not-human/282309/.


almost-took-over-the-washington-post/.

1056 Nate Hoffelder, “Why the Amazon Smartphone Might Need 6 Cameras, Part Two,” Ink, Bits, & Pixels, accessed
part-two/.

1057 Morozov, To Save Everything, Click Here, 192.

1058 Rancière, Disagreement, 26.
genealogy of taboo language and American cultural governance, and provide a few indications for future research.
Conclusion

The urge to shout filthy words at the top of his voice was as strong as ever.

— George Orwell, Nineteen-Eighty Four\textsuperscript{1059}

This project set out to explore how American cultural governance initiatives, aimed at developing and maintaining an American national culture, have used techniques to regulate language and police what can be said, written, or discussed. I used Rancière’s theory of policing and politics, which understands policing to be “an order of bodies that defines the allocation of ways of doing, ways of being, and ways of saying…it is an order of the visible and the sayable…that this speech is understood as discourse and another as noise”\textsuperscript{1060} and politics is a rare event which breaks with order or “whatever shifts a body from the place assigned to it or changes a place’s destination. It makes visible what had no business being seen, and makes heard a discourse where once there was only noise.”\textsuperscript{1061} I took taboo language as the vehicle through which to approach my study of American cultural governance because its use has excited exaggerated institutional responses directed at regulating its use and the people who use it. This project began by unsettling the dominant questions of the literature on taboo language: “What is taboo language?” and “What gives taboo language its power?” by asking instead: Under what conditions does taboo language become a political problem or a threat to “the American nation”? and How are different conceptions of what gives taboo language its power in the U.S. used to authorize institutional interventions into that language?

Project Synopsis

To answer these questions, I examined four domains of discourse and interventions which historicize the use of language regulation in the United States as a tool of American cultural governance

\textsuperscript{1059} George Orwell and Erich Fromm, 1984 (Charlotte Hall, MD: Signet Classic, 1950), 72.
\textsuperscript{1060} Jacques Rancière, Disagreement: Politics And Philosophy, 1st ed. (University of Minnesota Press, 2004), 29.
\textsuperscript{1061} Ibid., 30.
using genealogical methods and critical discourse analysis (CDA) methods. These four domains were print-capitalism, juridical discourse, medical discourse, and technical discourse. The first chapter studied the relationship between graphic print language and the development of “bad language,” through the regularization of texts with writing technologies and the interventions made by Noah Webster into the print-capital markets of the U.S. to create a distinctly American nation held together by a common language. The first chapter also examined the creation of Victorian language prohibitions and the invention of grawlixes like @&%#, which I discovered functioned to record the fact of censorship and signal to the reader the reasons for that censorship, and with the example of Webster’s bowdlerized Bible, argued that these interventions tentatively imagined a homogenous shared American morality.

The second and third chapters examined juridical attempts to regulate obscenity and hate speech. I found legislators and judges have been very interested in regulating obscenity in comedy performances especially. By subjecting several landmark cases, especially the famous FCC v. Pacifica Foundation and The People v. Lenny Bruce, using CDA I found that judges have determined what constitutes obscenity by coding their own affective responses as universal. I argued that judges have imagined “community standards” and vulnerable populations (especially women and children) in order to justify the regulation of obscenity by law or institutions like the Federal Communications Commission. By using CDA on several cases in which a hate speech argument has been brought to a judge for adjudication, I found that judges have similarly imagined vulnerable populations in need of protection, but rather than regulate content (as was the case with obscenity) I found that judges have tried to regulate the conditions under which a racial slur can excite violence or cause injury. I also subjected the arguments in favor of hate speech regulation, namely those made by the authors of Words that Wound, and the taboo language literature dealing with racial slurs to CDA. I discovered that juridical regulations of racial slurs have reduced racism to a scene between individuals, rather than institutionalized racism of the racial state, excite a discourse about the “wrongs” of racism using state-sanctioned discourses of “rights” to free speech and equal protection” as a project of American multi-cultural governance. I also found that etymological explanations for what gives taboo language its power have tended to ignore the “privileged” topologies which decide what is worth recording and archiving and that explanations based on mischaracterizations of racial “characteristics” have ignored the processes by which people are ascribed

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1065 FCC v. Pacifica Foundation, 438 US 726 (Supreme Court 1978).
characteristics. I concluded with a political theory of what gives racial slurs their power grounded in Rancière’s theory of “political subjectivization.”

The fourth chapter examined the medicalization of uncontrollable cursing. Deploying CDA methods to clinical reports and medical treatment plans, I discovered that physicians have viewed their patients as essentially re-writable media. I also found that medical writings made by physicians describe their patients according to the novel genre’s conventions, imagining them as literary fictions, and that how physicians wrote about their patients influenced the treatments they developed. After the invention of the phonograph, I found that Freud theorized about mental illness as a product of Victorian language prohibition and therefore prescribed free speech as the cure. Resisting the psychoanalytic techniques of European psychoanalysts in favor of drugs I found that chemicals have become a technique of American cultural governance.

The fifth and final chapter considered the extent to which previous techniques of language regulation have been “technologized” for deployment in regulating digital language. I found that legislative and juridical attempts keep children safe online conditioned the development of digital language filters and surveillance of data, “dataveillance,” and the overcoding of free expression using corporate services condition the possibility for “Internet freedom.” By subjecting technical documentation and testing the function of filters, I found that American cultural governance is being augmented with techniques used to steer users way from taboo or undesirable discourses by managing the “choice architectures” through which users communicate. I also found that terrorism became a “national threat,” systems to detect “dangerous” language and parse collected data have served to encourage a new kind of “pre-dictability” of user language. I also reviewed several successful examples of “hijacking” speech or the use of noncommunicational language to evade what I called “digital language control,” though I concluded more might be gained by leveraging the “distributed agency” of digital networks and suggested that non-human digital agents would soon be confronting the historical exercise of power which assigns speaking roles and determines whose expressions count as politically eligible.

Specific Findings and Contributions

In the introduction to this project, I describe several contributions this study has made both to understanding American cultural governance and the political gaps in the literature on taboo language. I will summarize those findings and then give more general findings from the project as a whole. The findings and contributions specific to the literature on taboo language and the study of cultural governance are:

- Censorship almost always produces discourse.
- “Bad language” was a product of the rising middle class in England attempting to imitate their social superiors.
- Webster intervened in U.S. print-capitalism with copyright and his pedagogical texts.
- Webster tried to create a common language to hold the American nation together by regularized and Americanized writing to produce a homogenous American national culture.
- Victorian language prohibitions invented graphical characters, grawlixes, to record the fact of censorship and also morally educate readers, beginning what would later become the “womenandchildren” justification for many language regulation initiatives.
- “Obscenity” does not name a thing, but an argument which when made before a judge is a plea for the judge to overcode alternative understandings for what might constitute obscenity using juris-diction.
- Judges adjudicating an obscenity argument for comedy monologues have read graphic transcriptions of speech and subjected that text to scrutiny (often ignoring obvious counter-scripts such as audience reactions). Judges also restage comedic events stripped of the original context in which they were performed.
- Judges adjudicating obscenity separate content and medium of expressions, and regulate the content. They do this by measuring their own affective response to the content and then ascribed that obscene politics of aesthetics to the “average person” or “community standard.”
- Judges adjudicating hate speech separate content and medium of expressions, and regulate the medium. They do this by imagining different conditions under which racial slurs might provoke violence or injury and then attempt to regulate those conditions, managing the “total speech situation” by racializing subjects, a form of institutionalized racism.
- Hate speech arguments often reduce racism to a scene between individual citizens capable of injuring each other with speech and requires that the injuries or “wrongs” of racism be expressed as linguistic injure using state-sanctioned discourses of “rights” to free speech and equal protection.
- Part of the injury of racial slurs is the political subjectivization of racialized subjects.
• Physicians attempting to control uncontrollable cursing have described their patients as essentially re-writable media, making the patient’s malleability sometimes the cause of their illness and more often the point of entry for attempts to write on that media using “moral treatments,” animal magnetism, hypnosis, psychoanalysis, and chemicals.

• Physicians describing patients who curse uncontrollably have constructed their patients as “literary fictions” according to the conventions of novel writing, and very often use characters from novels to describe the disorder and prescribe treatments.

• Freud theorized about mental illness as a produce of Victorian language prohibitions and therefore saw free speech as the solution, using the new technology of the phonograph to record a patient’s expressions and sort out the discourse or “meaning” later.

• The legislative and judicial attempts to protect children from “harmful content” on the Internet conditioned the development of digital language filters and digital surveillance. They also overcoded the Internet as a “marketplace of ideas” enabling the formulation of free expression through corporate intermediaries as “Internet freedom.”

• Unlike Victorian language prohibition, technical forms of language regulation are not concerned with the morality of users, and unlike judges adjudicating hate speech and mental health experts regulating and individual’s cursing, technical interventions are increasingly directed at managing the conditions under which expressions can be made (pre-speech) and nudge users towards speaking pre-dictably.

General Findings and Contributions

Cultural Governance, Like Culture, Is Never Complete

Shapiro points out that “The nation-state is scripted—in official documents histories, and journalistic commentaries, among other texts—in ways that impose coherence on what is instead a series of fragmentary and arbitrary conditions of historical assemblage.”

My study of cultural governance and taboo language concurs with Shapiro, but adds that the processes by which the nation-state is scripted also change. I found that the interventions into print-capitalism proposed by Webster were easier to study because he also considered print-capitalism a useful point of intervention for scripting the nation-state. However, my study of racial slurs revealed that the homogenous nation which Webster was busy trying to

1068 Michael J. Shapiro, Methods and Nations: Cultural Governance and the Indigenous Subject, New edition (Routledge, 2003), 49.
build is now more concerned with producing a nation(s)-state and is better described as multi-cultural governance. Similarly, I found that the medicalization of uncontrollable cursing has contributed to the development of drugs as a form of American cultural governance which spread the “system repertoire” of symptoms and treatments using drug-capitalism. American cultural governance then changes, and incorporates new techniques, as the nation-building project continues.

Censorship Produces Discourse

In The History of Sexuality Vol.1, Foucault finds that Victorian language prohibitions produce, and even excite, a discourse about sex which is both euphemistic and itself sexually stimulating.\textsuperscript{1069} Similarly, Judith Butler found in her study of hate speech, Excitable Speech, that “The regulation of the term is thus no simple act of censorship or silencing; on the contrary, the regulation redoubles the term it seeks to constrain...The term not only appears in the regulation as that discourse to be regulated, but reappears in the public debate over its fairness and value.”\textsuperscript{1070} My research reveals a similar productive capacity of censorship. The legal reasoning for finding Lenny Bruce guilty of obscenity, The Meece Report, the Parent Television Council reports online, and even the book Words that Wound\textsuperscript{1071} all reproduce the terms they find to be, in one way or another as Carlin described them, “always bad.” However, I also discovered that judges and legislators seem, as Foucault described, to get something out of reproducing the terms they argue are so offensive.\textsuperscript{1072} That thrill may be in part sexual or psychological, but I also find that it is part of the exercise of power. The judge who reproduces the words they hope to regulate reserves those words for their use and reinvigorates their exercise of juris-diction by repeating those words, over and over, as a reminder about who is allowed to use them. The Chief Justice presiding over Bruce’s New York trial, John Murtagh for example, argued that Bruce’s monologue “appealed to the prurient interest.”\textsuperscript{1073} We might, I think accurately, re-read that statement as “Bruce appealed to my prurient interest, but that interest is only for me, so I will refer to it as ‘the’ prurient interest and regulate it.” Reading Murtagh’s decision and unpublished articles on the trial, one can see

\textsuperscript{1070} Judith Butler, Excitable Speech: A Politics of the Performative (New York, NY: Routledge, 1997), 104.
\textsuperscript{1072} It is hard to condemn them on this point, especially considering that I use the terms repeatedly throughout this project and must admit that, on occasion, it is fun to use forbidden language in academic performances if for nothing more than their shock value.
how very much Murtagh enjoyed reproducing the forbidden words. There are pages of drafts in which little else is written but lists of terms which were “patently offensive.”

Censorship Directs Discourse

In addition to exciting reproductions, language prohibitions also produce a discourse which can be directed or used towards some end, such as nation-building. The sudden appearance of grawlixes in Victorian America excited a discourse about euphemisms, but the simple fact that no one named these strange symbols like @ &%# until Mort Walker in 1964 began using the term “for my own amusement,”\(^\text{1074}\) also demonstrates that censorship can be effective in preventing a discourse. Applying Rancière’s theory of politics and policing, a confrontation sometimes requires that the terms of the confrontation be named before that confrontation can take place. Similarly, because describing the injury of racial slurs must use a “language that conveys this experience is in no way specific to it,”\(^\text{1075}\) it can be difficult to name the “wrong” of racism and so one must rely upon metaphor, similes, and thought experiments in order to confront the policing of what has no language proper to it. Describing the ways in which digital technologies can direct a discourse, which is not exactly censorship and is not exactly forced, was a similar challenge I had to face when describing the “wrongs” of digital policing. That much of digital language policing involves offering a glut of alternative terms, rather than prohibiting certain expressions, only makes it more difficult to describe the ways in which coercive ergonomics\(^\text{1076}\) shapes what can be said and limits, or seems to make impossible, the declaration of a miscount.

Etymologies and the Search for Word Origins Privileges Hegemony

One unexpected discovery this project made was the extent to which etymologies depend upon the selection and preservation of writing, and the extent to which the literature on taboo language has not taken this into account when determining, for example, that “Nigger is derived from the latin word for the color black, niger,” and the argument that nigger “did not originate as a slur but took on a derogatory

\(^{1074}\) No one bothered to name these graphic symbols until 1964 when Mort Walker began using the term “for my own amusement” and the name caught on. See Mort Walker, *The Lexicon of Comicon* (Lincoln, Neb.: iUniverse, 2000), 3.


\(^{1076}\) Still a problematic term considering that what I am describing is not exactly coercive or ergonomic either, but it is as close as I am able to get.
connotation over time”\textsuperscript{1077} are both common in the literature on racial slurs. However, I found that these accounts all depend upon texts written by white Americans, whose historical exercise of power over what can be written and preserved continues to exercise its hegemony over the discourse today. Instead of these apolitical accounts for what gives slurs their power, I argued instead that a better account is the “political subjectivization” of racialized subjects and the policing of discourse which requires the “wrongs” of racism be addressed as linguistic assaults. Given how often etymologies appear in the literature on taboo language, usually in the first paragraph of texts, more attention needs to be paid to the practices which make word histories possible; the selection, storage, preservation, and accessibility of written texts. Whenever possible, I have refused to use etymologies in this project without being attentive to this selection process and argue that we should be suspicious of explanations for the power of specific words based on their history alone. For taboo language especially, Jameson is correct to assert that “at any moment in the history of the language, one meaning alone exists, the current one.”\textsuperscript{1078}

**Indications for Future Research**

My study of taboo language and American cultural governance indicates several potential future research projects, but perhaps the one this project most strongly indicated is the relationship between technology and political thought. The debate on digital technologies has raged in many scholarly fields, but much of the existing political studies of digital technologies have focused on the ontological and ethical implications of their use.\textsuperscript{1079} Despite much excellent work on digital technology and political thought, scholars examining digital politics have yet to adequately account for how the contemporary translation of text, sound, and video into the 1s and 0s of digital media shape how people think about politics. A study of “digital political thought” could do for digital media what visual media scholars have done for text and film, showing how digital technologies have influenced the possibility for new kinds of political thought. Beginning from the position that political “thought” is as much about how technologies think as it is what they think about, the project could critical discourse analysis and visual studies techniques to Google Search, Facebook, and iOS handsets in order to determine how thinking is formed or deformed through popular interfaces. There is also an urgency to this research as more of discourse becomes electronic and the channels of communication become monopolized by a handful of intermediaries. This work would contribute to the burgeoning literature on digital politics.

\textsuperscript{1077} Kennedy, *Nigger*, 4–5.
\textsuperscript{1078} Shapiro, *Language and Politics*, 170.
My research indicates there is also more work to be done on expressions made by non-human agents, technological and chemical, and how their expressions are or could be counted as politically eligible. Mental health experts have, for example, largely ignored the “voice” of the disorder or have only been interested in what it says regarding the patient’s desires or fears. However, the voice of a tic further complicates Aristotle’s arguments about political activity being only the purview of the human animal. A project on the voice of the cursing brain would contribute to contemporary debates of new materialism and agency, especially “distributed agency” since the voice of the cursing brain does not quite fit into the models of “non-human agency” which political theorists like Jane Bennett have been creating.

Finally, my research indicates the need for more work on the use of taboo in cultural governance. A similar study to the one made here on taboo language could be made regarding, for example, the use of pornography as a tool of nation-building or institutional regulations of pornography as a tool of nation-building. Either would both be fruitful avenues of research if this study of obscene language is any indication. I suspect a similar obscene politics of aesthetics is at work in juridical discourse, but the medicalization of pornography addiction and the print-capitalism of pornography are two corollary avenues of research this project has undertaken. Lenny Bruce’s biographer wrote that after hearing Murtagh’s explanation for how Bruce had violated “community standards,” Bruce asked “What’s wrong with appealing to the prurient interest?” That is a question with no final answer, but attempts to answer it would be worth studying.

There is plenty of research yet to be done on American cultural governance and on taboo language. And there’s no law against studying the politics of taboo language. Not yet, anyway. Perhaps it would have been better to answer the IT supervisor’s question with which I began this dissertation, “Why would anyone study that?!” would have been to repeat a statement made by the Irish comedian Tommy Tiernan explaining to an American audience why he needs to swear—because “*Fuck* is my chisel.”


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