

# Essay

## When Bad Speech Does Good

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Defenses of offensive speech typically include a distancing disclaimer, highlighting the separation between the person offering the defense and the offensive content itself.<sup>1</sup> Consider, for example, the well-worn quotation widely misattributed to Voltaire: “I disagree with what you say, but I will defend to the death your right to say it.”<sup>2</sup> In this view, it is the principle, not the substance, of the speech that deserves respect. This view may be grounded in the belief, or some combination of beliefs, that one person’s “bad” speech is another person’s “good” speech;<sup>3</sup> that even avowedly bad speech helps produce, or at least sharpen, good speech;<sup>4</sup> that because the line between bad and good speech is a difficult one to draw, censorship is likely to stifle or chill good speech as well as bad speech;<sup>5</sup> and/or that even if lines

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1. See generally ANTHONY LEWIS, *FREEDOM FOR THE THOUGHT WE HATE: A BIOGRAPHY OF THE FIRST AMENDMENT* (2007) (discussing First Amendment protections of offensive speech). See also Justice Scalia’s denouncement of the expressive act protected by the First Amendment in *R.A.V. v. City of St. Paul*: “Let there be no mistake about our belief that burning a cross in someone’s front yard is reprehensible.” *R.A.V. v. City of St. Paul*, 505 U.S. 377, 396 (1992).

2. The phrase was in fact authored by Evelyn Beatrice Hall, who wrote under the pseudonym Stephen G. Tallentyre, summarizing Voltaire’s views in her own words. EVELYN BEATRICE HALL, *THE FRIENDS OF VOLTAIRE* 199 (1906).

3. Or, as Justice Harlan put it in *Cohen v. California*: “[O]ne man’s vulgarity is another man’s lyric.” *Cohen v. California*, 403 U.S. 15, 25 (1971).

4. See JOHN STUART MILL, *ON LIBERTY* 37–38 (2d ed. 1859) (“Complete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for purposes of action; and on no other terms can a being with human faculties have any rational assurance of being right.”).

5. “[L]ow value speech may itself have no First Amendment value, but regulations of such speech may have spillover or chilling effects on speech with important First Amendment value. The threat of liability for false statements of fact, for example, may chill speakers from making even true statements.” Geoffrey R. Stone, *Free Speech in the Twenty-First Century: Ten Lessons from the Twentieth Century*, 36 PEPP. L. REV. 273, 285 (2009).

between good and bad speech can be drawn in a non-arbitrary fashion, the government is rarely in the best position to do so.<sup>6</sup>

These are forceful and, in some cases, compelling arguments for protecting bad speech. What they are not—often emphatically not—are defenses of what is bad about bad speech. Those who defend bad speech do not celebrate bad speech in all of its offensive, low-value, moronic glory. Instead, they defend an abstract mechanism of unrestrained communication that necessarily—and even regrettably—produces some bad speech.

In the following, by contrast, I would like to make the case for bad speech. In limited circumstances, some forms of bad speech—and by bad speech I mean crude, mindless, wide-ranging, vicious speech: the kind of speech epitomized in YouTube comments<sup>7</sup> and on the /b/ board of 4chan.org<sup>8</sup>—can do a world of good.

The benefit of bad speech does not lie in the possibility, as an academic exercise, to hammer bad speech into a virtuous shape; the bad speech I address here is toxic and irredeemable. Nor does its benefit derive from the way bad speech encourages the exploration of truth or the investigation of received wisdom; it is the sort of bad speech that communicates nothing of substance to public discourse. Indeed, this

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6. “What [the First Amendment] means, in effect, is that in no case may the majority conscript the power of government to suppress the advocacy of an idea because the majority believes the idea to be false or unwise or wrongheaded or dangerous and does not trust other citizens to make the ‘right’ decisions about such views in the political process. This is the prime directive of the First Amendment.” Geoffrey R. Stone, *American Booksellers Association v. Hudnut: The Government Must Leave to the People the Evaluation of Ideas*, 77 U. CHI. L. REV. 1219, 1227 (2010); see also *Am. Booksellers Ass’n v. Hudnut*, 771 F.2d 323, 330 (7th Cir. 1985) (“Racial bigotry, anti-semitism, violence on television, reporters’ biases—these and many more influence the culture and shape our socialization. None is directly answerable by more speech, unless that speech too finds its place in the popular culture. Yet all is protected as speech, however insidious. Any other answer leaves the government in control of all of the institutions of culture, the great censor and director of which thoughts are good for us.”).

7. One commentator likens the experience of reading YouTube comments to “reading the text messages between a 13-year-old girl and a klansman.” *YouTube Comments: The Ultimate Proof of Human Idiocy*, YOUSUCKATWEBSITES (Aug. 11, 2008), <http://yousuckatwebsites.com/uncategorized/youtube-comments-the-ultimate-proof-of-human-idiocy>.

8. 4chan.org is “an image board, a type of online message forum that encourages users to post both images and text, and its users now contribute more than a million messages a day, their content tending in the aggregate toward a unique mix of humor, pornography, offensiveness, and, at times, borderline legality.” Julian Dibbell, *Radical Opacity*, TECH. REV., Sept.–Oct. 2010, available at <http://www.technologyreview.com/web/25997/>. The /b/ board is 4chan’s “random” board, of which *New York Times* writer Matthias Schwartz writes: “Measured in terms of depravity, insularity and traffic-driven turnover, the culture of /b/ has little precedent. /b/ reads like the inside of a high-school bathroom stall, or an obscene telephone party line, or a blog with no posts and all comments filled with slang that you are too old to understand.” Matthias Schwartz, *The Trolls Among Us*, N.Y. TIMES MAG., Aug. 3, 2008, at MM24, available at <http://www.nytimes.com/2008/08/03/magazine/03trolls-t.html>.

kind of bad speech coarsens and trivializes public discourse. Nor do I argue, as others have,<sup>9</sup> that bad speech is beneficial based on a theory of substitution—i.e., that the spewing of hateful speech provides a safe outlet for what might otherwise take on a more destructive form.

Rather, I argue that bad speech is valuable precisely because its sheer volume and mindlessness dilutes the possibility of meaningful, focused communication. While this “dilution effect” is often regrettable, e.g. with regard to socially beneficial communication, bad speech also has the potential to dilute destructive speech, limiting its impact and its effectiveness.

To understand this claim, it is helpful to think of bad speech in terms of a spectrum. At one end of the spectrum, bad speech is random, unfocused, and mindless—let us call this *unfocused bad speech*. An example of unfocused bad speech would be a person shouting obscenities at no one in particular on a public street. At the other end, bad speech is precise, focused, and deliberate—let us call this *focused bad speech*. An example of focused bad speech would be someone shouting to an angry crowd that it should attack a particular individual disliked by that crowd.<sup>10</sup> When unfocused bad speech reaches a certain volume, it has the capacity to drown out focused bad speech. In other words, “bad” speech can weaken “worse” speech.

Three main characteristics distinguish unfocused from focused bad speech. Unfocused bad speech is (1) declaratory, (2) general, and (3) intended to aggravate its listeners. Focused bad speech, by contrast, is (1) imperative, (2) specific, and (3) intended to aggregate its listeners. These characteristics can be further detailed as follows:

(1) Declaratory vs. Imperative. Unfocused bad speech makes declarations, that is, observational or descriptive statements (e.g., “Lol even some of the black students are SAVAGES, well it seems that only about 10% of black people are civilized.”<sup>11</sup>), as opposed to issuing imperatives, that is, encouraging some action beyond speaking

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9. This claim is sometimes made with regard to pornography and sexual violence. See, e.g., NADINE STROSSEN, *DEFENDING PORNOGRAPHY: FREE SPEECH, SEX, AND THE FIGHT FOR WOMEN’S RIGHTS* 164 (1995) (“To the extent that erotic publications and videos offer an alternative sexual outlet for people who otherwise would be driven to engage in psychologically or physically risky sexual relations, they serve a positive public health function.”).

10. Cf. *Wisconsin v. Mitchell*, 508 U.S. 476 (1993) (holding that First Amendment rights were not violated by the application of a penalty-enhancement sentencing provision where a man directed and encouraged a number of young black men and boys to attack a fourteen-year-old white boy solely on the basis of his race).

11. LT0WnWaRi0, Comment to *Black Students Attack White Man For Eating Dinner With Black Man*, YOUTUBE (Jan. 10, 2011), <http://www.youtube.com/comment?lc=YezomniCIQRwD4QCP0yTN0zqNnxclk5vTuSnPocC1KY>.

(e.g., “The cause of the world’s misfortune, however, will be forever eliminated only when Jewry in its entirety is destroyed.”<sup>12</sup>).

(2) General vs. Specific. Unfocused bad speech addresses sweeping, varied, or poorly-defined groups (e.g., “f—k jews, f—k arabs, f—k queers. the only good people are christians, whites, mexicans, blacks, and asians. everyone else can die.”<sup>13</sup>). Focused bad speech singles out a particular individual or clearly defined group, especially a minority group (e.g., message board posts that attack named individuals<sup>14</sup>).

(3) Aggravating v. Aggregating. Unfocused bad speech seeks to cause offense without attempting to persuade (e.g., simply writing the word “n—ger” hundreds of times in a message post<sup>15</sup>), while focused bad speech seeks to gain supporters (e.g., a viral fraternity email referring to women as “targets [who] aren’t actual people like us men,” whose author expressed the hope that “ALL of our brothers will follow this creed with pride and distinction.”<sup>16</sup>).

Unfocused bad speech—that is, speech that is declaratory, general, and aggravating—is the least dangerous form of bad speech. Its net effects are distraction, indifference, and the diffusion of hostility. By contrast, focused bad speech—that is, speech that is imperative, specific, and aggregating—is the most dangerous and serious form of bad speech, the kind most likely to lead to violence.

The notorious Westboro Baptist Church (“WBC”) provides a textbook example of unfocused bad speech.<sup>17</sup> Its slogans and protests are largely declaratory: “God Hates Fags,” “Thank God for 9/11,” “God Hates Jews.”<sup>18</sup> Its putative primary target, homosexuality, is specific, but this focus is obscured by the WBC’s highly publicized attacks on many other groups, including the U.S. military, Jews, and the victims of terrorist attacks. These attacks on other groups make the WBC’s target

12. Julius Streicher, *Bolshevism and Synagogue*, DER STÜRMER, Sept. 1941, available at <http://www.calvin.edu/academic/cas/gpa/ds10.htm>.

13. deathdreamer1610, Comment to *Mexicans, Jews, and Fags; OH MY !!!*, YOUTUBE (Dec. 2, 2007), [http://www.youtube.com/comment?lc=05jsnZ59I\\_HIESjCDdXiXIVhhXQogKB8ZLcJvMxJKe8](http://www.youtube.com/comment?lc=05jsnZ59I_HIESjCDdXiXIVhhXQogKB8ZLcJvMxJKe8).

14. See Mary Anne Franks, *Unwilling Avatars: Idealism and Discrimination in Cyberspace*, 20 COLUM. J. GENDER & L. 224, 227 (2011) (detailing such posts on the site AutoAdmit.com).

15. See, e.g., Herman Coon, AUTOADMIT (Dec. 23, 2010, 11:15 PM), [http://autoadmit.com/thread.php?thread\\_id=1516789&mc=3&forum\\_id=5](http://autoadmit.com/thread.php?thread_id=1516789&mc=3&forum_id=5).

16. See Margaret Hartmann, *Textbook Stupidity: Frat Email Explains Women are “Targets,” Not “Actual People.”* JEZEBEL (Mar. 8, 2011, 9:34 PM), <http://jezebel.com/5779905/usc-frat-guys-email-explains-women-are-targets-not-actual-people-like-us-men> (reporting on an email sent out by a fraternity member with racist, sexist, and degrading comments).

17. For a discussion of the Westboro Baptist Church and its hate speech, see Mary Anne Franks, *For the Love of Hate: Why We Have Little to Fear from the Westboro Baptist Church*, CONCURRING OPINIONS (Mar. 8, 2011, 6:38 AM), <http://www.concurringopinions.com/archives/2011/03/for-the-love-of-hate-why-we-have-little-to-fear-from-the-westboro-baptist-church.html>.

18. GODHATESFAGS, <http://godhatesfags.com/> (last visited Dec. 14, 2011).

more general than specific.<sup>19</sup> Finally, the WBC is driven by the need to aggravate, not to aggregate—the Church focuses on inspiring hatred rather than on gaining new followers. In an August 2010 interview, Margie Phelps, the daughter of Westboro’s founder Fred Phelps and the lawyer who argued the Church’s side before the Supreme Court in *Snyder v. Phelps*, was asked how it felt “to be so disliked and hated.”<sup>20</sup> She responded:

Well, I love that question. And if you knew the words of Christ like a professing Christian should, you would know what a great token of salvation it is, because as the Scripture says, “Marvel not when the world shall hate you,” and they hated me. Do you think the servant is greater than the master? I love that they hate it. I can hardly believe it.<sup>21</sup>

The Westboro members have no interest in converting the masses—they see themselves as prophets, in an Old Testament, bloody-vengeance, apocalyptic sense. They have no visible supporters outside of their own community and seem intent on keeping it that way. In the same interview, which occurred before *Snyder v. Phelps* was decided, Phelps made a prediction:

Let me tell you where this is headed. The U.S. Supreme Court is going to rule in our favor. This nation is going to rise up in such a rage, such a mutinous rage, it will become necessary for us to be expelled from this land. And we will be. And when that happens, it’s all over for this country.<sup>22</sup>

The Phelps clan is committed to maintaining its outsider status and expresses no interest in persuading others of the correctness of its views. In fact, it seems to be content to preemptively alienate any potential supporters it might have. One is hard pressed to find a group more universally hated across the ideological spectrum than the WBC. Vocal critics of the WBC include Bill O’Reilly,<sup>23</sup> Sarah Palin,<sup>24</sup>

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19. See *id.* (professing its hate for other groups as well, including Catholic priests and Muslims).

20. John W. Whitehead, “*God Hates Fags!*” *Is it Free Speech?—An Interview with Margie Phelps*, AQUILA REP. (Aug. 10, 2010), [http://theaquilareport.com/index.php?option=com\\_content&view=article&id=2750:god-hates-fags-is-it-free-speech-an-interview-with-margie-phelps-&catid=79:commentary&Itemid=137](http://theaquilareport.com/index.php?option=com_content&view=article&id=2750:god-hates-fags-is-it-free-speech-an-interview-with-margie-phelps-&catid=79:commentary&Itemid=137).

21. *Id.*

22. *Id.*

23. See *O’Reilly Slams Westboro Baptist Church*, ADVOCATE.COM (Mar. 3, 2011, 10:00 AM), [http://www.advocate.com/News/Daily\\_News/2011/03/03/Oreilly\\_Slams\\_Westboro\\_Baptist\\_Church/](http://www.advocate.com/News/Daily_News/2011/03/03/Oreilly_Slams_Westboro_Baptist_Church/) (calling WBC members “vile idiots who are happy our soldiers are coming home dead”).

24. See @SarahPalinUSA, TWITTER (Mar. 2, 2011), <http://twitter.com/#!/SarahPalinUSA/status/43004543126093824> (“Common sense & decency absent as wacko ‘church’ allowed hate msgs spewed@ soldiers’ funerals but we can’t invoke God’s name in public square.”).

Michael Moore,<sup>25</sup> and Jon Stewart.<sup>26</sup> Numerous Christian organizations have condemned the Church,<sup>27</sup> as has the Ku Klux Klan.<sup>28</sup> Those sympathetic to its anti-gay agenda are revolted by its virulently anti-military stance; those who share its condemnation of pedophile priests are horrified by its celebration of the death of young children. The WBC has attacked Catholics, Jews, Muslims, Hindus, and Mormons; it has “thanked God” for 9/11, Hurricane Katrina, the 2008 earthquake in China, and the 2011 shootings in Tucson.<sup>29</sup> In fact, the WBC’s primary ideological accomplishment has been to discredit the anti-gay movement by associating it with agendas that even extreme social conservatives cannot stomach. In so doing, the WBC has united groups that would normally have very little to say to each other.<sup>30</sup> The WBC’s resolutely unfocused bad speech consequently poses little threat either to its targets or to society at large.

By contrast, consider an example from the other end of the spectrum: the focused hate speech used in the buildup to the genocide in Rwanda in 1994. The genocidal speech employed by the Rwandan media was clearly imperative (calling for violent action<sup>31</sup>), had a specific target (labeling Tutsis and any Hutus who supported them as the “enemy”<sup>32</sup>), and sought to aggregate (encouraging followers to take on the work of extermination<sup>33</sup>), thus fulfilling all the characteristics of focused bad

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25. See muckmakers, *Michael Moore Takes On the Westboro Baptist Church*, YOUTUBE (Feb. 26, 2010), <http://www.youtube.com/watch?v=c-h3Wl5wVns> (depicting Michael Moore’s humorous counter-protest against Westboro for his television show, *The Awful Truth*).

26. See *The Daily Show with Jon Stewart: Tales of Principled Behavior* (Comedy Central television broadcast Mar. 3, 2011), available at <http://www.thedailyshow.com/watch/thu-march-3-2011/tales-of-principled-behavior> (“The Westboro Baptist Church is no more a church than Church’s Fried Chicken is a church.”).

27. See Jenna Lyle, *Christians Condemn Westboro Hatred*, CHRISTIAN POST (Feb. 20, 2009, 9:47 AM), <http://www.christianpost.com/news/christians-condemn-westboro-hatred-37093/> (describing how six Christian organizations unanimously condemned Westboro funeral picketing).

28. See Michael Stone, *Westboro Baptist Church Too Extreme for Ku Klux Klan*, EXAMINER.COM (Apr. 9, 2010), <http://www.examiner.com/humanist-in-portland/westboro-baptist-church-too-extreme-for-ku-klux-klan> (“In an astonishing display of common sense the Ku Klux Klan has releasd [sic] a statement repudiating the activities of the Westboro Baptist Church, denying any connection or sympathy with the hate group.”).

29. *Westboro Baptist Church*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Westboro\\_Baptist\\_Church#Counter\\_protests](http://en.wikipedia.org/wiki/Westboro_Baptist_Church#Counter_protests) (last modified Dec. 14, 2011).

30. See Franks, *supra* note 17 (arguing that WBC accomplished the impossible feat of alienating every ideological, religious, or cultural demographic).

31. *Id.*

32. Colette Braeckman, *Incitement to Genocide*, CRIMES WAR, <http://www.crimesofwar.org/a-z-guide/incitement-to-genocide-2/> (last visited Dec. 14, 2011).

33. “RTLML called on all Hutu to ‘rise up as a single man’ to defend their country in what was said to be the ‘final’ war.” Alison Des Forges, *Call to Genocide: Radio in Rwanda, 1994*, in *THE MEDIA AND THE RWANDA GENOCIDE* 41, 48 (Allen Thompson ed., 2007).

speech. In the space of merely 100 days, Hutu radicals used the radio, the newspaper, and word of mouth to encourage, incite, and organize the murder of 800,000 people.<sup>34</sup> In the months before and during the Rwandan genocide, radio stations and newspapers unleashed inflammatory invective against the Tutsi and moderate Hutus, even going so far as to give the names and addresses of specific targets to be killed.<sup>35</sup>

By 1993, Radio Télévision Libre des Mille Collines (“RTLM”) had become the only licensed private radio station in Rwanda.<sup>36</sup> Given that much of the Rwanda population was illiterate, many Rwandans relied on the radio for news and entertainment.<sup>37</sup> RTLM quickly gained popularity by employing a Western-style format to appeal to a broad base of listeners.<sup>38</sup> Unlike the government’s station, Radio Rwanda, RTLM was informal and lively, playing popular music and offering witty commentary.<sup>39</sup> According to historian and human rights activist Alison Des Forges, “RTLM brought the voice of ordinary people to the airwaves. Listeners could call in to request their favorite tunes or to exchange gossip with announcers and a wider audience. RTLM journalists went out into the streets and invited passers-by to comment on topics of the day.”<sup>40</sup> In late October 1993, however, the station began broadcasting much darker messages, which were echoed by the main Rwandan newspaper *Kangura*:

The newspaper and the radio explicitly and repeatedly, in fact relentlessly, targeted the Tutsi population for destruction. Demonizing the Tutsi as having inherently evil qualities, equating the ethnic group with “the enemy” and portraying its women as seductive enemy agents, the media called for the extermination of the Tutsi ethnic group as a response to the political threat that they associated with Tutsi ethnicity.<sup>41</sup>

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34. See generally THE MEDIA AND THE RWANDA GENOCIDE (Allen Thompson ed., 2007) (compiling numerous authors’ accounts of the genocide); *Rwanda: How the Genocide Happened*, BBC NEWS (Dec. 18, 2008), <http://news.bbc.co.uk/2/hi/1288230.stm> (discussing the events leading up to and igniting the Rwandan genocide, the mass murder inflicted on the Rwandan people, and the political and socioeconomic aftermath of the genocide).

35. Gerald Kaplan, *Walking the Road to Genocide*, in THE MEDIA AND THE RWANDA GENOCIDE, *supra* note 34, at 27.

36. Russell Smith, *The Impact of Hate Media in Rwanda*, BBC NEWS (Dec. 3, 2003, 8:54 AM CST), <http://news.bbc.co.uk/2/hi/africa/3257748.stm>.

37. Des Forges, *supra* note 33, at 41, 42.

38. *Use and Abuse of Media in Vulnerable Societies: Case Study—Rwanda*, INTERNEWS, [http://www.internews.org/pubs/mediainconflict/mic\\_rwanda.shtm](http://www.internews.org/pubs/mediainconflict/mic_rwanda.shtm) (last visited Sept. 30, 2011).

39. Des Forges, *supra* note 33, at 41, 42.

40. *Id.*

41. Prosecutor v. Ferdinand Nahimana et al., Case No. ICTR-99-52-T, Summary, ¶ 72 (Dec. 3, 2003), [http://www1.umn.edu/humanrts/instree/ICTR/NAHIMANA\\_ICTR-96-11/NAHIMANA\\_ICTR-99-52-T\\_Summary.pdf](http://www1.umn.edu/humanrts/instree/ICTR/NAHIMANA_ICTR-96-11/NAHIMANA_ICTR-99-52-T_Summary.pdf).

The array of historical, cultural, and political factors at work in the media's dissemination of hateful ideology, and its successful effects on the Hutu population in Rwanda, has been extensively studied. This Essay highlights something different: the near-monopoly in Rwanda by one form of focused bad speech. RTLM and *Kangura* had virtually no competitors; the Rwandan Patriotic Front ("RPF"), made up of Tutsis, did attempt to establish its own radio station but could not broadcast to the entire country.<sup>42</sup> Even if it had been able to, it is not likely that a single, focused counterpoint discourse would have been nearly as successful in diluting the genocidal speech as would have multiple and conflicting discourses.

Genocide is, among other things, an act of successful speech. The nature of genocide is fundamentally communicative—it requires the coordination of many people's actions towards a focused set of goals. One cannot mobilize a large group of people to engage even in simple, innocuous mass activity, to say nothing of complex, violent activity, without effectively harnessing persuasive speech. The kind of speech that motivates people not only to hate others but to kill them must be brutally simple.<sup>43</sup> It must admit no nuance and no hesitation. To be successful, genocidal speech has to activate stereotypes<sup>44</sup> and orchestrate responses with an assurance and a righteousness that convinces those who hear it that it is nothing less than an incontrovertible truth. In short, genocidal speech must be able to drown out other fragmented, incomplete, unfocused forms of speech to sound a note of clarity and precision. To be effective, genocidal speech requires a high signal-to-noise ratio.<sup>45</sup>

Unfocused bad speech is one kind of noise that can interfere with the signal of focused bad speech. Unfocused bad speech can produce a high volume of distracting white noise, decreasing the likelihood that any clear signal, whether good or bad, can make its way to the receiver.

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42. ALISON DES FORGES, *LEAVE NONE TO TELL THE STORY: GENOCIDE IN RWANDA* 68 (1999).

43. See 2 SAMUEL TOTTEN & PAUL R. BARTROP, *DICTIONARY OF GENOCIDE: M-Z* 344 (2008) ("[S]implified messages shorn of any possibility of debate or further discussion are the preferred device for convincing the greatest number of the veracity of the propagandist's claims.").

44. See LEO KUPER, *GENOCIDE: ITS POLITICAL USE IN THE TWENTIETH CENTURY* (1982) ("[P]erhaps invariably, hostile stereotypes are projected onto the victims, and vilifying propaganda directed towards them.").

45. According to the Oxford Dictionaries, *signal-to-noise* is the "ratio of the strength of an electrical or other signal carrying information to that of unwanted interference. Informal: a measure of how much useful information there is in a system, such as the Internet, a proportion of the entire contents." OXFORD DICTIONARIES, <http://oxforddictionaries.com/definition/signal-to-noise+ratio> (last visited Dec. 14, 2011).

Such background interference has the potential to reduce focused bad speech's possibility of success.

What if, when someone turned on the radio in Rwanda in 1994, she was confronted by a barely intelligible cacophony of racist, sexist, classist vitriol, aimed now at one group, now at another? Any single, focused ideology would have to struggle for dominance against the tide of generalized hatred and sheer insanity. Mythological tales of the sinister Tutsi would have to compete against the same tales attributed to Hutus and other groups; epithets intended to slander them would be diluted by their use against men, women, and children of no particular racial or ethnic identity. A population accustomed to the steady shriek of multiple hostilities would be less susceptible to the escalating claims and calls of a singular and focused rage.

Such a population would also be less likely to be moved to any concerted action. Several sociological studies have demonstrated what is often referred to as the *choice overload* phenomenon: the more choices available to consumers, the more confusion and paralysis they feel. This so-called "tyranny of choice," about which many newspaper and website columns,<sup>46</sup> journal articles,<sup>47</sup> and books<sup>48</sup> have been written, refers to the paradoxical result of increased options: arbitrary decisions and reduced satisfaction. Though individual choice is highly prized in Western society, choice overload is regarded as detrimental to individual and societal well-being. The often-recommended cure is to limit one's options.<sup>49</sup>

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46. See, e.g., Libby Brooks, *The Tyranny of Choice*, GUARDIAN (May 1, 2006), <http://www.guardian.co.uk/commentisfree/2006/may/02/comment.children> (depicting the problem of having too many choices and how it affects relationships); Harry Eyres, *Tyranny of Choice*, FIN. TIMES (Nov. 2, 2007), <http://www.ft.com/cms/s/2/b86b2fc8-88fa-11dc-84c9-0000779fd2ac.html#axzz1WaqOcAiY> (describing the uniquely human condition of choosing one's path in life as a "mind-boggling responsibility"); Jeff Katz, *A Short-Lived Tyranny (of Choice)*, HUFFINGTON POST (July 15, 2011, 10:03 AM), [http://www.huffingtonpost.com/jeff-a-katz/always-waiting-for-that-s\\_b\\_899761.html](http://www.huffingtonpost.com/jeff-a-katz/always-waiting-for-that-s_b_899761.html) ("Life is a smorgasbord and we are all part of the buffet."); *The Tyranny of Choice: Why Simplification Leads to More Sales*, MICROSPERIENCE (May 10, 2011), <http://www.microspierience.com/?p=4875> (reminding certified sales professionals that too much choice is not always a good thing).

47. See, e.g., *You Choose*, ECONOMIST, Dec. 18, 2010, at 123, available at <http://www.economist.com/node/17723028> (contending that with so many different varieties and choices, making decisions becomes a difficult job).

48. See generally RENATA SALECL, THE TYRANNY OF CHOICE (2011) (studying the freedom of choice and how limitless freedom can lead to anguish); see also BARRY SCHWARTZ, THE PARADOX OF CHOICE: WHY MORE IS LESS 222 (2004) (providing ample evidence that we are faced with too many choices on a daily basis).

49. See SCHWARTZ, *supra* note 48, at 222–28 ("To manage the problem of excessive choice, we must decide which choices in our lives really matter and focus our time and energy there . . .").

A phenomenon closely related to choice overload is “decision fatigue.”<sup>50</sup> Making decisions requires mental energy, and the more decisions an individual is forced to confront, the more exhausted she becomes. “The more choices you make throughout the day, the harder each one becomes for your brain, and eventually it looks for shortcuts.”<sup>51</sup> While one possible shortcut is to respond recklessly, another common shortcut is passivity: “The other shortcut is the ultimate energy saver: do nothing. Instead of agonizing over decisions, avoid any choice.”<sup>52</sup> People facing a vast array of decisions often feel “paralyzed and don’t choose at all.”<sup>53</sup>

The negative effects of choice overload and decision fatigue are fairly obvious. My suggestion, however, is that in the context of bad speech, these phenomena have positive effects as well. With regard to speech that incites violence, indecision and paralysis are desirable. Thus, it makes sense to respond to choice overload and decision fatigue in the bad speech context in precisely the opposite way that we would respond to it in the consumer/life choices context. In the latter context, the recommendation is to limit choice. The (very) soft critique of commodity capitalism embedded in the tyranny of choice literature is valuable, suggesting as it does that the unfettered exchange of goods may not always produce positive effects. In the bad speech context, however, a “laissez-faire” approach that allows for a veritable chaos of speech might be preferable.

It should be said (and I have argued elsewhere<sup>54</sup>) that the “marketplace of ideas” metaphor, at least as often employed by self-professed free speech advocates, is deeply flawed. According to the naïve version of this metaphor, if ideas are simply allowed to compete freely with each other, the good ones will (ultimately) rise to the top, and the bad ones will drift to the bottom.<sup>55</sup> Such a view fails to take

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50. See John Tierney, *Do You Suffer from Decision Fatigue?*, N.Y. TIMES MAG., Aug. 17, 2011, at MM 33, available at <http://www.nytimes.com/2011/08/21/magazine/do-you-suffer-from-decision-fatigue.html> (arguing that decision fatigue helps explain why ordinarily sensible people do insensible things, like splurge on new cars and yell at colleagues).

51. *Id.*

52. *Id.*

53. Tammy Worth, *Too Many Choices Can Tax the Brain, Research Shows*, L.A. TIMES (Mar. 16, 2009), <http://articles.latimes.com/2009/mar/16/health/he-choices16>.

54. For a critique of “cyberspace idealism” and its reliance on a simplistic conception of the marketplace of ideas, see Franks, *supra* note 14, at 244 (addressing the discriminatory effects of cyberspace idealism and the impact that online abuse has on women, among other groups).

55. See, e.g., Fred Seibert, *The Libertarian Theory*, in *FOUR THEORIES OF THE PRESS: THE AUTHORITARIAN, LIBERTARIAN, SOCIAL RESPONSIBILITY, AND SOVIET COMMUNIST CONCEPTS OF WHAT THE PRESS SHOULD BE AND DO* 39, 45 (Fred S. Siebert, Theodore Peterson & Wilbur Schramm eds., 1963) (suggesting that true and sound speech will survive in the open market if people are free to express themselves, while false and flawed speech will be extinguished).

into account varying levels of access to the market, the fact that there is no such thing as a truly unregulated market, and that bad products frequently trump good ones. The marketplace metaphor is useful in a limited sense, however, with regard to bad speech.<sup>56</sup> It evokes the experience of navigating through a dirty, crowded, unbelievably loud marketplace. It would be as hard to pick out bad and dangerous products in such a marketplace as it would be to find good and valuable ones.

How then should the marketplace of ideas—of speech—be regulated?<sup>57</sup> This Essay suggests it is preferable not to regulate unfocused bad speech—a bad but also poorly designed product—not only because it is already unlikely to gain market share but also because it has the salutary effect of making it harder for focused bad speech—a bad but oftentimes well-designed product—to gain market share. Censoring unfocused bad speech would thus waste regulatory resources to prevent the consumption of a product no one is (or very few are) buying, as well as undermine the legitimate goal of pushing out a dangerously appealing product. Unfocused bad speech will never achieve monopoly status, whereas focused bad speech might. Regulatory energy should thus be reserved for monopolies, as it is in the non-metaphorical market. When a product or industry “corners the market” so thoroughly that it has virtually no competition, the general governmental response is to break it up and to force some other options into the marketplace. Like commercial monopolies, ideological monopolies created by focused bad speech should be presumptively disfavored.

To return to the WBC, one can see how the outcome of *Snyder v. Phelps*<sup>58</sup> was the correct one, if not (only) for the reasons the Court provides. Given that so few people are buying what the WBC is selling,<sup>59</sup> restricting its speech would accomplish little. Moreover, the

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56. For a different take on the regulation of speech in the marketplace of ideas, see Steven P. Lee, *Hate Speech in the Marketplace of Ideas*, in FREEDOM OF EXPRESSION IN A DIVERSE WORLD 13–26 (Deirdre Golash ed., 2010) (considering the issue of hate speech restrictions in the context of the pro-free expression ideals, within the framework of the realm of public communication as a “marketplace of ideas”).

57. By regulation I mean not only governmental regulation, but also regulation by society and social norms.

58. 580 F.3d 206 (2011).

59. In fact, WBC’s detractors are far more influential and effective than WBC itself. Many of WBC’s sites (godhatesfags.com, godhatesyou.com, priestsrapeboys.com, etc.) have been repeatedly hacked, thanks to the efforts of either the hacking collective Anonymous or a self-proclaimed adversary of Anonymous who calls himself “The Jester.” Paul Wagenseil, *Anonymous Hacktivists Attack ‘God Hates Fags’ Websites*, MSNBC, [http://www.msnbc.msn.com/id/41764514/ns/technology\\_and\\_science-security/](http://www.msnbc.msn.com/id/41764514/ns/technology_and_science-security/) (last updated Mar. 14, 2011, 2:14 PM). Anonymous is currently under investigation for attacking MasterCard and Amazon on

WBC actually helps dilute and discredit more persuasive and sophisticated agendas against gays, Jews, and pro-choice activists. The next anti-gay rights activist who wants to advertise his beliefs will do well to avoid any slogans that are reminiscent of WBC protest signs, while pro-life activists may have to clarify that they are not the kind of abortion protesters who trample or set fire to the American flag. In other words, there is no need to restrict the “choice” offered by unfocused bad speech, as it effectively restricts its own influence as well as that of more focused speech.

Several notes of caution are necessary here. I am not suggesting that allowing the proliferation of unfocused bad speech is the only, or even the best, way to dilute focused bad speech. It is worth noting that even the conventional wisdom on signal-to-noise ratios in science and engineering has been challenged by research suggesting that certain forms of white noise can actually boost, rather than repress, signals.<sup>60</sup> This phenomenon, called “stochastic resonance,” may have a cognate in the world of more metaphorical signals. It is possible that the general coarseness produced by unfocused bad speech creates a more habitable environment for dangerously focused bad speech.<sup>61</sup>

Nor do I mean to suggest that unfocused bad speech should be deliberately generated for the sake of its positive effects. It is quite clear that the authors of unfocused bad speech have no intention of performing a social benefit. There is no reason to think that the YouTube commenter spouting poorly-spelled Jewish conspiracy theories<sup>62</sup> or the AutoAdmit poster moronically typing “nigger nigger

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behalf of Wikileaks. Richard Stallman, *The Anonymous Wikileaks Protests Are a Mass Demo Against Control*, GUARDIAN (Dec. 17, 2010), <http://www.guardian.co.uk/commentisfree/2010/dec/17/anonymus-wikileaks-protest-amazon-mastercard>. The Jester claimed responsibility for the cyber attack on Wikileaks in November 2010. Richard Allen Greene & Nicola Hughes, *‘Hacktivist for Good’ Claims Wikileaks Takedown*, CNN (Nov. 29, 2010), [http://articles.cnn.com/2010-11-29/us/wikileaks.hacker\\_1\\_wikileaks-computer-hacker-cyber-attack?\\_s=PM:US](http://articles.cnn.com/2010-11-29/us/wikileaks.hacker_1_wikileaks-computer-hacker-cyber-attack?_s=PM:US). In other words, perhaps the most extraordinary thing about the Westboro Baptist Church is its ability to serve as a common target for groups who passionately disagree with and even hate each other.

60. See, e.g., Luca Gammaitoni, Peter Hänggi, Peter Jung & Fabio Marchesoni, *Stochastic Resonance*, 70 REV. MOD. PHYSICS 223 (1998); Fan-Gang Zeng, Qian-Jie Fu & Robert Morse, *Human Hearing Enhanced by Noise*, 869 BRAIN RES. 251 (2000). I thank Michael Froomkin for drawing my attention to this research.

61. See, e.g., David Neiwert’s arguments about eliminationist rhetoric. DAVID NEIWERT, *THE ELIMINATIONISTS: HOW HATE TALK RADICALIZED THE AMERICAN RIGHT* (2009). I would maintain, however, that the rhetoric Neiwert critiques falls on the “focused” end of the bad speech spectrum, and therefore we are largely in agreement on the dangers of such speech. I thank Michael Froomkin for directing me to Neiwert’s work.

62. “[T]he ‘Holocaust’ lies courtesy the jewish supremacists have damaged the Allied powers moreso than Germany because fraud inevitably lowers the moral tone and disintegrates the moral fiber. The USA moral landscape has been destroyed through subserviency to the international jewish bankers who provoked WW2 and fabricated the ‘Holocaust’ propaganda with the goal to

nigger”<sup>63</sup> hopes his online contributions will dilute the effectiveness of other, more violent, and more focused bad speech. The benefits are produced despite—or even in spite of—the intentions of those who engage in unfocused bad speech.

Bad speech is illogical, ignorant, and inflammatory, which is not an encouraging combination from the perspective of social discourse as a whole. Ideally, the effects of focused bad speech would be countered by nuanced discourse that highlights shared humanity or encourages empathy. The very limited claim made here is that unfocused bad speech, while hateful, ignorant, and simplistic, may sometimes be more effective in dampening the effect of violent speech than nuanced, empathetic speech, if only because it is so prevalent and seemingly inevitable. Nuance and empathy take patience and time to gain acceptance by a broad population, whereas random and obscene hostility gains traction very quickly.

If *Snyder v. Phelps* is a success story about leaving unfocused bad speech alone, Rwanda’s post-genocide speech regime is an example of a counter-productive response to focused bad speech. In Rwanda, the government’s attempt to zealously regulate speech that bears any possible connection to the genocide, while understandable, has proven to be gravely problematic. After the Tutsi-dominated RPF took control of the country following the genocide, it began imposing serious restrictions on the media and on speech in general.<sup>64</sup> The government has persecuted journalists who criticize its actions and has accused the very same human rights organizations that sought to bring attention to the 1994 genocide of genocidal ideology.<sup>65</sup> Sweeping “anti-genocide ideology” laws criminalize “any speech, written statement or action that causes conflict that causes an uprising that may degenerate into strife

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defeat Nationalism.” NewFormOfSlavery, Comment to ICDLYou, *Nazi Holocaust footage Part 1*, YOUTUBE (Aug. 1, 2011), <http://www.youtube.com/comment?lc=-9SYKvJwB9GKbHe7fW61KLLtr227XDfryo-0Yc1j8Ug>.

63. See Brian Leiter, *Cleaning Cyber-Cesspools: Google and Free Speech*, in *THE OFFENSIVE INTERNET: SPEECH, PRIVACY, AND REPUTATION* 155, 158 (Saul Levmore & Martha C. Nussbaum eds., 2010) (noting that there were hundreds of threads on AutoAdmit with the word “nigger” in the subject line).

64. See Stephen Kinzer, *The Limits of Free Speech in Rwanda*, *GUARDIAN* (Mar. 2, 2010, 5:30 EST), <http://www.guardian.co.uk/commentisfree/libertycentral/2010/mar/02/rwanda-free-speech-genocide> (highlighting that even now, Rwanda limits speech such as a new law requiring citizens to only to refer to themselves as Rwandans, not Hutu or Tutsi, for fear of inciting further ethnic-fueled violence); see also *FREEDOM HOUSE, RWANDA RIGHTS AND LIBERTIES REPORT* (2010), available at <http://www.africa.com/Rwanda/report> (presenting a survey of the political rights and civil liberties in Rwanda).

65. Lars Waldorf, *Censorship and Propaganda in Post-Genocide Rwanda*, in *THE MEDIA AND THE RWANDA GENOCIDE*, *supra* note 34, at 404–16.

among people.”<sup>66</sup> They also prohibit “threatening, intimidating, degrading through diffamatory [sic] speeches, documents, or actions which aim at propounding wickedness or inciting hatred” and “marginalising, laughing at one’s misfortune, defaming, mocking, boasting, despising, degrading, createing [sic] confusion aiming at negating the genocide which occurred, stirring [sic] up ill feelings . . . .”<sup>67</sup> Opposition leader Victoire Ingabire Umuhiza has been arrested twice for violating genocide ideology laws;<sup>68</sup> the first time, Ingabire suggested in a speech that reconciliation between the Hutu and Tutsi requires remembering not only the Tutsi victims, who were the primary target of the genocide, but also the Hutu victims. Her defense lawyer—international criminal defense attorney and U.S. law professor Peter Erlinder—was arrested on the same charges when he traveled to Rwanda to represent her.<sup>69</sup> In other words, Rwanda’s public discourse is dominated by a tiny number of radio stations and newspapers, nearly all of which promote the same pro-government message. Even though this new, post-genocide message is ostensibly one of union and harmony, the informational landscape in Rwanda is once again disturbingly monophonic. It is, as the saying goes, “quiet . . . a little too quiet.”

Rwanda’s laws have come under fire from human rights organizations and the U.S. Department of State.<sup>70</sup> Rwanda’s vague and sweeping anti-genocide laws are certainly out of step with the speech-protective regimes of most Western countries, especially that of the United States. Whether Western (to say nothing of American) free speech principles can or should be applied to other contexts and cultures is a complex question. Rwanda, like Germany, must construct its speech laws in the shadow of a genocide in which speech was used to deadly effect. The United States does not have a genocide in its recent history to haunt its collective conscience in the same way, and there are

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66. U.N. High Comm’r for Refugees, Law on Prevention, Suppression and Punishment of the Crime of Discrimination and Sectarianism, No. 47/2001, ch. 2, art. 3 (Dec. 18, 2002), available at <http://www.unhcr.org/refworld/pdfid/4ac5c4302.pdf>.

67. U.N. High Comm’r for Refugees, Law on Relating to the Punishment of the Crime of Genocide Ideology, No. 18/2008, ch. 1, arts. 2–3 (July 23, 2008), available at <http://www.unhcr.org/refworld/pdfid/4acc9a4e2.pdf>.

68. Nick Wadham, *Rwanda: Anti-Genocide Law Clashes with Free Speech*, TIME (May 5, 2010), <http://www.time.com/time/world/article/0,8599,1986699,00.html>.

69. Ann Garrison, *Rwandan Opposition Leader Victoire Ingabire Arrested*, S.F. BAY VIEW (Oct. 14, 2010), <http://sfbayview.com/2010/rwandan-opposition-leader-victoire-ingabire-arrested>.

70. See Zachary Pall, *Light Shining Darkly: Comparing Post-Conflict Constitutional Structures Concerning Speech and Association in Germany and Rwanda*, 42 COLUM. HUM. RTS. L. REV. 5, 26 (2010) (describing the finding made by the U.S. Department of State that genocide ideology and divisionism laws “discourage citizens from expressing viewpoints that might be construed as promoting societal divisions”).

good reasons to believe that if it did, its free speech regime would be quite different. Though the United States is still plagued by racism, and this racism far too often takes violent form, most of this violence takes place on an individual level. Instances of mass racial violence, spurred on by an imperative, specific, aggregating ideology, are rare in recent U.S. history.<sup>71</sup> This raises an intriguing question about whether a free speech-protective regime is a consequence or a cause of avoiding genocide. That is to say, is the United States able to allow more hateful speech because it has not had to confront the weaponization of that speech in recent history, or does the fact that the United States takes an unusually permissive stance towards hateful speech partly explain how it has avoided genocidal conflict? If the theory proposed here about the good effects of bad speech is correct, perhaps the answer is the latter.

No matter which way the causation runs, however, it cannot fully address the troubling issues raised by our increasingly globalized and borderless world. This was already evident in the United States's refusal to jam radio signals in Rwanda in 1994, even after it became clear that RTLM was actively promoting and orchestrating genocide on the airwaves. This refusal was apparently motivated in part by free speech principles,<sup>72</sup> principles that could be said to be astoundingly inappropriate in the context of an ongoing genocide. On the view advanced here, the United States wrongly applied the hands-off approach appropriate for unfocused bad speech to truly a situation involving deadly, focused bad speech. It should have been clear that anti-Tutsi ideology dominated the speech marketplace in Rwanda and that there was virtually no other public speech to counter or dilute it.

What makes the United States's position towards Rwanda even more troubling is the fact that the United States has demonstrated its willingness to discourage or even censor speech that it recognizes as focused and dangerous. In September 2010, Terry Jones, the pastor of

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71. The slaughter and displacement of Native American populations may be an exception, although it is debatable whether the ideology behind this violence stemmed from racial eliminationism or from "mere" expansionism. This is not to say that the latter is more excusable than the former, only that it has a different logic. The lynching of African Americans in the late nineteenth and twentieth centuries, while clearly motivated by racism, arguably did not rise to the level of "mass" violence, as least as compared to the genocides of the twentieth century. The number of African-American lynching victims between 1882 and 1968 is estimated at about 3500, *Lynchings: By State and Race, 1882–1968*, <http://law2.umkc.edu/faculty/projects/ftrials/shipp/lynchingsstate.html> (last visited Dec. 14, 2011)—a tragically high number, but not approaching the scale of, for example, the Armenian genocide (approximately 1 to 1.5 million victims), the Holocaust (approximately 6 million Jewish victims); or the Rwandan genocide (800,000 victims). Similarly, acts of violence against Muslims and Arabs in the U.S. are on the rise, but have fortunately not risen to the level of mass violence.

72. Frank Chalk, *Hate Radio in Rwanda*, in *THE PATH OF A GENOCIDE: THE RWANDA CRISIS FROM UGANDA TO ZAIRE* 103 (Howard Adelman & Astri Suhrke eds., 2000).

the thirty-member Dove Outreach World Center in Gainesville, Florida, threatened to burn a copy of the Koran following the revelation of plans to build a mosque near the site of the World Trade Center.<sup>73</sup> This threat received a tremendous amount of publicity at the time, including a personal plea from President Obama not to go through with it.<sup>74</sup> Several major news organizations vowed not to cover the event if it occurred, and reporters urged each other to simply ignore Jones's antics.<sup>75</sup> The general sentiment of those urging Jones not to go through with the act seemed to be that it would cause deep offense to Muslims and, more worryingly, might incite violence.<sup>76</sup>

Jones originally agreed not to go through with the burning, but on March 20, 2011, Jones held a "trial" of the Islamic holy book, setting a copy of it on fire at the end.<sup>77</sup> Jones's decision to burn the Koran several months later went largely unnoticed by the U.S. media,<sup>78</sup> though it was broadcast over the Internet.<sup>79</sup> It is not clear why an act that seemed disrespectful and dangerous enough to draw a plea from the President of the United States in 2010 was met with silence in 2011. My own view is that Jones's act was transformed from focused to unfocused bad speech in the intervening months. When Jones first made his threat, all eyes were on him. The controversy over the "World Trade Center mosque" was front and center in the media. After a while, though, as tends to happen in 24-hour news cycle societies, the issue fell off the radar. By the time Jones actually went through with the burning, too many other controversies and distractions had crowded the stage.

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73. Larry Copeland & Rick Hampson, *Fla. Pastor Issues New Demands*, USA TODAY (Sept. 10, 2010), [http://www.usatoday.com/news/religion/2010-09-09-quran-burning-florida-church\\_N.htm](http://www.usatoday.com/news/religion/2010-09-09-quran-burning-florida-church_N.htm).

74. Larry Copeland & Rick Hampson, *Obama Weighs In as Plan to Burn Qurans Sparks Debate*, USA TODAY (Sept. 9, 2010), [http://www.usatoday.com/news/religion/2010-09-08-quran-burning-florida\\_N.htm](http://www.usatoday.com/news/religion/2010-09-08-quran-burning-florida_N.htm).

75. Brian Montopoli, *The Perils of Covering the Quran Burning*, CBS NEWS (Sept. 9, 2010, 4:41 PM), [http://www.cbsnews.com/8301-503544\\_162-20016000-503544.html](http://www.cbsnews.com/8301-503544_162-20016000-503544.html).

76. The violent protests that erupted around the Arab world, leaving at least 200 dead, after European newspapers published cartoons caricaturizing the Prophet Muhammad in 2005 lent considerable weight to this concern. Patricia Cohen, *Danish Cartoon Controversy*, N.Y. TIMES, [http://topics.nytimes.com/topics/reference/timestopics/subjects/d/danish\\_cartoon\\_controversy/index.html?offset=0&s=newest](http://topics.nytimes.com/topics/reference/timestopics/subjects/d/danish_cartoon_controversy/index.html?offset=0&s=newest) (last updated Aug. 12, 2009).

77. Kevin Sieff, *Florida Pastor Terry Jones's Koran Burning Has Far-reaching Effect*, WASH. POST (Apr. 2, 2011), [http://www.washingtonpost.com/local/education/florida-pastor-terry-jones-koran-burning-has-far-reaching-effect/2011/04/02/AFpiFoQC\\_story.html](http://www.washingtonpost.com/local/education/florida-pastor-terry-jones-koran-burning-has-far-reaching-effect/2011/04/02/AFpiFoQC_story.html).

78. Michelle Boorstein, *Koran Burning by Florida Pastor Originally Went Unnoticed*, WASH. POST, Apr. 2, 2011, at A4, available at [http://www.washingtonpost.com/local/koran-burning-by-florida-pastor-initially-went-unnoticed/2011/04/01/AFI2LEKC\\_story.html](http://www.washingtonpost.com/local/koran-burning-by-florida-pastor-initially-went-unnoticed/2011/04/01/AFI2LEKC_story.html).

79. See AussieEnigma777, *Terry Jones Burns the Quran After a Trial*, YOUTUBE (Apr. 1, 2011), [http://www.youtube.com/watch?v=skZuW-oS\\_9o](http://www.youtube.com/watch?v=skZuW-oS_9o) (showing video of Jones burning a Koran).

Consistent with this view, not a single incidence of violence was reported in response to the burning—at least not in the United States.

But the story does not end in the United States. On March 24, 2011, Afghanistan president Hamid Karzai strongly condemned the burning,<sup>80</sup> and on April 1, three prominent mullahs in Mazar-i-Sharif encouraged angry crowds to retaliate against the act.<sup>81</sup> The deadly protests that followed left at least twenty-one people dead (several of whom were U.N. workers) and injured 150 more.<sup>82</sup> President Karzai blamed Jones for the violence and demanded that the United States hold him accountable; Jones in turn issued a statement that “the time has come to hold Islam accountable” for its “terrorist activities.”<sup>83</sup>

This episode is a troubling illustration of how an act of mere unfocused bad speech in one setting can become an act of focused, deadly speech in another. By the time Jones went through with it, his Koran burning was just one of thousands of spectacles on the Internet Americans can view on any given day. Its invocation in Afghanistan, however, gripped a public consciousness much less distracted by media ephemera.

How to address such situations is a very complicated matter. The answer cannot simply be for Jones to disavow all responsibility, pointing to the fact that his actions didn’t cause anyone in America to riot or kill. There is no longer any way to truly contain speech in a single city, state, or even country. It also cannot be right to say that Jones is responsible for everything that may result from his words being taken from one context and put into another.

There is no clear way to resolve these conflicts, but there are at the very least lessons to be learned from them. Rwanda could be said to represent the lesson that focused bad speech, in a country with little noise to interfere with genocidal signals, requires intervention. The Jones controversy arguably stands for the proposition that what is unfocused bad speech—and thus relatively innocuous—in one context can be focused bad speech—and thus deadly—in another. Whether the

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80. Tom A. Peter, *Why Did Karzai Spotlight Terry Jones’ Quran Burning?*, CHRISTIAN SCI. MONITOR (Apr. 5, 2011), <http://www.csmonitor.com/World/Asia-South-Central/2011/0405/Why-did-Karzai-spotlight-Terry-Jones-s-Quran-burning>.

81. Enayat Najafizada & Rod Nordland, *Afghans Avenge Koran Burning, Killing 12*, N.Y. TIMES, Apr. 1, 2011, at A1, available at <http://www.nytimes.com/2011/04/02/world/asia/02-afghanistan.htm>.

82. *Afghan Protests Continue Against Qur’an Burning*, GUARDIAN (Apr. 4, 2011, 4:51 EDT), <http://www.guardian.co.uk/world/2011/apr/04/quran-burning-protests-continue-afghanistan>.

83. Lizette Alvarez & Don Van Natta, Jr., *Pastor Who Burned Koran Demands Retribution*, N.Y. TIMES, Apr. 1, 2011, at A10, available at <http://www.nytimes.com/2011/04/02/us/politics/02burn.html>.

United States will develop an intelligible and internally consistent response to bad speech both at home and abroad (and thus become a model for other countries) may depend on how much it learns from these events.

The prognosis, however, is not encouraging. In 2009, the Obama administration began jamming web and radio links in Afghanistan and Pakistan.<sup>84</sup> According to the Pentagon, the effort targets transmissions and communications by the Taliban and other extremists.<sup>85</sup> Even beyond the questions of hypocrisy and the consequences of unenlightened self-interest, the United States's decision to engage in censorship in Afghanistan and Pakistan, particularly given its permissive approach to free speech at home and in countries such as Rwanda even during a genocide, suggests that lessons have yet to be learned. Censorship will likely turn off the noise, at least for a time. The question is what signal will be heard when it does.

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84. Yochi J. Dreazen & Siobhan Gorman, *Pentagon Jams Web, Radio Links of Taliban*, WALL ST. J., Apr. 18, 2009, at A1, available at <http://online.wsj.com/article/SB124001042575330715.html>.

85. *Id.*