

Hearing Hate Speech: force, violence and institutional frameworks

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Submitted in accordance with the requirements for the degree of

Master of Philosophy

The University of Leeds

School of Fine Art, History of Art and Cultural Studies

April 2019

The candidate confirms that the work submitted is her own and that appropriate credit has been given where reference has been made to the work of others.

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Acknowledgements

To Dr Diane Morgan and Professor Salman Sayyid for their incredible support and wise guidance without which, this would not have been completed.

Abstract

Hate speech is on the rise. Its threat grows daily. Increasingly, reports of hate speech enter our daily news, researchers make it a focus of study, legislators create laws to protect us from it, and people fall victim to it. The sites of conflict which hate speech creates are difficult and confused; deliberately so. Such language does not languish on the extremes of accepted discourse occasionally breaking through at accidental points of destructive horror. Instead, it stalks the foundations of discourse, relentlessly seeks power, and infiltrates institutional frameworks, in order to continually promote violence and division. Hate speech is condemned and yet, it thrives, casting what seems like a growing shadow over spaces of communication.

This thesis journeys from the historical conditions from which the current concept of hate speech has evolved, to the established and conventional structures that ensure the continued ability of these utterances to inflict appalling harms. The language of hate respects no boundaries, arbitrary or otherwise. And so, engagement with thinkers across disciplines is necessary to draw together the elusive and disingenuous character of this language. The combined might of philosophers, linguists, legal scholars, gender theorists, sociologists, and race theorists is needed to illuminate the dark spaces of hate speech. These often complex and diverse academic theories - that are shown to be relevant to the hate speech debate - are drawn together through examples of the utterances themselves observed in areas such as; politics, literature, theatre, social media, news reports, and legal cases. Ultimately, the argument is made that the violence of hate speech is not accidental. It is intentionally reinforced by state institutional frameworks.

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Introduction

The aim of the thesis is to illuminate the dark shadow that hate speech casts through force, violence and institutional frameworks. A persistent tension is revealed between the need for the state to control hate speech through its institutional frameworks and, the role those frameworks play in perpetuating the violence of hate speech. Considering hate speech through theories of performative language allows the paradox to be explained. A mutually exploitative relationship between hate speech and institutional frameworks is exposed and used to demonstrate how, state institutional frameworks can work to reinforce the violence of hate speech.

Chapter One, 'Unnamed', provides the foundations for understanding hate speech in its modern context. Considering four different definitions of hate speech provides the opportunity to uncover common characteristics shared between these forms of expression regardless of academic discipline, context, or event. Seven shared characteristics of hate speech are emphasised with the first showing that hate speech is not limited to verbal utterances, but can damage and harm through any form of expression. Secondly, there is a propensity for the definitions of hate speech to treat the concept of hate speech as presupposed. This leads to a third element that shows attempts to describe hate speech always give primacy to the effects of these forms of expression. A fourth characteristic which follows from this is to recognise that hate speech is not random but instead is intended to cause harm. The argument is made that hate speech is perpetrated both consciously and unconsciously because of the way hate speech becomes authorised by an external authority. Fifthly, and perhaps not surprisingly, I argue that the groups most at risk from hate speech are invariably constituted as 'Other' in some way. A sixth characteristic, which is more unusual, is

that absence and uncertainty are shown to be an essential part of hate speech and facilitate part of its force. The final characteristic that is argued to be consistently visible is that hate speech acts in a deliberately divisive way, which is in itself, violent.

Opening with this chapter serves to illuminate, but not resolve, a range of problems that are investigated throughout. Collectively the characteristics of hate speech that are identified can risk generating confusion and so seven key themes are employed to navigate a path. The first theme demonstrates that the naming of 'hate speech' creates an autonomous space in discourse that serves to normalize the appearance of this language. Following from this it is argued that, hate speech does not require an originator and because of this, hate speech can increase its scope for harm. A third theme unveils the violence that is present in both instances of hate speech and within definitions of the term. Fourthly, traditional investigations of hate speech are argued to limit how the concept is viewed and potentially contribute to the ability of this language to harm. The fifth theme emphasises that particular histories compound the force hate speech is able to exert. A sixth theme identifies that violence, inflicted through creating social divisions and coupled with the stigma of 'Otherness', influences the constitution of linguistic subjects and creates a greater risk of vulnerability to the harm hate speech inflicts. Finally, hate speech is argued to be both performative and political which in later chapters, will demonstrate how the violence of hate speech is reinforced by state institutional frameworks.

Chapter Two, 'Constructing a concept of hate speech', explores six significant influences that have come to shape the modern concept associated with these forms of expression. It is argued that critical moments, drawn from different historical periods, heavily influence current work in areas of hate speech and shape how the

concept has come to be understood. To manage complexity and maintain a focus on violence, force and institutional frameworks, these influences are considered through three interconnected strands. These strands are academic theory, legal traditions and hate speech regulation, and cultural events which, it is argued, shape the relationship between hate speech and violence.

By emphasising six specific moments of hate speech history, I argue that, political and social commitments to rights of freedom of expression and equality create a particular type of concept of hate speech to arise. More importantly, these overarching rights allow the concept of hate speech to be tolerated. Through the context of that toleration, I will demonstrate how hate speech can threaten values of freedom of expression. From this position, a need for states to intervene and control hate speech is articulated. However, such circumstances also generate a contradiction. Interventions made by the state to control hate speech are shown to simultaneously create an environment whereby, the violence of hate speech is inevitably reinforced by institutional frameworks. It is argued that that one way these contradictions are made visible is through the forceful separation of and differentiation between groups identified as at risk from hate speech. The apparent paradox is resolved through emphasising a political and performative element of hate speech. It is argued that hate speech performatives can be considered as violent, political, and with an ability to masquerade, that results in hate speech becoming inextricably tied to institutional frameworks. Each of the six influences, it is argued, always increase the risk hate speech poses to those most vulnerable to its harms.

To draw together the six key influences that are important for the conceptualisation of hate speech, some apparent disconnects are evident and yet

necessary. What is shown through the chapter is that hate speech can become dangerous because of its ability, with relative anonymity, to infect all areas of discourse. By combining elements such as enlightenment period ideas of harms and toleration, political movements, literature, print media, theatre, laws, performative speech acts and genocide, it becomes possible to demonstrate how violence is integral to the effects and survival of hate speech. In addition, it is argued that hate speech is never far from political and state influences. As such, it is indicated that the state does not provide people with robust protections from hate speech. Instead, legal provisions aimed at controlling hate speech are argued to, function in ways that reinforce the violence of hate speech. The chapter ends with an explanation of how the six influences explored contribute to the current concept of hate speech.

Chapter Three, 'Violence, hate speech and institutional frameworks', builds on the themes explored in chapters one and two to show how the relationship of hate speech and institutional frameworks is bound to violence. The argument is made that the violence of hate speech is reinforced by state institutional frameworks. The chapter gives primacy to legal structures and reveals how these structures can work to legitimise hate speech violence. Legal frameworks are argued to function in ways that perpetuate the violence of hate speech but without those frameworks managing to fully encompass the force of these utterances. Despite this tension the state is shown to possess the ability to control and command the violence of hate speech to some extent.

The chapter initially considers how hate speech - since it is measured against other forms of harmful language - becomes judged against a standard. The argument is progressed to explain how, the judgement and the standard itself, mean hate speech

can be thought of as subjected to legal violence. When these standards ensure different levels of toleration for forms hate speech, it is shown how the perceived authority of a hate speaker can be brought into question. As a result, it is argued that, when legal frameworks function to individualise the problem of hate speech they can, to some extent, diminish any authority attributed to a speaker.

An element within legal restrictions of hate speech is made visible that is both inclusive and exclusionary. This opposition is argued to be positioned at heart of considerations for hate speech and institutional frameworks. When this uncertainty meets with the performative violence of hate speech, an opportunity is revealed - through the state authorisation or legitimisation of hate speech - for particular social and political conditions to be generated. The boundaries of what can be considered acceptable speech in the public domain are argued to be produced by legal institutional frameworks. Hate speech that falls within the domain of the 'sayable' is shown to become legally sanctioned as legitimate.

This final chapter also identifies the 'external authority' that is initially observed within chapter one. The law is shown to act as one form of external authority; however, an overarching 'external authority' is identified as the executive power of the state. It is argued, that the executive power is overarching because it has the capability to disrupt the territorial integrity of the law. As a result, the executive power is able to exert a force over hate speech that does not depend on the law and exceeds any intention of a hate speaker. Where executive power intervenes, it reveals an opportunity for the state to potentially exploit the violence of hate speech for its own ends.

While it is demonstrated throughout the thesis that state institutional frameworks do reinforce the violence of hate speech, the final chapter also presents some possible sites of resistance to this injurious language. The arts are presented as productive sites of challenge to hate speech because, they are argued to be able to reposition the boundaries of discourse and transform how linguistic subjects come to be constituted. I argue that it could be possible for the forum of the theatre to reduce the power of hate speech to harm. Equally and more directly related to legal institutional frameworks, the theory of 'speaking back' is considered to understand ways victims of hate speech could be empowered through responses that are enabled by state institutional frameworks.

The thesis concludes by drawing together the major themes from each chapter and emphasising that hate speech possesses a power to harm in subtle and extreme ways. The themes are used as evidence to show that the violence of hate speech becomes authorised by the state and is reinforced through institutional frameworks. As a result, the continued survival of these forms of expression is argued to be ensured. Through demonstrating the mutually exploitative relationship between hate speech and institutional frameworks, the ways in which those state institutional frameworks work to reinforce the violence of hate speech is illuminated.

Chapter One: Unnamed.

'Gloucester @Tesco: 'this is England, foreigners have 48 hours to f**k right off. Who is foreign here? Anyone foreign?' #Brexit'¹

How can the term 'hate speech' be understood and how do expressions of hate come to occupy a place in our modern discourse and culture? This chapter aims to answer these questions by considering some contested definitions and the place of hate speech in language. Seven characteristics of hate speech will be considered and emphasised using examples from academic, legal and social spheres. I will argue that these elements ultimately shape how hate speech can be understood. What will be shown is that hate speech has violence as a foundational cornerstone of its identity. Later chapters will demonstrate how the violence that characterises these forms of expression creates an inevitable tension. The tension is visible between a need for the state to intervene in order to exert some level of control over hate speech, and the role that state institutional frameworks play in reinforcing the violence of this language.

Commonplace yet simultaneously elusive, hate speech speaks with a vague familiarity. Commonplace, because the term has found a home in public discourse and is now in regular use in many different spheres: academia; legal; the media; online; music; the list goes on. Elusive because although hate speech may appear recognisable, a difficulty is faced when attempting to pinpoint exactly what it is that makes something 'hate speech'. Despite the threat hate speech is assumed to pose, the utterances can be somehow hollow and desolate. When interrogated at the level of the linguistic sign, a signifier considered in isolation will not reveal a word as hate

¹ Taken from Twitter on the 24th June 2016 following the UK's EU Referendum result on the 23rd June 2016. At the time social media platforms were documenting a rise in racist incidents following the vote. Police confirmed a 57% rise in reported incidents immediately following the Referendum result. <https://twitter.com/fullofeels/status/746413588177387520>

speech. Through the process of signification, a signifier must be combined with the signified to be understood.² Nevertheless, the combination of form and concept is not necessarily enough to tether hate speech in the spotlight. At this point hate speech may be real and in use but, if there is no context to clearly identify a word or words as hate speech, the meanings of those words can remain unclear or incomplete. Where a lack of clarity exists it can lead to an uncertainty in meaning. Only when context is embraced, where a word becomes meaningful, can something reveal itself as hate speech. Although even then hate speech may remain elusive.³

As we have seen, it can be difficult to identify where and when hate speech exists. This indicates that we must first consider other factors in order to understand what hate speech actually is. Problems begin immediately in terms of how to identify common characteristics that may be consistently present within hate speech. Shared characteristics that might clearly identify hate speech are not always made visible through context. However, assuming that such clarity can be found in context may be a doubtful proposition in the first place. In the book *'Limited Inc.'* (Derrida 2000a), Jacques Derrida makes the argument that '...a context is never absolutely determinable, or rather, ... its determination can never be entirely certain or saturated' (Derrida 2000a, 3). He emphasises that the possibility of all signs being citable provides the opportunity for them to '...break with every given context engendering an infinity of new contexts in a manner which is absolutely illimitable.' (Derrida 2000a, 12)

² I am describing a basic semiotic analysis based on Ferdinand de Saussure's *'Course in General Linguistics'* (Saussure et al. 1983) but with the understanding that later developments allow for the consideration of the sign itself more as material than only psychological.

³ For example, 'economic migrant' means a person who has moved to find work; however, during 2016 it was used by some UK media outlets and politicians as a way of categorising people they claimed intended to move to the UK to claim state benefits. Within the second context the term is wildly inaccurate and exaggerated but nevertheless, it demonstrates how meanings can be manipulated to hide hate speech under a more palatable disguise.

As a result, considering context as a complete, singular, element that can help to limit and define the parameters in which hate speech can be understood is problematic.⁴

What this indicates, it seems to me, is that hate speech must combine with something else, a force beyond context, which can be shown to be common for all instances of hate speech. If, as Derrida's argument shows, it is possible for hate speech to break with context, this indicates that a particular sort of violence is taking place. If violence is present then it can potentially give hate speech a mechanism through which it can inflict harm.⁵ How might this force and the barbarity it injects into these injurious utterances be understood?⁶ To progress to that point, there must first be an understanding of how the term 'hate speech' has come to be understood.

The term 'hate speech' appears to encapsulate a type of linguistic horror within a unified and singular concept.⁷ And that concept appears to be taking shape by apparently aiming to detain derogatory, discriminatory and dangerous language. Yet, hate speech remains to some extent intangible because neither a word, nor a word coupled with context make something identifiable as hate speech. Understanding the threat and danger of injurious language is impossible without first considering what 'hate speech' really is. On first appearance, the idea of hate speech seems obvious and accessible. One might assume these utterances are simply verbal expressions of

⁴ At this point in his text, Derrida is clear that he is not solely considering written words. His analysis has been expanded to include spoken and written words and linguistic and non-linguistic signs (see pages 3 to 13 for further details). While hate speech may appear to relate to spoken language, it will be shown later how hate speech actually encompasses all forms of communication.

⁵ Instances of hate speech are now generally accepted as performative speech acts. However, being performative does not in itself explain the power of this language to injure or harm its victims. Another influence, violence, gives hate speech an injurious force.

⁶ Chapter Three explores force and violence in relation to hate speech and state institutional frameworks. Here, force and violence are used in relation to each other in acknowledgement of Walter Benjamin's work *'The Critique of Violence'* (Benjamin, Bullock, and Jennings 1996) where he uses the term *'Gewalt'* which means both force and violence.

⁷ I use the term 'linguistic horror' because expressions of hate can be extreme and in Chapter Two are discussed in the context of genocide. However, this should be treated with some caution as hate speech is not necessarily horrific to a hate speaker or an intended victim.

hatred but this would be inaccurate. Through analysing four definitions of hate speech from Samuel Walker, L. W. Sumner, Bhikhu Parekh, and The Council of Europe, it will be shown that there is an underlying threat posed by hate speech: a threat to wound or harm.⁸ However, in order to make the extent of the threat to harm clear, there must be a consideration of how hate speech can transcend the confines of language before the definitions can be discussed. At this point Jerome Neu can be considered to make an important and relevant intervention stating that hate speech:

...aside from causing emotional injury and other harm to individuals, [it] can harm interests in community: in civil relations, in equality and non-discrimination, and in peaceful and nonhostile environments for work, education and other pursuits that must take place in an interactive setting. (Neu 2008, 154)

What is important in Neu's statement is the identification of the ability of hate speech to inflict trauma beyond language, in civil relations. Often hate speech can be assumed to be limited to causing harm only to an individual person. It is not uncommon to hear someone advised to ignore hate speech because it is 'only words'. The implication here is that such utterances inflict no real or lasting damage. However, if 'hate speech', as a term, is now commonly used across a range of public spheres (as indicated above), then that in itself suggests that such utterances have a reach beyond individuals. Although hate speakers carry an individual responsibility for their use of this language, a wider threat that reaches beyond individual people is being signalled. Neu demonstrates through his argument in the book *'Sticks and Stones: the philosophy of insults'* (Neu 2008), that hate speech can harm the interests in communities, in equality, and in non-hostile environments. In doing so, an agency in hate speech is exposed that signals its ability to wound.

⁸ The four definitions have been chosen because they are representative of common and accepted understandings of hate speech within the literature.

The above points can be further illustrated through the following example:

Nigel Farage was branded 'fundamentally racist' today after he unveiled a Brexit poster showing thousands of male refugees flooding into Europe. The poster uses a picture of Syrian refugees being escorted along the Slovenian border during the migrant crisis last October and tells voters the EU is at 'breaking point', adding: "The EU has failed us all. We must break free of the EU and take control of our borders." (Dathan 2016)⁹

What is initially shown through this example is that the poster being reported is

breaking from previous contexts of both the poster display and the image it contains.

This illustrates Derrida's notion of citation generating possibilities of illimitable

contexts. Although the quotation states that the picture reproduced in the poster was

taken in Slovenia and that the migrants were entering mainland Europe, the original

context is erased or at least obscured in the poster display.¹⁰ The image is thrown into

a new and political context. Rather than capturing a human crisis, the meaning

becomes more sinister. Stating that 'our' borders are out of control and that the

European Union (EU) is at 'breaking point' with an image of many, now unidentified

and displaced individuals, suggests that the people pictured are somehow responsible.

While the association is not one based on truth, it is nevertheless a powerful one.

Being displayed in the UK during the EU Referendum campaign in 2016, and against

the backdrop of the Home Office 'hostile environment' policy, it can be argued that the

intention of the poster is to arouse hostility against people from beyond the borders of

the UK.¹¹ Using the image to promote a particular political position is what prompted

the outrage at Farage with the result that he was labelled institutionally racist.

⁹ The poster has been widely reported and condemned across the UK. The poster is particularly relevant to definitions of hate speech as it demonstrates the power of images as hate speech and connects to the themes of naming and the constituting power of hate speech examined in this section.

¹⁰ To say the context is erased is not accurate in terms of the article the quotation is taken from. The author does state the details of the original image. However, the poster itself does not mention the origin of the photograph, the people pictured within the image, or the circumstances of movement. In that sense, the context is at least missing if not completely erased and replaced with an alternative.

¹¹ The 'hostile environment' policy was introduced by Theresa May as Home Secretary in 2012. The policy 'refers to a range of measures aimed at identifying and reducing the number of immigrants in the UK with no right to remain.' (Taylor 2018).

Combining all of these elements to promote a political agenda starts to show how hate speech can begin to harm civil relations and communities in the sense that Neu articulates.

Defining a contested term

One problem when considering definitions of hate speech, as a means of understanding how the term might be understood, is that currently ‘no universally accepted definition of the term “hate speech” exists...’ (Weber 2009, 3). That is not to say there are no useful or illuminating existing descriptions that can be used to advance this investigation of the term. Instead, it serves as a reminder to be cautious in assuming that hate speech is always understood in a shared or consistent way. The term ‘hate speech’ first appeared in the Oxford English Dictionary (OED) as a draft addition in 2002.¹² Quotations associated with this entry are noted as dating back to 1981, suggesting that, ‘hate speech’ remained, for over twenty years, a conceptual category that could not be confidently tied down.

Reasons for this apparent uncertainty around defining hate speech can now be explored by considering the complex conditions that refuse but also embrace identification. Direction can be taken from definitions offered by; Walker, Sumner, Parekh, and The Council of Europe who have already sought to define or at least describe hate speech. A significant proportion of the definitions share the key feature of identifying that hate speech is directed at people or groups because they are identified as different or ‘Other’. A problem arises here because there is an indication,

¹² (Oxford English Dictionary [accessed 2019/04/13]) The definition is n. orig. *U.S.* speech expressing hatred or intolerance of other social groups, esp. on the basis of race or sexuality; hostile verbal abuse (though the term is sometimes understood to encompass written and non-verbal forms of expression). However, the concept of hate speech is significantly older than the point at which the term enters this dictionary. A first use is noted as taking place in 1938; however, the majority of references are from the 1980s as that was the decade that began to acknowledge ‘hate speech’ as a term.

that hate speech is not an isolated verbal expression of hate towards someone or something that becomes exhausted in the moment of the utterance. Hate speech has the potential to harm broader community interests because victims can be targeted for their perceived status as 'Other'.

However, to understand the underlying threat of harm that might be seen more generally within hate speech, a moment must be spent considering the impact injurious language can have. For hate speech to acquire the ability to harm an individual it is necessary for that person to be constituted as a linguistic subject, in and beyond language. In order for this to take place, a process of interpellation is required that situates a victim of hate speech as a member of a specific group subject to a particular form of ideology.¹³ Where a hate speaker identifies a person as 'Other' through an ideological construction of identity, that person becomes an individual victim of hate speech. However, it can also be argued, that the harm is simultaneously a personal one that injures an individual, and a civil harm with the potential to injure any person perceived as belonging to the same ideologically constructed group. As a result, it seems to me, that hate speech is never only a random expression of hate directed towards one person by another. A wider danger is apparent that reaches past individual people and may play a role in reinforcing ideologically constructed social divisions.

An example of this expanded threat of harm, from others beyond individual hate speakers and victims, is drawn from the '*Findings and Conclusions*' report of the

¹³ The process through which an individual is positioned as a subject, in relation to a particular ideology. See Louis Althusser '*Lenin and philosophy, and other essays*' (Althusser, Brewster, and Jameson 2001) For detailed theoretical explanation see pages 170-86.

Leicester Hate Crime Project. (Chakraborti, Garland, and Hardy 2014) A participant in the research identified as a black British gay woman was quoted as saying:

...if the police are standing and someone calls me a nigger, they are straight over there. If someone calls me a filthy dyke, like, they just wait for whatever witty retort I come back with and stand and have a giggle. (Chakraborti, Garland, and Hardy 2014, 73)

In the situation being described above, hate speech in the form of racism is treated as unacceptable by the police and the victim receives help. When the hate speech relates to her identity as a gay woman, she is forced to experience both the hate speech of the speaker and, a lack of protection from the police. Here, the reaction of the police appears to legitimise the homophobic form of hate speech she is suffering.¹⁴ Through the victim's description of her experiences, it is clear that the hate speech she refers to takes aim at specific parts of her overall identity. The response of the police appears conditional upon which part of her identity is being targeted but not upon the initially constituting words of the hate speaker. It is helpful here to understand Judith Butler's development of Louis Althusser's view of interpellation. Butler states that 'the subject need not always turn around in order to be constituted as a subject, and the discourse that inaugurates the subject need not take the form of a voice at all.' (Butler 1997, 31)

The above example of the gay woman's experience of hate speech demonstrates Butler's point. Part of the discourse to which the gay woman becomes vulnerable is not only the hate speech itself but also, the failure of the police to provide protection from the hate speaker's homophobia. Such a failure is not verbal but manifests in the form of inaction. Being seen simultaneously is, what Neu identified as, the wider

¹⁴ The hate speech victim's identity is spanning a number of ideologically constructed categories that are important for hate speech definitions (race, gender, nationality, and sexual preference). These groupings and their importance will be considered in the paragraphs below. What is important here is that the victim identifies herself as a black British gay woman.

community harm threatened by hate speech. This is because it can be argued in this example that homophobic speech is being authorised as acceptable.

While the process of interpellation functions most effectively when it remains invisible, definitions of hate speech can function to disrupt some of its constituting power. As will be shown below a number of hate speech definitions rely on identifying groups which people can belong to or can be assigned to. Most often the groups are based on predetermined categories of race, ethnicity, religion, and nationality. The individuals assigned to, or identifying with those groups, are those most likely to be victims of hate speech.¹⁵ Additionally, those identified groups include communities that may be likely to suffer the greatest collective harm from hate speech. These observations are important because 'words have effects in the world and sometimes their transformative power is peculiarly direct, constructing and constituting the world.' (Neu 2008, 153) If a hate speaker directs a derogatory insult toward an addressee and the addressee recognises a harm is inflicted upon them, then hate speech constitutes the subject in a subordinate position.¹⁶

At the start of this section I quoted Anne Weber to make the point that there is no universally agreed definition of hate speech. But that is not to say there are not differing definitions in existence. Walker provides a place of departure for this discussion when describing 'hate speech' as having 'Traditionally...included any form of expression deemed offensive to any racial, religious, ethnic, or national group.' (Walker 1994, 8). Four specific groups at risk of being subjected to hate are singled out here.

¹⁵ For examples of other definitions see '*Extreme Speech and Democracy*' (Post, Baker, and Parekh in Hare and Weinstein 2009), '*The Hateful and the Obscene: Studies in the Limits of Free Expression*' (Sumner 2004)

¹⁶ Butler describes the power of hate speech to constitute the subject in this way but she also questions if the constitution is always final or effective. (Butler 1997, 18)

This is not accidental but a reflection of the major sociocultural, political and academic preoccupations of different eras. Walker goes on to recognise that these groups are broadened during the 1980s to include 'gender, age, sexual preference, marital status, physical capacity, and other categories.' (Walker 1994, 8) Expanding definitions through the inclusion of new categories serves to locate hate speech across a greater range of social constructs, and something telling is revealed as a result. The increasing fragmentation that the broadened categories bring about also increase the opportunities for hate speech to inflict its injuries. As has been shown, an individual's identity may span a number of these groups. Greater specificity in definition might recognise this complexity but it can also inadvertently generate a hierarchy of harm that privileges the risk hate speech poses to some groups over others.

Hate speech, when defined in a contemporary setting, is not usually considered an isolated unmotivated attack upon a random individual. Victims are targeted because they are identified as different or 'Other'. And so, hate speech fixates upon a (perceived) characteristic that has come to be associated with one or more of these named groups. A concern arises within the process of classifying these groups targeted by hate speech that unless membership of one or more of those pre-assigned groups is embraced in the definition, then it is feasible that an individual might not be recognised as a victim of this injurious speech. It would be at best cumbersome and at worst impossible, to create a definition that includes all conceivable groups that are threatened by hate speech. I am not suggesting that this should be an aim when attempting to agree a definition. Instead an acknowledgement is required that there must always be an absence that is accepted as part of hate speech. Absence and uncertainty come to the fore prominently in Walker's definition because exposing hate speech partly depends upon an external judgement. He states that hate speech is

traditionally something deemed offensive but does not attempt to explain who or what, may actually deem something offensive.¹⁷ A judgement appears to be required by an, as yet, unknown authority that holds the power to deem an expression offensive. In seeking clarity through definition, an additional problem has been created; who or what is the authority that judges an expression to be 'hate speech'?

At this point it is useful to introduce a second definition from Sumner. Sharing some similarities with Walker, Sumner acknowledges hate speech goes beyond verbal utterances and targets specific social groups. However, Sumner's definition includes some key differences that I will argue have influence upon the understanding of the term 'hate speech'. For Sumner, hate speech is understood as:

...any form of expression whose dominant purpose is to insult or denigrate members of a social group identified by such characteristics as race, ethnicity, religion, or sexual orientation, or to arouse enmity or hostility against them. (Hare and Weinstein 2009, 207-8)

The focus is shifting subtly here. Whereas Walker is content to consider the effect of hate speech as being one judged to cause offence, Sumner identifies a dual purpose within this language that seems to me to be crucial in understanding hate speech.

There is a 'dominant purpose' of hate speech to insult, as well as, the recognition that hate speech can generate hostility against a victim. Sumner introduces the idea of an intention linked to hate speech and designed to generate particular effects. What this suggests to me is that hate speech need not be explicitly hateful in content. Instead it could take the form of a hate speaker using more moderate language with the intention of encouraging others to express hatred towards members of a social

¹⁷ It is possible that a hate speaker may deem their words offensive which is why they choose them. A victim of hate speech may deem something directed at them offensive. A court may deem something offensive or perhaps a reader or viewer. Walker does not address this problem in his main text, so who deems something offensive is unclear.

group.¹⁸ No requirement for the forms of expression to be factual, appropriate or true is demanded. Examples are numerous. They include phrases such as ‘all Blacks are lazy’, ‘all Jews are rich’, or ‘paedophiles are gay’.¹⁹

With Sumner, the definition of hate speech develops from forms of expression that are deemed offensive to a particular group, to expressions that can arouse hostility in others against particular groups. An additional power of hate speech must be recognised here. Arousing hate in others and encouraging them to direct their animosity towards particular groups appears to give hate speech an agency. If hate speech has the capability to arouse hostility in others in this way, the possibility arises that new victims will be targeted as a result. What is uncovered here is that the original target of hate speech is never the only one put at risk by expressions of hate.

Both definitions from Walker and Sumner refer to ‘any form of expression’ that is judged to be offensive or has the purpose of being denigrating. They involve a helpful and generally accepted recognition that hate speech is not limited to speech or writing, despite what its name might suggest. Accepting the notion that any expression can be a form of hate speech is essential for understanding the reach and impact expressions of hate can have. Gestures, images, policies, and even silence can all be instances of hate speech. Each mode of expression potentially possesses the power to contribute to the constituting of a subject in a particular and political way. However, to say hate speech has a dominant purpose, as Sumner does, suggests that hate speech is *intended* to do something and this can be problematic. On the one hand it allows for the intention of a hate speaker to cause harm to be considered. On

¹⁸ This idea will be considered further in Chapter Two under the section titled ‘Hiding in plain speech’

¹⁹ No specific references are given as these slurs are based on well documented and much repeated stereotypes that can be considered well known. It is important to point out that people do not have to belong to any racial or religious group to be a target by hate speakers. False associations are common but inaccuracy does not make the injury that is inflicted by hate speech any less severe.

the other hand, if hate speech has an agency that can arouse hostility in others then an additional harmful intention, existing beyond the speaker, also appears to be indicated. Although *intent* is essential in understanding how hate speech is conceived, it can also be its most elusive element to uncover.

There are of course others who seek to resist the inadequacies of the 'hate speech' label. In light of this, a third description from Parekh becomes important to advance this analysis. For Parekh, the term 'hate speech' is itself unsatisfactory because the phrase:

...stresses hatred, an extremely strong emotion' and allows the concept to be easily confused if 'all forms of uncivil and hurtful speech' are subsumed within it. (Herz and Molnar 2012, 40).

To this point, the other definitions from Walker and Sumner have emphasised the negative effects that hate speech produces (to cause offence, to insult or to create hostility). Parekh adds complexity to how hate speech might be understood by distinguishing it from other types of speech that might cause injury. Sumner appears content with assigning to hate speech the intention of causing offence. Parekh is less convinced because speech that causes offence may be hurtful but that does not necessarily make it hateful. A key distinction is being made that begins to differentiate the levels of harm different types of expressions might inflict. Offensive speech can harm but it can also incorporate distasteful or rude utterances that do not communicate hate. By introducing categories of speech that might inflict lesser forms of harm, Parekh introduces a value judgement to distinguish what is hateful and what is merely uncivil. Just as Walker's description of hate speech requires an external authority to deem something offensive, so too Parekh's consideration requires a similar judgement. Despite the reservations Parekh articulates about the term 'hate speech', he nevertheless commits to a definition on the basis that the expression 'is

widely used and there is no obvious alternative'(Herz and Molnar 2012, 40) stating that:

...hate speech expresses, encourages, stirs up, or incites hatred against a group of individuals distinguished by a particular feature or set of features such as race, ethnicity, gender, religion, nationality, and sexual orientation. (Herz and Molnar 2012, 40)

Parekh's reluctance to accept the term 'hate speech' emphasises the difficult nuances faced when attempting to accurately define these forms of expression. Such resistance in the face of the term's inadequacies goes some way to explaining the difficulties in defining 'hate speech'.

What is beginning to become visible is how hate speech is able to create and re-enforce social division and difference. I suggest the divisions are made firstly and most obviously by identifying, through the definitions, who is vulnerable to this language. The definitions identify members of different religions, races, genders, and nationalities who may be subjected to expressions of hate. Secondly, although the process of defining the term is necessary, it also unintentionally colludes with hate speech and provides a way for a new division to be made. Since any definition is never entirely comprehensive (and will also adapt over time), they must always exclude or at least omit, some groups who are vulnerable to hate speech.

'Hate speech', the term that designates the idea, forces another splinter by virtue that it exists at all. In creating a name that claims a coherent, identifiable concept, hate speech is granted an authorised space in language where it is recognised. Additionally, hate speech is able to combine with and separate from other types of harmful speech (such as racist language or homophobic language), depending on the degree of harm that is inflicted. It is necessary to continually revise definitions of hate speech but the process of undertaking these repeated revisions ensures that a

shared certainty of meaning remains an impossibility. Definitions of hate speech are always susceptible to continual change, reframing, manipulation and omissions. Therefore, absence and uncertainty become a necessary part of the term that is understood as 'hate speech'.

Maintaining an openness to re-evaluation of the definitions is essential but is not without its problems. Definitions must keep pace with changing conceptions of the term itself, the ways in which hate speech is deployed within language, the victims who are targeted, and with the methods these utterances employ to injure. And yet, despite the challenges, those who seek to define hate speech also hold power over how the term is understood. Perhaps unintentionally, they are able to influence what is omitted or unrecognised as hate speech. This leads to a site of continual conflict where hate speech can thrive because the term must always exist in an uncertain state of revision.

What is consistent in the three definitions from Walker, Sumner, and Parekh, is how each privileges the effects of hate speech above any unique or quintessential features of the content of expressions. Each example under discussion asserts that hate speech conveys, promotes, or generates hatred in some form or another. However, in emphasising only the effects of hate speech, a problem can be seen. These indicate but do not address the notion that, in some sense, the impacts and harms inflicted by hate speech must occur prior to the utterance itself. The conditions that enable harm to be inflicted by this language must already be in place in advance of a communication. Whether such conditions are known or unknown is unimportant. What is significant is that these apparent pre-existing conditions create an environment where hate speech can succeed in its aim to inflict harm.

With each struggle for precision, these definitions of hate speech expose some of the key problems with attempting to understand and locate the harm these expressions can inflict. Two common themes are visible. Firstly, hate speech is agreed to encapsulate all forms of expression and, through these, its power to constitute and situate the linguistic subject in specific ways is identified. Secondly, there is a recognition that some groups are considered more vulnerable to, or more frequent targets of, hate speech. At the same time, questions arise over who or what may be authorising hate speech and judging the extent of the threatened harms. The centrality given in the definitions to the effects of hate speech suggest that hate speech itself is not a random or an accidental explosion of vitriol. Instead, there is a suggestion that hate speech is constructed with purpose, with the intention of communicating and sometimes creating hatred. If this is the case then, it seems to me, that hate speech cannot ultimately depend on how one subject or another interprets an instance of communication. As has been shown, a different authority, one that is as yet unknown, has the power to name something hate speech and judge the level of harm that may be inflicted. Later chapters will go on to uncover that authority and reveal it as something beyond both the hate speaker and the victim of hate speech.

A term gathering force

So less than 20 hrs after Brexit results announced, I have the pleasure of being called "a Paki c*nt in a suit" by a homeless man.²⁰

At the beginning of the chapter I stated that hate speech is known when it is heard but there is a difficulty in pinpointing exactly what makes something hate

²⁰ <https://twitter.com/TheBuddhaSmiled/status/746453286077796356> A personal account of suffering verbal abuse published on Twitter. The incident is important for discussions of hate speech because it demonstrates that perceived social status or economic privilege provide no protection from becoming a victim.

speech, which makes these forms of expression elusive. The statement now requires some clarification. It would seem that hate speech comes to be understood, at least in part, through its destructive results. It is now known that some definitions of hate speech consistently focus on the effects of these forms of expression.²¹ However, they avoid giving explanations as to what content or form hate speech may actually have. Hate speech is referred to as a presupposed category and the definitions cited here persistently restate who is vulnerable to its attacks. Such a blind spot in how the term is understood allows hate speech the opportunity to begin to enforce its power.

When hate speech incidents are analysed there is a tendency to place a reliance upon alternative concepts that seek to quantify the potential harms of these forms of expression. Other approaches construct arguments around the justifications for legislative restrictions on hate speech. Rather than being problematic, this frequent diversion within the hate speech literature actually serves to reinforce and highlight the contested space of definition. Ensuring the term is open to continual challenge and re-evaluation allows for its adaption to unstable external influences and helps the concept of hate speech maintain cultural relevance.

A moment is needed to remember the complicated themes that have arisen from considering definitions of hate speech that have a bearing on the concept itself. Because hate speech takes root across diverse and evolving social and political categories, no singular, universal definition of hate speech can, nor does, exist. However, the following common characteristics have emerged thus far:

²¹ Alexander Brown in the thorough and engaging article '*What is Hate Speech? Part 1: The Myth of Hate*' makes the point that '...only some characterisations stress that hate speech, properly called, typically causes or has a substantial likelihood of causing harm of one kind or another.' (pg. 437)

1. Hate speech is not limited to verbal utterances and can occur within all forms of expression.
2. Definitions tend to treat hate speech as a presupposed concept.
3. Definitions usually focus on the effects of hate speech not its content.
4. Hate speech is not random. It is intended to cause harm, premeditated, and authorised by an external authority.
5. Groups most at risk from hate speech are constituted as 'Other'.
6. Absence and uncertainty in meaning are an inextricable part of hate speech.
7. A divisive and violent force gives hate speech its injurious power.

As the ultimate aim of the chapter is to show how the term 'hate speech' is understood and how hate speech occupies a place in discourse, these characteristics must be examined in more detail. Performing as it does means that hate speech has a constituting power that reaches across all forms of expression. Hate speech definitions encourage the idea that forms of expression of hatred can be considered as vehicles for asserting, or arousing hatred of, and in, others. And yet, we seem to lack the vocabulary to adequately articulate this thing that is 'hate speech'. Recognised as stronger and more virulent than offense or insult, explanations are forced to qualify hate speech through recourse to inadequate and lesser descriptions. Each synonym (insult, denigration, offense) is simultaneously essential and deficient.

Hannah Arendt explores a comparable problem in her book '*On Violence*' (Arendt 1970) when describing a failing in the terminology used to consider violence because it does not sufficiently differentiate between specific key terms. Although the problem of sensitivity to specific terms is relevant here, Arendt's work is

additionally important for understanding hate speech because it focuses on violence.²²

Even in the work of having to *supplant* hate with other descriptors, in the hope of exposing the nature or essence of hate speech, the tools to do so seem to be missing.²³

Where other words are synonymised with hate, opportunities are created for this injurious language to go unseen and unnamed. For example, hate speech might be downgraded to an insult or offensive remark. In these circumstances there is a risk of failing to acknowledge an utterance as one that specifically expresses hate. Arendt articulates this problem writing that, 'to use them as synonyms not only indicates a deafness to linguistic meanings, which would be serious enough, but it has also resulted in a kind of blindness to the realities they correspond to.' (Arendt 1970, 43)

Whereas hate speech is no doubt offensive, not all offensive utterances can be considered hate speech. Some are merely distasteful. The blindness Arendt articulates in terms of violence is relevant here because, when considered in the context of hate speech, it can explain how this type of injurious speech exploits an ability to claim other terms, using them as a shield to avoid being fully exposed. When shrouded in this way, hate speech can appear less dangerous giving the illusion that it is 'only words' in the sense of posing no direct threat to an individual.²⁴ By exploiting the deafness to meaning hate speech creates a lure, offering a false assurance that expressions of hate no longer pose a danger. Where the masquerade is accepted, a

²² A continual theme throughout the text, and particularly in Chapter Three, shows how violence is a key element of hate speech.

²³ Derrida uses the term '*suppleer*' meaning both to supplant and supplement. The translation into English uses 'supplant' to articulate a 'concept of absence as the modification of presence' (Derrida 2000a, 6) as examined through Derrida's reading of Condillac in the essay '*Signature Event Context*'.

²⁴ I am using 'only words' as a reference to speech but also to the book '*Only Words*' (MacKinnon 1993) Catharine MacKinnon argues that pornography constitutes women in positions of subjugation and is authorised by the state '...establishing what women are said to exist as, are seen as, are treated as, constructing a social reality of what a woman is and can be in terms of what can be done to her...' (MacKinnon 1993, 25) MacKinnon of course always knows and rejects the problem of the 'only words' argument.

blindness to the discriminatory practices that hate speech requires in order to exist can also follow.²⁵ The masquerade can also be argued to have the effect of masking the previously identified intention of hate speech to generate particular effects beyond an individual hate speaker. Absence that is in fact presence, generated through deafness, follows hate speech like a spectre.²⁶ What is shown is an ever present and unavoidable failing in attempts to uncover the essence of expressions of hate.

Understanding the weight and importance of linguistic precision, and how neglecting particular words or terms may obscure social realities to which they correspond, allows for a final definition to be drawn into discussion. The '*Manual on Hate Speech*' (Weber 2009) is a publication designed to 'guide policy makers, experts and society as a whole on the criteria followed by the European Court of Human Rights [ECHR] in its case law relating to the right to freedom of expression.' (Weber 2009 Foreword) As Weber's text takes hate speech as its subject and is designed to guide society as a whole, it can be argued that it has relevance to the realities of social relations.²⁷ The importance here is that ECHR case law informs a specific definition of hate speech provided by The Council of Europe. As a result, a direct relationship between hate speech and society as a whole is created through legal means. What is evident here is that there has become a need for states to intervene and attempt to

²⁵ It is important when analysing hate speech not to accept that this type of language resides only within abstract linguistic categories. Hate speech produces and is a product of, discriminatory practices that shape the social world. Lacking a full and resilient vocabulary to articulate hate can mean it is easy to fall back in to less threatening terms and as a result fail to fully comprehend the savagery and force with which this language strikes.

²⁶ I am referring to Derrida when he writes that 'One never inherits without coming to terms with [*s'expliquer avec*] some spectre, and therefore with more than one spectre. With the fault but also the injunction of *more than one*.' (Derrida 1994, 21)

²⁷ Further discussion of the relationship between hate speech and the law will be pursued through chapter three.

control hate speech via the law. Weber's text also introduces a new theme that links hate speech directly to freedom of expression.

The Council of Europe in *Recommendation 97(20)* states:

...the term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin. (Weber 2009, 3)

This is the most detailed definition considered so far; however, the seven common characteristics identified earlier in the chapter remain evident. Importantly, however, the context of this definition, because it is informed by criteria used in freedom of expression case law, pits hate speech and free speech in a false opposition.²⁸

Additionally, the definition introduces a much clearer link between hate speech and law indicating a state interest in gaining some sort of control over this type of language. The definitions considered earlier were produced within academic texts. Weber's is designed for policy makers with an understanding that the definition is likely to shape real political approaches to hate speech. The result is that paragraph 2 of *Article 10* of the *European Convention on Human Rights* becomes relevant, that is to say freedom of expression being considered a human right.²⁹ To pursue this thread, it is necessary to accept that freedom of expression is applicable to all information and ideas including those '...that offend, shock, or disturb the State or any sector of the population.' (Weber 2009, 20)

A tension arises here because hate speech definitions referred to earlier in the chapter include 'offence'. There is a need to remain mindful that hate speech can

²⁸ Considering this relationship between free speech and hate speech on the basis they are mutually exclusive is, it seems to me, a false opposition since hate speech is a part of language in and of itself. Free speech is a principle that relates to human rights and so incorporates hate speech but is not in opposition to it.

²⁹ For full details on the ECHR framework in relation to hate speech see '*Hate Speech Revisited*' (Noorloos 2011, 57-119)

'offend' and so might also be considered a legitimate statement of free expression. In addition, *Article 10* introduces a new layer in terms of differential levels of offence by recognising expressions that shock and disturb. At this stage I will focus on the influence of rights to freedom of expression and case law on the concept of hate speech because they bring to the fore the challenges of linguistic precision, as Arendt has emphasised. I will argue that where a lack of precision or over-reliance on synonym are evident they generate a conflict that begins to imbue hate speech with a particular power to strike.

In the moment of aligning hate speech with offense, through a connection with freedom of expression, the demolition of the boundaries between the two is witnessed. To uphold ideals of freedom of expression there must be space for offensive utterances to be tolerated.³⁰ And yet, hate speech itself, at least on the surface, remains intolerable. Hate speech can be offensive speech but not all offensive speech can be hate speech. By what means can this contradiction be reconciled? If expressions that offend are tolerated on the basis of freedom of expression they are, in some respects, especially in a legal sense, no longer hate speech. Part of the problem lies in failing to clearly distinguish between offensive speech and hate speech. One might argue that this is done through considering the effects, considering the impact hate speech has. Did a form of expression promote, incite or justify hate? However, to tackle the problem of hate speech once its effects are known seems too late. Constructing a conflict between hate speech and freedom of expression seems to suggest that injurious language is now capable of eluding full exposure and, worse still, can affect its own sanitisation. While hate speech need not be based in fact, there is

³⁰ Behind this statement is a question of who authorises hate speech in the sense of judging its severity against other forms of speech that may hurt or offend. Chapter Three will address this point.

now a burden, not to show something is hate speech but, to show why something is not just shocking, offensive or disturbing. In part, this is a result of the inevitable and required act of substituting words for others in efforts to reveal hate speech in meaningful ways. When the state intervenes to control hate speech through law and policy, an additional force is exerted that gives hate speech further opportunities to refuse identification and to demand a level of toleration in public discourse.

Instances of hate speech are, under these circumstances, too easily relegated to the lower levels of offense or insult. Again the absence and hollowness hate speech requires is seen. Expressions of hate are not so much a fleeting burst of hateful energy that flares up and swiftly disappears. Instead, a blindness to the substance of what sustains hate speech is generated because, as the expressions are interrogated for evidence of their essence, they can evaporate and vanish under the scrutiny. Nevertheless, hate speech does not die and disappear. Instead, these expressions of hate transform and reappear; changed, yet the same. Like a snake shedding its skin, hate speech, once in danger of being exposed, moves on leaving its empty casing behind to distract us from following.³¹

A pause is needed here as a site of conflict and creation is being uncovered. Arendt cautions in her text that 'violence' should not be substituted for, or used interchangeably with, other distinct terms such as power. This problem is equally true of hate speech and yet, achieving a desired differentiation between expressions of hate and other insults is also impossible. As has been seen with offense, hate speech can masquerade as less threatening forms of language when in fact it poses a much

³¹ Here I am invoking the *spectres* conjured by Derrida in response to international transformations proclaiming the death of Marxism (Derrida 1994). It is not Marxism that is of significance for hate speech but rather the concept of the spectre.

greater threat. A claim is made by hate speech to assert its power over words that would seek to unmask it. In claiming other analogous terms as its own, hate speech creates a tension specifically around the levels of brutality expressions of hatred expose people to. Hate speech acts coercively to force the questions of how much injury has been caused and if that level of harm is significant enough to be called 'hate speech'. Finding ways to quantify the trauma and determine the depth of the wound inflicted by hate speech begins to take precedence. By causing a distraction in this way, hate speech is able to increase its power to harm. Arguably, hate speech is aided in this endeavour by state interventions designed to control hate speech because they can create a false opposition between hate speech and freedom of expression.

To accept that hate speech is in conflict with freedom of expression limits how much of this language can be kept in view at any one time and as a result, and potentially how effective any response to hate speech may be. This is because too little attention would be paid to how hate speech is conceived as a broad collection of communications. Analysing individual hate speech instances or events in the context of whether they are legal, discriminatory or harmful, and in terms of the harmful effects those instances of hate speech generate, is also limiting. So too are approaches that focus on a presupposed need to balance rights of freedom of expression against those of restricting hate speech. While remaining incredibly valuable as ways of locating trends and similarities between hate speech incidents, these approaches can fail to illuminate the resilient, dangerous, and chameleon character of hate speech itself, which, is why I have taken a different approach here.

Violent acts

By engaging, through The Council of Europe's definition of hate speech, with the broader influence of state interest in expressions of hate, an opportunity arises to explore the divisive and violent force that is a common trait of injurious utterances. Divisions in definitions that attempt to provide clarity, inadvertently allow hate speech to target victims more directly. Positioning hate speech as in conflict with principles of free expression shows that hate speech is more than only words.³² Identifying the targets of hate speech within the definitions by attributing characteristics to them such as age, gender, or ethnicity, can be argued to show a political function. Building definitions around constructs that are subject to inclusion or exclusion depending on political or social circumstances does two things.³³ Firstly, hate speech receives a type of authorisation because the named groups are identified as targets for these injurious utterances. Secondly, a risk is generated of failing to recognise the harm hate speech inflicts upon people or communities who remain unnamed. The crucial point, I suggest, is the act of exclusion that takes place in the naming and identifying of some groups and not others within each definition. Hate speech makes an act of violent division here. In fact, a double action occurs in the moment of naming. The defined groups become burdened with a heavy weight; one of difference, of being other, of not being 'normal'. In the moment of classifying difference within a definition and, in particular, when that description is forced into opposition with a broader principle that, '...is not only a consequence of democracy, [but] it also stands as one of its roots and continuously fosters it' (Weber 2009, 19) a moment of rupture is witnessed, a moment

³² Examples include 'Trigger Warning' (Hume 2015), 'I find that Offensive' (Fox 2016), 'Extreme speech and democracy' (Bodney, Edgar in Hare and Weinstein 2009)

³³ I mean that current groupings included in hate speech definitions can and do change. If the category of age was removed it would be because it may have lost its political relevance and could result in ageist hate speech becoming unrecognised by state controls.

of violence.³⁴ What does this mean for understanding the concept of hate speech? Is hate speech claiming to emerge from a place of normality; is hate speech claiming to be 'normal'?

Acting normal

Initially, stating that hate speech can claim to be normal might seem a ridiculous proposition. Hate speech is not normal in the sense that it is usually considered a typical or customary part of public discourse.³⁵ Expressions of hate are terrible, abhorrent and unwanted. What I mean here is that the harms that hate speech can inflict are recognised and understood to cause damage.³⁶ An observer, as opposed to a victim of hate speech, may consider expressions of hate abhorrent and yet, hate speech persists; hate speech may be terrible and yet it persists; hate speech may be unwanted and yet it persists. No matter how repulsive injurious utterances may appear, they nonetheless continually demand and receive a place within public discourse. As argued previously through the process of engulfing and over-powering its synonyms, hate speech ensures its own sanitization producing the illusion that the harm which hate inflicts is lessened. This question of normality demonstrates how this works. Hate speech may not be considered 'normal' within public discourse. However, shocking, offensive and contemptible utterances, though distasteful, are accepted as a

³⁴ The *force de rupture* that is the 'very structure of the written text' allowing it to break with context in the moment of inscription (Derrida 2000a,9). It seems to me that the separation involved allows individually innocuous words or signs to be used as hate speech.

³⁵ What or whose discourse is another question that cannot be answered here but there should be some recognition that the category is problematic and not at all unified.

³⁶ The presumption in this thesis is that all hate speech is harmful and dangerous. While this is defensible given that hate speech is often destructive, there can be instances where hate speech has no effect or where these expressions are authorised in some way.

necessity of free expression.³⁷ It seems to me that the points debated above are the reason a Presidential candidate in the United States is able to say:

”[Mexico] are sending people that have lots of problems, and they are bringing those problems to us. They are bringing drugs, and bringing crime, and their rapists,” the business mogul said. (Gabbatt 2015)³⁸

To suggest hate speech might be ‘normal’, is not to blithely assert it is acceptable, harmless, or even simply, a burden our discourse must bear. Instead, the issue is really whether hate speech can be considered usual or acceptable in public discourse. Who is accustomed to hate speech? But, a glimpse of the real problem is seen here. When a Brexit campaigner boldly and publicly claims, that sex attacks perpetrated by immigrants will increase if Britain votes to remain in the European Union, surely it becomes clear that hate speech is more commonplace than one may care to admit.³⁹

Here it is important to return to my indicated, but not yet explored, suggestion that an external force authorises hate speech to harm. During the earlier discussion of Walker’s description of hate speech, I raised the point that if something is deemed to be hate speech, then some external authority beyond the addressor and addressee must authorise it as such. Such an external validator appears in the Brexit campaigner example. Publicly linking responsibility for sex attacks to immigrants surely promotes, or at least aims to promote, ‘hostility against migrants and people of immigrant origin.’(Weber 2009, 3) It seems to me that the comments meet the definition of ‘hate speech’ proffered by the Council of Europe. Given that this particular definition is informed by European case law (but with the proviso that this scenario plays out under

³⁷ Examples of this point are available in ‘*A Duty to Offend*’ (O’Neill 2015) and ‘*Free expression is no offence*’ (Appignanesi 2005) and ‘*I find that Offensive!*’ (Fox 2016)

³⁸ This is a quote taken from a speech made by the Republican Presidential Nominee, Donald Trump on 16 June 2015 and reported widely by the UK press. Trump was later elected President.

³⁹ Nigel Farage made the sex attack comments in an interview with The Telegraph newspaper. The article text was ‘Women could be at risk of mass sex attacks carried out by gangs of migrant men if Britain stays in the EU’ (Ross 2016)

somewhat different national laws across the EU), it seems to me that comments meeting its criteria could potentially be unlawful.⁴⁰ Nevertheless, no calls for an investigation were made. Perhaps more alarmingly, especially given the public context of the statement, is that few demands for an apology were made. Some form of authorisation is taking place here that allows the speaker to make these comments without being tempered by a serious threat of repercussions (or at least legal repercussions). I suggest that this indicates that a source more powerful than that wielded by an individual speaker, has influence over the conditions under which hate speech becomes 'sayable'.⁴¹ For the time being, who or what, authorises hate speech in this situation remains unclear, but the existence and power of an external authority seems evident.

Both examples, from Donald Trump and the Brexit campaigner, work to create division and promote hate. One seeks to divide Americans and Mexicans, and the other seeks division between migrants and non-migrants in the UK. Hate speech makes a violent intervention in both situations. When hate speech is named and when it is known as a category of language (however distasteful that might be), expressions of hate become, in some senses, normalized. A different example that also shows how hate speech can be normalised can be seen in instances where people understand singular epithets, like 'nigger' or 'faggot', as hate speech.⁴² At the point of someone

⁴⁰ The Donald Trump example given earlier in the section is slightly different as it is situated in the context of the US where legal traditions and cultural views of free speech are usually considered to be somewhat different to those in the UK. However, there is still an authorisation taking place that allows Trump to speak from a position of power and influence.

⁴¹ In the book *'Excitable Speech'*, and the chapter 'Sovereign Performative', Butler states 'the border that produces the speakable by excluding certain forms of speech becomes an operation of censorship exercised by the very postulation of the universal.' (Butler 1997, 90) The state is shown to draw the boundaries between the speakable and the unspeakable through speech regulations.

⁴² At the beginning of the chapter I stated that semiotics alone will not reveal a word as hate speech because the sign is not enough to reveal their meaning. The single words referred to in this section

recognising the words and understanding them to be hateful, the meaning and force of these injurious utterances is exposed. The words appear to conform to a standard that is understood as typical of hate speech.⁴³ A recognised shared meaning seems to allow the word to be understood in a way that does not depend on the interpretation of its context but still identifies it as hate speech. It does not mean that the use of particular words is condoned, or accepted, or inflicts no injury. Instead, the words appear to be acknowledged and known to belong to the broad conceptual category that has come to be termed 'hate speech'. However, a problem arises here, as it has previously been argued, that hate speech thrives in a site of continual conflict exactly because the term itself must always exist in an uncertain state of revision. If hate speech is, to some extent, always uncertain then how can some words conform to what appears to be a broader shared understanding?

What's in a word?

"And then he says to me 'yeah, that goes for you as well'. He starts calling me the N word and told me to 'go home'." (News 2016)⁴⁴

To respond to the question above, it is helpful to remember an earlier point that hate speech possesses an agency that allows it to reach beyond language. Singular words that encapsulate hate may initially appear to contradict the point that hate speech must always involve absence and uncertainty but that is not the case. Instead these individual names allow a new strand of investigation to be taken forward that

move the discussion forwards as they are saturated with political meaning through their histories. The point will be addressed directly in the following section.

⁴³ The standard to which I say the words conform may go unexplained or unarticulated but the standard is nevertheless met in the understanding that the words represent hate speech.

⁴⁴ Trish Adudu, a BBC reporter, became a victim of hate speech and was interviewed about her experience by Nick Owen for BBC Midlands on 30 June 2016. The quotation is taken from the transcribed text of the television interview available through the BBC website. In the embedded video of the interview, the victim conveys what her abuser said repeating the word 'nigger' twice. The transcribed text is edited to change those sentences to the quote shown above where the epithet is changed to 'the N word'.

can resolve the difficulty. What of 'Paki', 'Nigger' or 'Dyke' for example? They all scream 'hate speech' in a single name. I could argue that I understand these particular words ooze hate because I already know how I should conceive each one. To know these words, I must also know their hateful meanings. To some extent this is true but there is also another factor at play. Earlier in the chapter I argued that hate speech always carries an underlying threat to wound, and that the conditions that allow hate speech to harm always precede any communication. These singular names communicate beyond the moment of the utterance because each one has a history that can be accessed. Such a history is not just related to contexts and content but what Butler describes as being:

...the history that has come to be internal to a name, has come to constitute the contemporary meaning of a name: 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. (Butler 1997, 36)

From the slurs cited above it would seem that cultural memory combines with iteration, allowing a turbulent and violent history to distil so potently, it can be conjured through the invocation of a single name. Through repetitive use in different situations, the negative meanings of the words solidify in their association with hate. Hate becomes constitutive of hate speech. The word alone becomes enough to harm because that word always carries the weight of every harm inflicted through its prior use. Each use adds a layer of sediment, an additional history and, by extension, increases the potential violence that can be forced upon a future victim.⁴⁵

An example that illustrates this point can be taken from a recent speech made by Suella Braverman MP that resulted in her being heavily criticised for using the term

⁴⁵ There are a number of instances where people have attempted to reclaim some of these derogatory words through the process of resignification. Although important, I have not included discussion within the main text as even where resignification takes place the word as hate speech remains understood and often in use.

‘cultural Marxism.’⁴⁶ Often associated with the far right, the term refers to a conspiracy theory that is considered to be anti-Semitic. A phrase like ‘cultural Marxism’ can be said to demonstrate the sedimentation that Butler describes because its history has come to constitute its meaning. However, in addition, a comment made about the incident by a spokesperson reveals something new:

Suella Braverman MP may not have been aware of it, but the term ‘cultural Marxist’ has a history as an antisemitic trope. We would ask for her to clarify the remarks and undertake not to use the phrase in future. (Walker 2019)

As is indicated in this extract, the history that Butler describes as being ‘internal to the name’ has given the term ‘cultural Marxism’ a force that allows it to injure. However, in saying that Braverman ‘may not have been aware of it’, it can be argued that these histories cannot be assumed to be equally accessible to everyone.⁴⁷ If some of the sedimentation within a word remains unseen, then the absence and uncertainty I argued is a necessary part of hate speech, again becomes visible. However, the words still contain a violence that propels the underlying threat of hate speech to harm, regardless of whether the history is known or not. I argue that this is a force that *supplants* the violence of each utterance with misdirection.⁴⁸ In diverting attention to what remains a real shared understanding of names like ‘nigger’, the powerful point of continuity and shared comprehension (which I argue is violence) can go unseen. Violence propels hate speech, ensuring its performative power to inflict harm. Where hate speech is concerned, the misdirection I suggest takes place is not a ‘natural’ development miraculously evolving over time. Rather, it is the use and iterability of

⁴⁶ Braverman was quoted as saying ‘We are engaging in many battles right now. As Conservatives we are engaged in a battle against cultural Marxism, where banning things is becoming de rigueur;’(Walker 2019)

⁴⁷ At the time, Braverman was challenged about her use of ‘cultural Marxism.’ From her response it is not clear if she was directly aware of the anti-Semitic connotations although she did not directly deny knowing. She responded by defending her use of the term.

⁴⁸ Again I referring the translation of ‘*suppleer*’ used by Derrida and explained under footnote 23.

hate words, structured and pre-determined by social and political conditions, which precede the words and ensure their violence. As Lynne Tirrell points out 'People may use them casually, participating in practice without being fully aware of the details of the practice.' (Maitra and McGowan 2012, 206) However, even when a person may be ignorant of a name's internal history, they can still know the word carries a threat to harm.⁴⁹ Such a force is exerted in the process of naming, since the naming both constitutes a linguistic subject and makes their vulnerability to language transparent.

This chapter began by demonstrating that hate speech cannot be fully revealed through content and context alone because, as performative speech acts, the iterability of these forms of expression allows them to break with context. Such a point of disruption was the first insight into the violence that shapes hate speech and its definitions.⁵⁰ As the end of the chapter draws near, it seems to me appropriate, to return to this site of violence and to propose that it may reveal a glimpse into the future of the term 'hate speech'. A famous passage from the play *'Romeo and Juliet'* can be read in this context to elaborate my point:

ROMEO

By a name

I know not how to tell thee who I am:

My name, dear saint, is hateful to myself

Because it is an enemy to thee.

Had I it written, I would tear the word. (Shakespeare et al. 2001, 1015)

The final line of the poetic quotation presents an intriguing opportunity to consider the violence, which I have argued is both internal and external to hate speech, from a

⁴⁹ Social conditions can be argued to function to reinforce this point. For example, when a child is warned not to call someone a name because it is 'bad' or 'nasty' that child will not understand the lengthy and painful histories that are internal to a particular name. Nevertheless, they are likely to understand that it is considered wrong to use the word because it can hurt someone.

⁵⁰ During this chapter there has been an underlying presupposition of hate speech as a performative speech act that can be argued to be supported by the focus on effects of hate speech in the definitions. Hate speech does act. However, chapter two will look in more detail at hate speech being positioned as a performative speech act.

slightly different perspective. The idea of tearing the word or name, as indicated in the quotation, is a physical possibility for a written inscription. In a more modern sense of a typeface displayed on a screen, the act of tearing could potentially be replicated with a strikethrough.⁵¹ Conceiving this action within other types of communication may appear more challenging, especially if Roland Barthes's assertion that 'Speech is irreversible; that is its fatality...In speaking, I can never erase, annul; all I can do is say "I am erasing, annulling, correcting", in short, speak some more' (Barthes 1989, 76) is considered. However, to tear the word as Romeo wishes is not to erase, instead it implies a violent rejection. A tear must leave behind a residue or a part of the name. The apparent contradiction here between speech and writing can be resolved through the positioning of hate speech as a performative speech act because, 'Performative utterances operate according to the same logic as written marks...' (Butler 1997, 148) Under these circumstances, to 'tear the word' can be construed as the *force de rupture* that Derrida explores as a 'breaking force' in the 'very structure of the written text,' (Derrida 2000a, 9)⁵² but it is not limited to the written text.⁵³ Considering the tearing of a name in this way, as a *force de rupture*, might allow hate speech itself, the idea that is represented by the name, to break 'with its context, that is, with the collectivity of presences organizing the moment of its inscription' (Derrida 2000a, 9). In the act of existing in a state of continual revision, it seems to me that, 'hate speech' as a term is never far from the possibility of being torn apart and reimagined. And so, I

⁵¹ Although the supplemented electronic option may lack the physical force of an actual tear, I would argue the intention is similar enough for a comparison to be drawn.

⁵² A full explanation of the *force de rupture* is given in 'Limited Inc.,' (Derrida 2000a).

⁵³ Hate speech as a performative speech act will be considered in chapter two.

suggest that there is a possibility that hate speech can shed its name and move into the future under a different guise.⁵⁴

The original aim of this chapter was to answer the question of how the term 'hate speech' is understood and how expressions of hate come to occupy a place in our modern discourse. A point has been reached where a response to these questions can be articulated. Through examining four definitions of hate speech, and seven characteristics I have argued they share, I have made a case for recognising violence as the real foundation for understanding the term 'hate speech'. Consequently, I conclude this chapter by stating that the term 'hate speech' can be understood through violence, and that it is violence that allows hate speech to claim a place in discourse.

As there is no universally accepted definition of the term 'hate speech', it cannot be assumed that the term is always understood in a shared or consistent way. Having said that, I argued that hate speech is often treated as a presupposed concept within definitions that describe these forms of expression. The term's generality '...means that it can be used to meaningfully talk about far more protected characteristics and far more varieties of speech than any of its predecessors.' (Brown 2017, 427) However, the generality Alexander Brown identifies means hate speech must always exist in an uncertain state of continual revision, subject to changing social and political conditions. As a result there is always an absence and uncertainty in meaning that is internal to these forms of expression. These absences ensure that

⁵⁴ The point here acknowledges that hate speech is a term that has come in to regular use over the last thirty years. However, expressions currently termed hate speech have been uttered prior to the collective name being applied. It is not inconceivable that the term 'hate speech' will change its name over time in response to different conditions so I argue the *'force de rupture'* provides the opportunity for that to happen.

hate speech always encapsulates the possibility of redefinition, allowing hate speech to adapt to unstable external influences, and ensure its own continuation.

Despite being labelled with the name 'hate speech', hate speech is not limited to verbal utterances and can be found within all forms of expression. Because hate speech can break with context and, in that rupture, generate new and alternative contexts, a type of linguistic violence takes place from the outset. The propensity of the definitions of hate speech to focus on the effects of these forms of expression is useful in identifying their violent impacts. However, giving primacy to effects obscures a different violence that is identifiable within hate speech. Through being named, 'hate speech', becomes formally recognised. Becoming visible in this way allows hate speech to forcefully demand, and receive, a place in discourse which subsequently increases and, in some instances, authorises its ability to harm.

Violence appears again when definitions of hate speech work to identify the groups considered most at risk from these forms of expression. Initially, a violent act of division takes place exposing the groups, or individuals within those groups, as particularly vulnerable to hate speech. They are designated as different, or 'Other' in some way. Simultaneously, an act of exclusion takes place ensuring any unnamed person or group, who may be targeted by hate speech, risks going unrecognised as a victim. Additionally, the role of hate speech itself, in constituting and reconstituting the linguistic subject, forcibly ensures a single individual is never the only one placed at risk from expressions of hate. As a result, violence is seen in both the harms hate speech inflicts upon its victims and, within the agency it possesses to constitute social identities and incite hatred towards different groups. Positioning and recognising hate

speech as a performative speech act allows these violent pre-conditions to become visible.⁵⁵

Other significant ways through which the violence of hate speech becomes visible, are emphasised throughout the chapter. The definition offered by The Council of Europe is used to demonstrate an initial, direct, connection between hate speech and the state.⁵⁶ Such a connection is forged through law and politics in the context of what can be considered 'freedom of expression' and where the limits to 'freedom of expression' may be drawn. State interventions to control hate speech acknowledge the danger this language poses to individuals and civil relations. At the same time, these interventions generate requirements for some levels of toleration of offensive utterances as part of commitments to 'freedom of expression.' Hate speech goes beyond individual injuries, which are damaging enough, because this injurious language both produces and is a product of discriminatory social practices.

By aligning hate speech with similar words, in efforts to describe and isolate it, a confusion is generated in relation to what actually defines hate speech. While hate speech can saturate alternative names used to describe it (offensive speech, degrading speech), those synonyms are not always in themselves forms of hate speech. Although the use of synonyms may be necessary, the process of invoking alternative descriptions is also deficient. Hate speech gains a power to masquerade as a less threatening substitute, and by extension, to prevent the violence it inflicts being fully

⁵⁵ Chapter two will consider hate speech as a performative speech act.

⁵⁶ Connections between hate speech and state institutional frameworks will be explicitly considered in chapter three.

exposed. As a result hate speech creates opportunities to sanitise its own appearance and falsely reduce the appearance of its harm.

A hierarchy is reinforced by creating a requirement for some form of value judgement to be applied in order to assess the amount of harm hate speech inflicts. Where the harm is judged to fall within one of the 'lesser' realms of offence, then the violence of hate speech can be obscured or even tolerated. Having claimed a place in discourse through being named and distinguished from other types of offensive utterances, hate speech becomes, in a very direct way, authorised by the state. A space is forcefully created within discourse which demands hate speech is, to varying extents, tolerated. I argue that through this process, hate speech becomes to some extent normalised within discourse. Combined, all of the divisive and violent forces explored within this chapter function to give hate speech its injurious power. As a result, hate speech is always able to carry an underlying and sustaining, threat to wound or harm. Hate speech is always, in some sense, violent.

Chapter Two: Constructing a concept of hate speech

Chapter one demonstrated that definitions of 'hate speech' are contested and, although they share a number of similar characteristics, the definitions undergo a necessary and continual revision. I argued that a consistency can be brought to understanding 'hate speech' through violence, and that violence allows hate speech to claim a place in discourse. Following from this, it seems possible that violence may also help to shape the concept of hate speech itself. Brown has written that:

...it makes a material difference that people use the term 'hate speech' rather than these older terms, and it makes a difference because the term is referring to a much broader and more capacious concept; and this is not necessarily a bad thing. (Brown 2017, 428)

It seems to me, that if Brown's statement is accurate, then there is potential within the concept of hate speech (because it can be general and expansive) to incorporate both the state of continual revision and the violence revealed during discussion of the definitions.¹ Additionally, because hate speech can transcend the confines of language to inject harm into civil relations, the need to understand the broader concept of hate speech becomes more urgent. As a result, some of the historical conditions connected to how the concept of hate speech has come to be understood must be explored.

However, I have previously shown that hate speech can be problematic because histories associated with particular words or phrases cannot be assumed to be equally accessible to everyone. The different groups identified as most vulnerable to hate speech change over time, and hate speech possesses the ability to break with context and obscure any points of origin. As a result, I suggest that tracing a linear history of events in the hope of describing how the concept of hate speech has

¹ Brown proposes a general concept of hate speech because he recognises an imbalance in academia that has focused heavily on legal concepts of hate speech.

developed, may not be productive. The main focus here is to understand the concept and its relationship with violence, force and institutional frameworks. And so, as an alternative, I propose to approach the concept of hate speech by emphasising six particular points of influence that, I will argue, have shaped the modern conceptualization of hate speech. The six points of influence are the relationship of hate speech to: freedom of expression, hate crime, the concept of 'fighting words', the importance of being a performative speech act, everyday situations, and genocide. To understand the concept of hate speech through this approach means to seek out, the spaces of disruption that allow conflicting perceptions, to become part of the concept of hate speech itself. Using academic work alongside a range of examples drawn from law, social movements, publications, the internet, theatre, politics, and everyday situations, I will show how the relationship between the concept of hate speech and violence is shaped.² The six themes will act as a prism and refract to illuminate the concept of hate speech in terms of, how the concept is shaped by violence and comes to absorb conflicting ideas and ideals.

Freedom of expression

Strictly speaking, there is no definitive point of origin that can be isolated to show the birth of 'hate speech' as a conceptual construct. Such a statement should not be unexpected. Origins are multiple and mendacious and, as chapter one has shown, hate speech targets origins and fights being limited to a singular original, injury. Constituting subjects beyond speech, across a variety of points of origin, ensures expressions of hate always exceed an original speaker. Perhaps it is more appropriate

² It is important to remember that this thesis focuses upon hate speech from the perspective of violence, force and institutional frameworks. The emphasis of the chapter is placed upon considering the concept of hate speech in this context.

to refer to a point of departure instead. To find this uncertain site, I will look toward societies that embrace the value of freedom of expression since:³

Free speech and democracy have had a long and ambivalent relationship. From the dawn of modern democracy, it was recognised that the right of the people to criticise government, laws, and social conditions was inherent in the very concept of the rule of the people. (Hare and Weinstein 2009, 1)

Chapter one made the argument that hate speech can infiltrate all forms of expression. Most often, hate speech is debated in terms of how these utterances or expressions should be conceived in relation to rights to freedom of expression.⁴ A societal commitment to freedom of expression while crucial and valuable, seems to me, to create the conditions that allow a particular type of concept of hate speech to develop. In order to explore this further, I will look back to some of the beginnings of the modern idea of freedom of expression and demonstrate their relevance for discussions of hate speech today.

In ‘*The Harm in Hate Speech*’ (Waldron 2012), Jeremy Waldron explores ‘the issue of hateful defamation in Enlightenment theories of toleration.’ (Waldron 2012, 207) He approaches this through the specific lens of religious toleration. While religious toleration may seem an unusual point of departure the words of Kevin Boyle can be used to help defend this choice as follows:

The struggle to achieve religious liberty has been a fundamental aspect of the emergence of the modern world. Freedom of expression is the child of freedom of religion and the two remain intimately connected. Both rights remain precarious and are far from achieving universal acceptance. (Boyle in Coliver, D'Souza, and Boyle 1992, 61)

³ By taking this approach, the emphasis in this thesis is placed mainly (but not exclusively) upon Western liberal democracies where legal frameworks include provisions covering freedom of expression. However hate speech is a global threat so as the thesis develops, the points of influence I identify as shaping the modern concept of hate speech will be indicated, to be potentially, universally applicable.

⁴ There are numerous academic texts that analyse hate speech within the context of freedom of expression and so I consider this relationship both important and not in need of further elaboration. Examples include: ‘*Extreme Speech and Democracy*’ (Hare and Weinstein 2009), ‘*Striking a Balance: Hate speech, Freedom of Expression and Non-discrimination*’ (Coliver, D'Souza, and Boyle 1992), ‘*The Content and Context of Hate Speech: Rethinking Regulation and Responses*’ (Herz and Molnar 2012), ‘*Hate speech revisited*’ (Noorloos 2011), and ‘*Freedom of expression v. hate speech*’ (Bacquet 2011) amongst others.

As was shown in chapter one through discussion of definitions of hate speech, religion is often one of the characteristics cited when identifying those most at risk from hate speech.⁵ In addition, Ivan Hare has observed that ‘religion has been central to discussion of freedom of expression since the first sustained writings in English about the extent of free speech.’ (Hare in Hare and Weinstein 2009, 289) And so, Waldron’s link between religion and toleration has a clear connection with freedom of expression. Through his reading of John Locke, whom he considers as having created the ‘most sustained piece of writing on [toleration] in the early modern period’ (Waldron 2012, 210), Waldron traces these links back to the Enlightenment period.⁶ Using Locke as a starting position, Waldron draws upon the work of Voltaire, Pierre Bayle, Montesquieu and Denis Diderot within his analysis. His argument culminates in the summation that current approaches that defend the position of no or minimal restrictions on free speech are deficient where they claim to deal with hate speech ‘by making concessions under the headings of “public disorder”, “incitement”, “or fighting words.”’ (Waldron 2012, 232)⁷

Waldron argues that where public order is considered in the context of toleration, it does not just convey the absence of violence, but also ‘...a principle of inclusion and a rejection of the calumnies that tend to isolate and exclude vulnerable religious minorities.’ (Waldron 2012, 232). As a result, he suggests that amendments to non-speech related regulations are inadequate in terms of dealing with injurious

⁵ This would seem to indicate that the links between religious toleration, freedom of expression and hate speech currently remain relevant.

⁶ Definitive dates for the Enlightenment period or ‘Age of Reason’ are debated. Generally speaking they are accepted as covering the majority of the Seventeenth and Eighteenth Centuries. The defining characteristic of this age was the primacy of rational thought and scientific thinking. Major thinkers associated with this period include Immanuel Kant, Jean Jacques Rousseau, Voltaire, Denis Diderot and John Locke.

⁷ Fighting words is a reference to a specific point in US case law that will be discussed in a later section.

speech. Instead he argues that specific restrictions enacted against hate speech have now become a requirement. Although I agree with Waldron's conclusion that specific restrictions against hate speech are now required, it is not for the same reasons. It seems to me that given public order is maintained by legal, social, and political means, then it cannot convey an absence of violence.⁸ Additionally, as shown in chapter one, hate speech demands a level of toleration in discourse. Specific restrictions against its use can be argued to be necessary because of the violence hate speech threatens to individuals and civil relations. Mary Kate McGowan makes a counterpoint to Waldron stating that:

Since a commitment to free speech is deeply incompatible with allowing the government to regulate the expression of political opinions, it seems that one cost of valuing free speech is the mandatory toleration of hateful speech. (Maitra and McGowan 2012, 122)

Where Waldron is able to break from the idea that the cost of freedom of expression means accepting vilification as a dark side of discourse, McGowan takes the opposite stance. The two positions appear incompatible with one another; however, I would argue that their main difference is really located in different levels of toleration for hate speech they are willing to accept. I suggest that from the perspective of the concept of hate speech, both views are essential to its construction. A direct connection to the state is created through the idea of the right to free expression and the regulatory frameworks surrounding it (i.e. law or politics). Simultaneously, a site of conflict is uncovered through opposing the needs to limit hate speech through regulation against those required to support freedoms to criticise government, laws

⁸ Chapter one concluded that hate speech is always violent. Due to the violent threat of this language, it is necessary for states to attempt to exert a level of control over hate speech. However, as I will argue in the last chapter, where legal, political or social force are used to limit the harm of hate speech (through attempts to control this language) the institutional frameworks through which those controls are enacted, inevitably and simultaneously work to reinforce the violence of hate speech.

and social conditions. And so, seeds for the development of the concept of hate speech can be seen germinating during the Enlightenment period.

Sumner also sees a need to return to the Enlightenment period when he considers freedom of expression and its connection to the principle of equality in his book *'The Hateful and the Obscene: Studies in the Limits of Free Expression'* (Sumner 2004). His aim is to 'articulate a framework for determining limits to the right of free expression and to apply it to the particular cases of hate propaganda and pornography.' (Sumner 2004, 203) In order to achieve this, Sumner draws upon John Stuart Mill's Harm Principle on the basis that 'where harm to others is involved, individuals may rightfully be subject to coercion and control.' (Sumner 2004, 20)⁹ Despite the different approaches taken by Waldron and Sumner they both agree that hate speech is damaging enough to warrant being restricted through law. The difference lies, in Waldron, on the one hand, arguing that the restrictions ensure the participation of vulnerable minorities in public life, while Sumner, on the other hand, focuses more on where the limits on freedom of expression ought to be placed in order to prevent harm to others. Alon Harel and Sumner share a position that harms from hate speech can be quantified and ordered in terms of their ability to injure.

Harel supports Sumner's view that hate speech harms when saying:

Hate speech constitutes one of the most damaging forms of "bad speech." The most serious harms from hate speech are expressive and psychological injuries....Other harms...include the risk of violence and the contribution of such speech to creating or sustaining and reinforcing a discriminatory or oppressive social environment. (Harel in Herz and Molnar 2012, 308)

However, Harel also recognises directly the contribution hate speech makes to sustaining oppressive social environments. Sumner's solution is to produce a

⁹ Sumner's conclusion presents four policy recommendations for modern Canadian courts generated from 'consistent application of a principled normative framework – one which is both harm-centred and evidence-based.' (Sumner 2004, 202)

framework to legitimately limit freedom of expression in particular cases where the harm can be evidenced.

Mick Hume challenges the position Sumner takes by suggesting that Mill's concept of the harm principle has been 'expanded beyond all recognition' (Hume 2015, 189) and is wrongly used to argue for restrictions on hate speech. Rather than considering the potentially varying levels of harm hate speech can inflict, Hume argues that de-normalising offensive speech through legislative measures serves to restrict public debate.¹⁰ While Waldron and Sumner advocate hate speech restrictions, Hume considers this problematic because:

The biggest victim is not the one taking offence; it is the rest of us, robbed of the opportunity for open-minded discussion and free debate that offers our best hope of getting at the truth and deciding a way forward on controversial issues. (Hume 2015, 189)

Such an argument is not unusual when hate speech is considered, however, I would argue that the position is flawed, not least, because it appears to conflate hate speech and offense. As I have argued in chapter one there is a need to clearly distinguish between the two terms to ensure hate speech is recognised. Hume appears to dilute the harm threatened by hate speech through equating hate speech with offence.

Under such conditions, the wider threat to civil relations hate speech poses is overshadowed with the suggestion from Hume that a victim who suffers at the hands of hate may somehow be choosing to take offence. Hume appears to reject the notion supported by Waldron, Sumner and Harel that hate speech can reinforce discriminatory social practices. Others too resist the idea of placing legal limitations on hate speech. Theodore Shaw, for example, follows Hume in suggesting that restricting

¹⁰ I argued in chapter one that hate speech can be normalised in discourse and it would seem here that Hume is providing additional evidence for that position.

free speech removes opportunity for free debate. However, Shaw is different in taking the view that greater freedom of speech provides ways of challenging systems of discrimination, stating that:

Free speech is essential for minority group members who are challenging systems of subordination, segregation, discrimination, particularly if they are attacking the complicity of government in creating and maintaining those systems of subordination. (Shaw in Herz and Molnar 2012, 411)

Though the writers quoted above differ in their positions, what seems to be clear is that freedom of expression and its limits are not universally agreed or without restriction. As Marloes Van Noorloos has recently observed 'An individualistic, one sided "right to say whatever I think" mentality...' (Noorloos 2011, 328) has become worryingly prevalent and serves to distort the idea of the right to freedom of expression. Such a distortion is generated by privileging individual interests over and above the rights of all people. In reaching back to Mill, Sumner provides a reminder that 'the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.' (Mill and Himmelfarb 1982, 68) To deny the personal and civil harm hate speech causes as Hume appears to do, facilitates the argument that freedom of expression should be absolute, in the distorted individualistic sense Noorloos has observed. But an individualistic view neglects to acknowledge the historical conditions and social contexts that have already tied freedom of expression, and by extension hate speech itself, to limitations and measures of state control through civil, political and legal means.

Focusing on these texts makes it possible to argue that the influence of early debates about the right to freedom of expression set conditions for the modern concept of hate speech to take shape. While 'hate speech' as a term may be relatively

new, the long lineage of the right to free expression ensures that hate speech must always be aligned with the state, law, and civil relations. Therefore, hate speech as a concept becomes tied to models of Western liberal democracies through the concept of freedom of expression.¹¹ Additionally, those ties involve understanding that the right to freedom of expression has always been limited. As is demonstrated by the work of Waldron, Sumner, and the other writers quoted, rights to freedom of expression play a fundamental role in debates about hate speech today. A central point of debate continues to exist in relation to whether it is right to restrict freedom of expression in order to limit the harms hate speech can inflict. These debates are fuelled by the contradictory requirements that hate speech must be tolerated and restricted simultaneously. At the heart of the concept of hate speech sits this conflict.

Hate speech or hate crime?

Police are investigating reports that signs reading "No more Polish vermin" have been distributed in Huntingdon - including outside primary schools - just hours after the result of the EU referendum was announced.¹²

What is becoming clear, through the influencing history of freedom of expression and the arguments to place restrictions upon hate speech as a result, is that the law has a significant role to play in shaping the concept of hate speech. However, caution should be used in making any assumptions that would lead to always thinking of hate speech as illegal. If that were the case there would be no distinction between hate speech and hate crime. However, it is known that hate speech exists and harms

¹¹Identifying the concept of hate speech, as tied to freedom of expression and models of Western liberal democracies in this way, raises a question of if the concept of hate speech being presented here can resonate in societies constructed under different social and political conditions. It seems to me, that where any political conditions and social contexts tie rights to freedom of expression to any state limitations or controls on injurious language, then the concept of hate speech explored here could potentially be more universally applicable.

¹² <http://www.cambridge-news.co.uk/reports-of-no-more-polish-vermin-signs-distributed-in-huntingdon/story-29443411-detail/story.html>, [accessed 26 June 2016] The story has also been reported by national media in *The Guardian*, *Independent*, *The Express* and *The Mirror* all of which included photographs of the signs written in both English and Polish.

when it is not considered to transgress legal boundaries. It seems to me that hate speech laws actually have more resonance with maintaining public order and the limits of free expression, than they do with directly protecting people from the harms of hate speech.

Paul Iganski has written that 'the term 'hate crime' has no legal status in the UK. No law uses the term. Yet the police and other criminal justice agents have enthusiastically embraced it.' (Iganski 2008, 1) This is equally true of the term 'hate speech' in that in itself, 'hate speech' is not named in the legal provisions that relate to these forms of expression. I argue that this formal absence, despite a more general presence in discourse, has a wider influence on the concept of hate speech, in terms of generating a shared social understanding of what hate speech means. Despite numerous connections to the law, it would seem that 'hate speech' as a term has no legal status. Hate speech must exist beyond the law whilst also being subject to the law. The reluctance or inability of the law to directly confront hate speech is critical to the conceptualisation of hate speech. However, if the elusiveness of hate speech is recalled from chapter one, then this should not seem too surprising.

Nevertheless, many nations have adopted what can be considered some direct 'hate speech' legal restrictions. The UK, US, Germany, France, The Netherlands, Australia, Canada, Hungary, all enacted legislation that relate to hate speech in some way. European law and international law have also addressed hate speech through legal means. Given the amount of academic work that analyses and cites 'hate speech' law, it can be argued that legal traditions influence the concept of hate speech over and above the history based in democracy and freedom of expression. Having said that, this is not a thesis in law and I do not intend to revisit the mass of work already

carried out in this area of study. Nevertheless, I will argue that the next major point of influence for the concept of hate speech is to be found in the conflict through which hate speech is differentiated from hate crime.

Like 'hate crime', 'hate speech' is not a term that can be found in the wording of specific legislation that seeks to tackle these forms of offences. One of the difficulties in attempting to uncover a traditional history of hate speech, and a reason I am taking a different approach in this chapter, is articulated by Sir David Williams QC who writes:

There is no accepted generic term for the battles of the past, and the restrictions which have arisen emerged from many statutes as well as from the common law itself. (Williams in Hare and Weinstein 2009, 92)

Lines of legal heritage that are relatable to 'hate speech' can be traced through a range of other restrictions from sedition, libel, and other legislation focused on offences of incitement or disturbances to public order. These vary considerably between different countries and periods of history.¹³ A result of this historical journey in the UK has been to closely align 'hate speech' with protections for religion, race and public order.¹⁴

Although hate speech is clearly bound to the law, there is no certainty that these forms of expression are always marked by illegality. The relationship between hate speech and law is more complex and results in having a significant influence upon the concept of hate speech.¹⁵ Brown provides a basis from which to explore this

¹³ To explore the mass of variation in legal developments is beyond the scope of this thesis and would also unnecessarily limit the discussion of the broad concept of hate speech.

¹⁴ A brief summary of UK developments is provided by Williams (Williams in Hare and Weinstein 2009, 92-95) A much more detailed history is given by Noorloos. (Noorloos 2011) Chapter one identified other groups that have been closely aligned with hate speech in this way through consideration of the definitions of the term 'hate speech.'

¹⁵ For the purposes of this thesis, UK law is given primacy and the arguments and conclusions drawn as a result are UK-centric in that respect. Different legal traditions and areas of the world may access and understand the concept of hate speech very differently in their own contexts. However, international law does include provisions for combatting hate speech that are linked to rights to freedom of expression, and the term 'hate speech' is now widely used across many nations. Consequently there are

tension in the article '*What is Hate Speech? Part 1: The Myth of Hate.*' (Brown 2017)

Here he distinguishes between a legal concept of hate speech and a more general concept of hate speech. He notes that 'numerous legal scholars have put forward putative definitions of the term 'hate speech' (Brown 2017, 421) but suggests that an increasingly general view is more apt where 'hate speech is best conceived as a family resemblances concept that does not admit definition.' (Brown 2017, 419) Brown argues that legal definitions of hate speech have heavily influenced academic considerations of the subject in other disciplines. As a result, an imbalance has been created in theoretical work that he views as obscuring the illimitable contexts in which the term 'hate speech' is used. As I emphasised in chapter one if hate speech can appear normalized, and force debate as to if it should be tolerated as a result of a commitment to free expression, then an understanding of the concept cannot be one purely formed through law. This more general type of hate speech concept is being indicated when Claire Fox expresses concern that:

This escalating offence-spotting is unnerving, especially when you realise that the target list for people likely to be hauled over the coals for being offensive is growing. Anyone can be accused, and the most liberal organisations can crumble under fire. (Fox 2016, 9)

Usually, it might be expected that legal frameworks would require a certain evidence threshold to be met to determine if a defendant is guilty of a crime or not. Here Fox's comments serve as a reminder that where hate speech is concerned, accusations and judgements take place through other forums as well. Recognising this shows a break or at least a difference between hate speech and hate crime. It can be argued here

some indications that the concept of hate speech incorporates elements that are potentially more universally shared. For an overview of relevant international law, see '*Hate Speech Revisited.*' (Noorloos 2011, 141-179)

that one of the reasons for this, as R. L. Tsai points out when considering the politics of hate, is that:

...the rule of law, which does not trickle down to most of the human interactions in society, relies on other media and social organisations to reinforce norms of equality and participation. (Tsai 2012, 13)

These other mechanisms that Tsai is emphasising can be argued to be the major influences that lead Fox to express her concerns about what she views as a decreasing ability of society to tolerate offense. Legal restrictions upon hate speech exist. They are important for formally denouncing and punishing hate speech as well as marking boundaries for what is considered legally 'sayable'. At the same time, there must also be a resistance to viewing hate speech only, or primarily, through the legal readings. Hate speech always occurs prior to any legal intervention and it is clear that a number of hate speech utterances, although recognised as hate speech, are not considered to contravene any particular law. As demonstrated in chapter one, state controls that rely on determining varying levels of toleration for injurious language can also serve to legitimize some forms of hate speech. Recognising the wider generality of the concept of hate speech is significant for distinguishing between hate speech and hate crime. With this in mind, I will consider these challenges not via specific legislation but instead, through different community influences and experiences.¹⁶

During an investigation of the normality of everyday hate crime, Iganski argues that 'the label 'hate crime' wrongly individualises the problem as the abnormal, irrational and pathological behaviour of severely bigoted individuals.' (Iganski 2008, 40)¹⁷ While Iganski is specifically referring to racist hate crime, I argue that the

¹⁶ Specific pieces of legislation will be discussed during chapter three as they are relevant to the discussion of the relationship between hate speech, law, and state institutional frameworks.

¹⁷ The notion of 'perpetrator communities' is addressed by Iganski in the context of 'low-level hate crime' that is described as 'banal and unorganised'. Examples given include: broken windows, banging on doors, pushes, kicks or a blow to a passer-by.

problem is also relevant to conceptualising hate speech. Instances of hate speech are often perceived as individual exchanges. Brown draws a parallel with Iganski arguing that conceptualising hate speech as ‘the expressing of hate or hatred may have the unwelcome effect of pathologising hate speech.’ (Brown 2017, 454) Where this happens Brown argues that hate speech becomes individualised in the same way Iganski observes for hate crimes. I suggest here that often, such moves to individualise hate speech result in the wider influences shaping behaviour, including the influence of institutional frameworks, receiving less attention than might be deserved. One can argue as a result, that the law can actually distract from identifying hate speech in a broader sense and lead to a narrower conception of hate speech than is actually needed. Individuals who engage in hate speech carry a responsibility for the harm their speech inflicts, but at the same time, frameworks that shape and authorise particular behaviours in communities or society also contribute to the damage hate speech can cause.

Iganski continues by asserting that perpetrators of hate crimes are likely to be quite ordinary. He explains this by saying that offenders are influenced by the wider community which ‘shapes and legitimises the perpetrator’s racism, the offender in turn serves the community’ (Iganski 2008, 40) through committing the hate crime. In doing so, offenders are ‘not only acting out these notions of difference, they are simultaneously reconstructing the prevailing structures of oppression and reinforcing the boundaries of difference.’ (Iganski 2008, 40) This point is significant for understanding the concept of hate speech and how it relates to violence and institutional frameworks. Here, Iganski’s work suggests that civil relations, and what he terms structures of oppression, can also shape the environment to produce hate

crime. Chapter one showed that hate speech exceeds any individual hate speaker because it has the potential to harm wider civil relations and can become normalised in public discourse. Iganski's work shows how those wider threats posed by hate speech become so damaging. It seems to me to serve as one way to differentiate hate crime from hate speech. Both function in similar ways, to reinforce boundaries of difference, but hate speech retains an ability to avoid being criminalised because, in some circumstances, it demands a legitimacy in public discourse.¹⁸ While hate crime is argued by Iganski to be produced by the structures of oppression that it reinforces, hate speech, because it can avoid criminalisation through being legitimized, can also function to produce discriminatory social practices.

Research conducted by the Leicester Hate Crime Project appears to at least partly support these claims. Findings following interviews conducted with victims of hate crime showed that:

... there is 'no one size fits all' type of offender...participants referred to a sense of unfamiliarity and intolerance towards 'difference' as being key motivating factors behind acts of targeted hostility. Perceived vulnerability was also identified by participants as being central to why they thought they had been victimised. (Chakraborti, Garland, and Hardy 2014, 62)

The main difference between the research outcomes of the Hate Crime Project and Iganski's position is the reference the research participants made to their perceived vulnerability. While it cannot be clear how the vulnerability they refer to was conceptualised, there is a link here to the definitions of hate speech discussed in chapter one. I argued that labelling or naming particular groups in definitions aims to identify and protect those most vulnerable to hate speech. However, through the process of being named, those groups and people who identify as members of them,

¹⁸ This argument only applies to instances of hate speech that do not directly conflict with legal provisions to restrict hate speech.

are also designated as 'Other' and inadvertently made more vulnerable as a result. The participants in the Hate Crime Project appear to indicate here that they became constituted as victims of hate because of an intolerance towards difference on the part of the perpetrators.

And so, a point is reached where it is becoming clear that considering hate speech through its relationship with hate crime is limiting. Law is restricting the concept of hate speech and distracting from the broader social and political influences that are shaping the construction of the concept. As a result, it seems productive to explore an alternative example in order to understand how hate speech and the law interact. The example I will use relates to the introduction of the *Racial and Religious Hatred Act (2006)* in the UK. (2006a)¹⁹ Prior to the introduction of the Act, the dominant Christian religions were privileged under the law.²⁰ However, it is not the legislation itself that is important here. What can lead to understanding a point of influence for the construction of the concept of hate speech is a response to the introduction of the Act from arts practitioners.

During 2005 English PEN published '*Free Expression is No Offence*' (Appignanesi 2005) containing contributions from across the arts sector objecting to the proposed law. The book includes contributions from actors, writers, directors, film makers, academics, journalists, a comedian, a QC and a radio presenter. The objections were based on the view that the Act was considered 'a modification to the UK's justice system which puts all writers, artists and performers at risk, and limits all of our

¹⁹ Primarily the Act was designed to create equality in law between religions by granting equal status to non-majority religions. An offence was created making it illegal to 'stir up' hatred on religious grounds. <http://www.legislation.gov.uk/ukpga/2006/1/contents> [accessed 28 January 2016]

²⁰ It seems pertinent at this point to remember Waldron's consideration of religious tolerance in relation to his support for hate speech regulation. The Act demonstrates how these issues maintain a continuing relevance.

fundamental rights to free expression.’ (Appignanesi 2005, Publisher's Note)²¹ While the Home Secretary of the time gave reassurances that the arts would have no reason to fear the legislation, some contributions to the book contextualise the concerns of the artists and cultural practitioners, by articulating a set of events that led to the cancellation of the play *Behtzi* in 2004.²² After running for two weeks, the play was cancelled when protests against its performance turned violent. The protests against the play came mainly from the Sikh community in the city of Birmingham who raised objections to the staging on the basis that the play insulted the Sikh religion. Here it is helpful to provide some context about the play itself. Madhav Sharma, one of the lead actors, gives a synopsis of the content of the play as follows:

And so it was that I agreed to take on the challenge of trying to portray the head of a gurdwara (Sikh temple) renovation committee who abuses the psychological hold he has by raping, within the confines of his office, the devout daughter of his former homosexual lover. He is murdered, and our heroine ultimately finds some salvation thanks to her abiding faith in God and the love of a younger Afro-Caribbean man. (Sharma in Appignanesi 2005, 32)

The point here is not to argue whether the play did or did not amount to hate speech.²³ Instead, I aim to show the influence of law upon on the concept of hate speech by considering what took place. The relevance of this point is articulated by the executive director of the Birmingham Repertory Theatre who was quoted as saying that ‘it remains a matter of great concern to us that illegal acts of violence can cause the cancellation of a lawful artistic work.’ (Left 2004)

²¹ English PEN is described in the book as ‘a vital part of an international organization that champions freedom of expression everywhere and the right of writers, artists and indeed anyone to say whatever they feel without fear of persecution or penalty.’ (Appignanesi 2005, Publisher's Note)

²² The cancellation of the play, written by Gurpreet Kaur Bhatti and performed at the Birmingham Repertory Theatre, took place in 2004. The *Racial and Religious Hatred Act* became law in 2006.

²³ I do not hold the view that the play contains or represents hate speech. The point of interest are the reasons presented for why artists might object to a proposed piece of legislation that would outlaw the ‘stirring up’ of racial or religious hatred. I argue that these reasons are really related to who controls what can be said and who is authorised to set limits on freedom of expression.

Nicholas Hynter has said that ‘...it’s the business of theatre and always has been, to disturb and provoke.’ (Hynter in Appignanesi 2005, 40) If that is the case then arguably, the play resides within the acceptable boundaries of freedom of expression. As a result, any response to the people who protested violently, might be expected to be a legal one. And yet, the events were not quite so simply resolved. The police made three arrests but no prosecutions followed. In addition, the theatre was not ‘...given the guarantee that it was entitled to: namely that audience, workforce and premises would be protected.’ (Hynter in Appignanesi 2005, 39) And so, the violent protests can be argued to have received a form of authorisation that resulted, in the curtailment of the right to freedom of expression of those involved with the production. This leads to the question of what might have prevented the police, and legal structures, from acting to protect those under attack, and failing to prosecute those who protested violently.

As has been discussed in chapter one the definitions given to hate speech are continually revised. Often these changes will reflect the social and political preoccupations of different time periods. Hate speech remains officially unnamed in a legal sense with legislation instead emphasising rights to freedom of expression and the limitations of those rights. Hynter’s criticism of the police force and the apparent legal failure to protect those involved with the production becomes more complex when the political conditions are considered in more detail. Hynter suggests that the ‘theatre and play seem to have been victims of political jostling between a local Labour minority and a Tory-Lib Dem coalition’ (Hynter in Appignanesi 2005, 39) that each required votes from the Sikh community. He goes on to suggest that the ‘political jostling’ and desire for votes meant there was a failure by politicians to condemn the

violent protests. He implies that a lack of open political support for the staging of the production was a contributing factor to the situation that forced the play's cancellation. To my mind, it seems that the cancellation of the play is not explained by a simple and seemingly obvious inaction on the part of the police force. Nor is it explained by a lack of public support from politicians who failed to champion the right of the play to be performed. If it is true that the theatre is seen as the site of controversy that '...the authorities fear above others,' (Hynter in Appignanesi 2005, 42) then a deeper understanding is required that reaches beyond a localised electoral contest or the response of the local police.

Jacques Rancière's consideration of 'politics' allows for a more nuanced and revealing exploration of the situation. In the book *'The Politics of Aesthetics'* (Rancière 2009) Rancière discusses how forms of art:

...define the way in which works of art or performances are 'involved in politics', whatever may otherwise be the guiding intentions, artists' social modes of integration or the manner in which artistic forms reflect social structure or movements. (Rancière 2009, 14)

The argument can be made here that the play itself challenged established social and political hierarchies prompting the allegation that it insulted the Sikh community. The violent protests served not only to disrupt the performance but also to reinforce the same hierarchies that the play exposed and challenged. And so, the play becomes 'involved in politics' through what can be argued to be a contest over equality.

However, I argue that this is not a contest over which group (those involved in the production or those involved in the protests) assumes greater authorisation to 'speak' or to be 'heard.' Instead, a specific form of disagreement arises which is defined by Rancière as '...a conflict over what is meant by 'to speak' and 'to understand' as well as over the horizons of perception that distinguish the audible from the inaudible, the comprehensible from the incomprehensible...' (Rancière 2009, 84) Because the play is

‘involved in politics’, the contest must be elevated beyond a matter of whether either group has more or less authorisation to speak.

For Rancière ‘politics is an anarchical process of emancipation that opposes the logic of disagreement to the logic of the police.’²⁴ (Rancière 2009, 90) Furthermore, the ‘police,’ must be understood as distinct from a police force, referring instead to ‘a system of coordinates defining modes of being, doing, making, and communicating that establishes the borders between...the sayable and the unsayable.’ (Rancière 2009, 89) The competing views of the two opposing communities that clashed over the performance of *Behtzi* are not actually the central concern when considering the circumstances surrounding the cancellation of the play. The play is ‘involved in politics’ because its performance presents a challenge to what it means to speak, what is understood as sayable, and where the boundaries are drawn around what is sayable and unsayable. It can be argued that the contest over equality is not taking place between the theatre and the protestors. Instead, the fight takes place between those who control the boundaries that limit free expression and those who would challenge them.

As a result the state finds itself in a precarious position because:

The arts only ever lend to projects of domination or emancipation what they are able to lend to them, that is to say, quite simply, what they have in common with them: bodily positions and movements, functions of speech, the parcelling out of the visible and the invisible. Furthermore, the autonomy they can enjoy or the subversion they can claim credit for rest on the same foundation. (Rancière 2009, 19)

²⁴ Rancière assigns some particularly specific meanings to these terms and provides his definitions in *The Politics of Aesthetics* (Rancière 2009, 80-93) ‘Disagreement’ ‘...arises when the perennial persistence of a wrong enters into conflict with the established police order and resists the forms of juridical litigation that are imposed on it.’ (Rancière 2009, 84) This should be considered in the context of Rancière’s concept of the ‘distribution of the sensible’ that ‘refers to the implicit law governing the sensible order that parcels out places and forms of participation in a common world by first establishing the modes of perception within which these are inscribed.’ (Rancière 2009, 85)

I argue that the cancellation of *Behtzi's* performances exemplifies the potential threat the theatre poses to the 'system of coordinates' Rancière's police uses, to create the borders for what is considered sayable in a public forum. Where the theatre threatens to influence civil relations, it does so through a challenge to the boundaries of what is 'sayable' and who is given authority to speak. As a result, the theatre potentially possesses a power to make audible the inaudible and expose the inequality that is revealed when hate speech is wrongly opposed to freedom of expression.

Foundational 'fighting words'

This strange relationship between law and other areas of society and state, that appear to be influencing the concept of hate speech, are seen again through my next point of influence. I will argue that one event in US legal history makes a fundamental impact upon how the concept of hate speech has come to be understood, particularly in academic fields. The much cited *Chaplinsky v New Hampshire* decision resulted in a new concept of 'fighting words' being defined in US law.²⁵ Justice Murphy articulated 'fighting words' as '...words that "by their very utterance inflict injury" and words that "tend to incite an immediate breach of the peace"' (Walker 1994, 71). 'Fighting words' are clearly described as more than a heated argument and more than a threat of violence. Justice Murphy's description is clear that these words are different; they inflict injury through being uttered and that they have an ability to incite public disorder.

²⁵ Walker provides a detailed and illuminating history of hate speech in the United States that includes consideration of the fighting words doctrine first introduced in 1942. The ruling is considered especially significant because it was 'the major exception to the expansion of freedom of expression under the Roosevelt Court' at a time when American law on this issue was in its infancy. (Walker 1994) 'Fighting words' was specific to the US and ultimately had only minor legal impact.

'Fighting words', as a legal category, had only a minor influence and 'constitutional scholars have argued that this doctrine should no longer be considered good law, for reasons that are particularly weighty in the context of racial slurs.' (Strossen in Coliver, D'Souza, and Boyle 1992, 300) However, these reasons are not because fighting words are viewed as problematic in terms of restricting freedom of expression in the US. James Weinstein has addressed why the *Chaplinsky* decision does not contradict the First Amendment saying it is because '...the Court was trying to distinguish a 'private fracas' from a 'public debate' and more specifically a public debate linked to political participation.' (Weinstein in Hare and Weinstein 2009, 53). The collection of critical race theorists, who came together in order to theorise an approach to hate speech that is compatible with the First Amendment in the US, also considered fighting words. The book *Words that Wound* (Matsuda 1993) sees both Mari J. Matsuda and Charles R. Lawrence III address 'fighting words', and although they differ in their interpretations, neither argues that the concept is necessarily problematic. The real issue as Matsuda sees it is that '...racist speech is so common that it is seen as part of the ordinary jostling and conflict people are expected to tolerate, rather than as fighting words.' (Matsuda 1993, 35) Despite its impoverished legal weight, the *Chaplinsky* decision is conceptually important for hate speech because it acknowledges two important issues that I will discuss below.²⁶

Firstly, the court created a term, 'fighting words', which categorizes a very specific type of speech that has the capacity to inflict injury. Accepting that speech causes injury has become essential to the modern understanding of hate speech.

²⁶ Fighting words, as will be shown, are not the same thing as hate speech. The relevance of this moment for hate speech is linked to the recognition that speech can inflict injury and that the law has a specific aim; to maintain public order.

Legally recognising the ability of words to injure puts into question the artificial division between language and actions that had been traditionally presupposed. When this occurred, space became available to question the position of privilege, speech, or rather the democratic notion of freedom of speech, had historically occupied. Most importantly, in my view, 'fighting words' laid the foundations for what would later become understood as performative speech acts.²⁷ Without the performative speech act, the modern concept of hate speech would be very different.

Secondly, 'fighting words', directly assigns language the ability to incite disturbances in public order. Words are assigned an agency that goes beyond that of causing injury to an intended individual victim. Potentially, all citizens are threatened by these words if public order is threatened. Recognising 'fighting words' meant that an understanding that words could do something destructive both in the moment of the utterance and beyond it, was legally acknowledged. More importantly, words were deemed to hold the potential power to threaten the state through civil disturbance.²⁸ The *Chaplinsky* case legitimises a way to legally restrict a type of speech by both creating 'fighting words' as a legal category and linking them to public disorder and injury. However, 'fighting words' are not strictly speaking 'hate speech'. Although 'fighting words' were considered in the same vein as obscenity, profanity and insults, there is nothing specific in the definition to implicate hate in these crimes. The focus was instead placed on provocation and it created an interesting complexity that has

²⁷ Here, the injury in the moment of the utterance is specifically related to instances of hate speech. Performative speech acts are generally understood to act but their action is not necessarily injurious. Their action is instead linked to authorisation. These ideas will be developed further in the next section.

²⁸ What I mean here is that in breaching the peace there is a risk of the words generating civil unrest. The point of how hate speech can further threaten the state will be elaborated upon in chapter three.

been termed the 'heckler's veto.'²⁹ The veto describes a situation whereby a speaker might find themselves subject to arrest or prosecution, not because of what they say but because of how an audience reacts. If an audience with extreme views reacts to a moderate speaker in a way that disturbs the peace, that speaker may be at risk of finding themselves arrested for inciting public disorder, even though what they say may be reasonable. I have previously argued through considering definitions of the term 'hate speech' that injurious language possess an agency that allows it to arouse hostility in others. This intention to generate a reaction need not be that of an individual speaker because hate speech can exceed the speaker, transforming its contexts and constituting subjects in social and political ways. Making speakers vulnerable to the 'heckler's veto' is one of the broader criticisms of the fighting words doctrine.

Here an interesting development for the concept of hate speech emerges. Neu articulates a conflict when arguing that the *Chaplinsky* verdict is an 'odd way to prevent violence' (Neu 2008, 144) since it can be viewed as punishing the speaker and not necessarily those engaged in violence. Neu reasons that, although the speaker is responsible for their words, they technically incite violent acts rather than carry out those acts. His view is that it would be more appropriate to punish 'those who actually become violent' (Neu 2008, 144) as a result of the language that incites them. Of course, this assumes that individuals enacting physical violence would not be punished but it is easy to imagine a range of other laws that those individuals could be charged with. Additionally, it takes a narrow view of what may be being said. Violence could be incited if a crowd objected to a view the speaker expressed, as well as, in cases where

²⁹ A full explanation of the heckler's veto is given in '*Hate Speech: A history of an American Controversy*' (Walker 1994, 71) and '*Sticks and Stones: the philosophy of insults*' (Neu 2008)

the speaker may actively encourage an audience to support their view. However, I would argue that the major influence of this situation is to illuminate the state interest in maintaining public order, over and above, any consideration of the actual words or views that may have been expressed. A supporting argument for this view is provided by Nadine Strossen when she writes:

Even more disturbing is that the reported cases indicate that blacks are often prosecuted and convicted for the use of fighting words. Thus, the record of the actual implementation of fighting words doctrines demonstrates that – as in the case with all speech restrictions – it endangers the principles of equality as well as free speech. (Strossen in Coliver, D'Souza, and Boyle 1992, 301)

However, the influence of fighting words for the concept of hate speech does not end here. Whilst there may ultimately have been little legal gravity to the 'fighting words' doctrine, the concept has carried currency into much later decades and different spheres of public life. During the 1980s the Campus Speech Codes controversies in the US invoked the principles of 'fighting words' and firmly established them as central to the idea of hate speech. The Campus Speech Codes involved 'colleges and universities adopt[ing] codes of student conduct restricting offensive speech' (Walker 1994, 128) Although initially successful, the codes were challenged and quickly defeated in the courts. Arguably, what is seen here is an instance of, 'fighting words' breaking from its legal context and, acting to re-inform a greatly developed area of debate around hate speech. The idea of fighting words recognises a specific violence of a certain type of speech that is different to that of a personal affront or an insult. Meaning, that fighting words inflict an injury. Although the key element of 'fighting words' for the concept of hate speech is to acknowledge that words can injure, it also emphasises a significant state tie that is not based in a motivation to protect a victim but instead is focused on preserving public order. As Strossen observes, '...the fighting words doctrine does not address and will not prevent

the injuries caused by [campus] racist speech.’ (Strossen in Coliver, D’Souza, and Boyle 1992, 300) Although based in law, the concept of ‘fighting words’ is shown here to also be heavily influenced by state politics.

Performing hate speech

Chapter one outlined how the definitions of hate speech often place emphasis upon the harms hate speech can inflict. If hate speech can injure then there seems to be the presumption that these forms of expression must be performative in nature. Additionally, if the political influence, noted at the end of the ‘fighting words’ section, is constructing an influential part of how the concept of hate speech is understood, then there are additional grounds for considering hate speech as performative.³⁰ As a result, a brief account of performative speech acts is needed.

The first theorisation of performative speech acts is attributed to J. L. Austin who gave the William James Lectures in 1955.³¹ Austin describes these speech acts as indicating ‘that the issuing of the utterance is the performing of an action – it is not normally thought of as just saying something.’ (Austin, Urmson, and Sbisá 1975, 6) There is no direct association in Austin’s work with violence or indeed any injury inflicted by performative speech acts. Instead, he considers the ability of speech to act through a form of authorisation. A famous example of how the performative functions for Austin is the description of a judge saying ‘I sentence you.’ In the moment of the utterance, the words act to sentence a defendant. A certain authorisation is required for the act to be successful and, in Austin’s conceptualisation, the scenario privileges

³⁰ This is because Butler’s theorisation of the performative speech act adds a distinctly political character which will be discussed within this section.

³¹ The lectures resulted in the publication of *How to Do Things with Words* (Austin, Urmson, and Sbisá 1975) which sets out Austin’s theory of performative speech acts.

the position of the speaker over the addressee. For Austin, these performatives are restricted to verbal utterances. His conceptualisation of the performative speech act appears to align consistently with the foundation provided through the 'fighting words' doctrine in the previous section.

Later work by Derrida and Butler develops this notion of the performative beyond Austin's essential but arguably restrictive concept. Derrida increases the reach of these types of utterance to other forms of 'communication' and emphasises the violence in these speech acts.³² By identifying the ability of the speech act to break with context through the *force de rupture*, as was outlined in chapter one, Derrida introduces violence into the performative. In addition, he also problematizes Austin's idea of the 'total speech act in the total speech situation' (Austin, Urmson, and Sbisá 1975, 148) which Derrida argues must be an impossibility asking '...would a performative utterance be possible if a citational doubling [*doublure*] did not come to split and dissociate from itself the pure singularity of the event?' (Derrida 2000a, 17) Building on these previous works, Butler develops the performative speech act further to make it distinctly political.³³ She argues that the 'efforts of performative discourse exceed and confound the authorizing contexts from which they emerge.' (Butler 1997, 159) For Butler, this is because subjects are interpellated into social being in a variety of different ways, not in a singular way. Through those processes, she explains how the performative is not only something used by an 'already established subject' but

³² Derrida undertakes a specific reading of Austin's performative in the essay '*Signature, Event, Context*' in the book '*Limited Inc.*' (Derrida 2000a, 1-23)

³³ Butler devotes a complete book to the performative speech act in '*Excitable Speech: a Politics of the Performative*' (Butler 1997) She responds directly to the work of Austin and Derrida throughout the text.

also shows an ability to 'transform the contexts by which they are or are not authorised.'³⁴

In this sense the social performative is a crucial part not only of subject *formation*, but of the ongoing political contestation and reformulation of the subject as well. The performative is not only a ritual practice: it is one of the influential rituals by which subjects are formed and reformulated. (Butler 1997, 160)

This developed form of the performative is the version that I argue is an essential feature of both hate speech, and the understanding of the concept of hate speech. The stages of theoretical development outlined above are heavily influential for the concept of hate speech. This is because they explain how hate speech can injure but, also, how hate speech functions to constitute linguistic subjects in social and political ways. The authorisation that Austin assumes for the performative speech act is not always granted to hate speech.³⁵ However, once that performative is made violent by Derrida, and politicised through Butler's analysis, the performative hate speech act can transform its contexts whether it is authorised or not. Butler describes this as 'that moment in which a speech act without prior authorization nevertheless assumes authorisation in the course of its performance...' (Butler 1997, 160)³⁶

An alternative view of the performative is contributed by Cami Rowe who approaches the concept of performativity through theories of performance. She makes a clear point that her conception of the performative refers '...to the broad performance-like characteristics of particular actions and modes of being, and this is,

³⁴ I am making reference to Butler's argument through chapter four, '*Implicit Agency and Discursive Agency*' in '*Excitable Speech*' (Butler 1997, 127-163)

³⁵ For Austin the speaker is authorised and so the performative can act. However, with hate speech, and particularly where hate speech laws are in place, the speaker cannot be assumed to be in a position of authority. They may be unauthorised, excluded by law.

³⁶ Through this idea, an explanation can be given for how a hate speaker can occupy a position of authority over a victim even if they appear to be in position of subordination. For example the tweet describing verbal abuse received from a homeless person at the beginning of the section 'a term gathering force.'

except where noted, distinct from linguistic notions of performativity.’ (Rowe in Sylvester 2015, 23) Nevertheless, Rowe acknowledges that because she is undertaking a performative political analysis, there is overlap with the work on performatives by Austin, Derrida, and Butler. As a result of the overlap, I am able to pursue an argument that the hate speech performative may also be considered as a masquerade. This is not without a connection to a lesser quoted section of Austin’s writing. During the opening passages of *‘How to do things with words’* in the section *‘Preliminary Isolation of the Performative,’* Austin states that performative speech acts will not be found in nonsense but as ‘masqueraders.’ (Austin, Urmson, and Sbisà 1975, 4)³⁷ To masquerade is of course to wear a mask, to be disguised, perhaps to alter one’s appearance, or temporarily take on an alternative role.

Rowe traces the historical roots of ‘masquerade’, discovering that the term brings together notions of masquerade performances with the objects used to create them (Rowe in Sylvester 2015, 23). Initially, this involves Rowe identifying theatre as a site for political masquerade and subsequently as a place where participants are able ‘to take on social identities normally prohibited by their class or gender, or to disguise themselves while committing socially inappropriate acts.’ (Rowe in Sylvester 2015, 24) Disguised behind only a few words, that perhaps were never intended to be dwelt upon, the essence of hate speech is made starkly visible. It seems to me, that the idea of masquerade can allow hate speech to function performatively at the point where it acts to claim synonymous terms and to mask the harm hate speech can inflict.³⁸

³⁷ It seems to me that the idea of masquerade can allow hate speech to function performatively and engulf its synonyms as is described in chapter one.

³⁸ I described the way hate speech can achieve this masquerade in chapter one under the heading ‘A term gathering force.’

Hiding in plain speech: the face of ‘reasonable racism’

Both Labour and the Conservatives are calling for a ‘transition period’ when we leave the European Union, which would mean **unlimited EU immigration** until 2021³⁹

As has been shown earlier in the chapter the concept of hate speech incorporates a confusion that disturbs distinctions between hate speech and hate crime. I argued that the reason for this is due to the social and cultural factors functioning to maintain frameworks of oppression and discrimination. If this is combined with earlier points that mean hate speech is not always in conflict with the law - it can be tolerated - then it seems to me that more ‘ordinary’ forms of hate speech may also influence the construction of the concept of hate speech.

Whereas in many circumstances hate speech is obviously harmful and dangerous, there are others where expressions of hate contrive to serve a less visible, insidious, social or political purpose. Iganski pointed toward the possibility of these less visible forms of harm when he considered the normality of many hate crime perpetrators and the influence their community could have upon their behaviour. However Iganski was clearly considering perpetrators of formally and legally recognised ‘hate crimes’. As has been discussed, hate speech is not always a hate crime and is able to produce as well as reinforce discriminatory social practices. Nevertheless, there is a parallel in terms of the ‘normality’ of many perpetrators of hate speech since, in some cases, ‘hate speech can also be subtle, moderate, nonemotive, even bland.’ (Parekh in Herz and Molnar 2012, 41) Consequently, it can be counterproductive to think of hate speech only as extreme and unusual.⁴⁰ However, unlike the earlier discussion where state controls on

³⁹ The quotation is taken from a jointly created leaflet distributed by Europe for Freedom and Democracy (EEDF) and United Kingdom Independence Party (UKIP) in 2018. No publication details are provided with the leaflet.

⁴⁰ Examples of extreme instances include events such as cross-burning (in the US specifically) or ‘queer-bashing.’

hate speech were shown to normalise injurious language by requiring its toleration in discourse, this next influencing point allows a further argument to be made that hate speech can masquerade as something apparently 'reasonable.' Following from this, the concept of hate speech could conceivably be influenced by more moderate expressions of 'reasonable' hate speech. Such expressions would seek to disrupt the idea that hate speech is continually in conflict with notions of freedom of expression or legal regulations. Take for example, the following statement:

Perhaps you're bothered by how someone like Obama, with such a mysterious and shadowy background who hasn't even provided college transcripts, can seemingly come out of nowhere as a media darling and go on to become the president of the United States (and for those in Europe, the strange and harmful leadership of the European Union). Maybe you have become one of the millions of White victims of "multicultural enrichment."⁴¹

While the essence of the extract may imply that the statement is a form of hate speech, there is nothing within the content of the paragraph that is overtly hateful.⁴²

Even once that context becomes available, there is no indication that the statement may warrant any sort of legal intervention or censorship. A much broader context needs to be understood in order to be able to decipher the hate speech message.

Instances such as these require the concept of hate speech to be much broader than a concept constructed solely through law.

Priscilla Marie Meddaugh and Jack Kay explore this, as they claim, 'new', type of hate speech and suggest that it has the capacity to elude current hate speech regulations. Analysing characterisations of the 'Other' within articles published on the

⁴¹ Taken from an introductory section of the Stormfront website attributed to Dr Ford <https://www.stormfront.org/forum/t968576/> [accessed 26 June 2016]. This quotation is used as it provides an example of how so called 'reasonable racism', discussed in this section, functions. Additionally its source, the StormFront website, is also the focus of one of the critical essays considered later in this section.

⁴² I claim here that the essence of the content implies it is hate speech. However, this is because I am familiar with the source and the various theories surrounding this type of hate speech. Without that context I may not recognise the statement as hate speech which is why this form of hate speech is so dangerous.

Stormfront website they conclude that the site has created ‘a “cyber transition” between traditional hate speech and “reasonable racism,” a tempered discourse that emphasizes pseudo-rational discussions of race and subsequently may cast a wider net in attracting audiences.⁴³ (Meddaugh and Kay 2009, 251) Such a transition is argued by Meddaugh and Kay to obscure the extreme nature of the articles published through the website because the racist rhetoric has been made more ‘palatable’. Meddaugh and Kay find:

...the approach of “reasonable racism” appropriated by Stormfront authors as particularly disturbing’ because ‘messages benefit from the “in-tertextuality” of Web authorship, the porosity of contemporary texts, and their relative reading in the political organization of hate discourse. (Meddaugh and Kay 2009, 264)

Or, in other words, publications are appropriated to make it appear as though the racist articles are well researched with a legitimate evidence base. The result is argued to be that such a pseudo-legitimacy makes the content (expressed in less obviously extreme wording) more likely to appeal to a wider audience satisfying and reinforcing the prejudices of a more diverse white supremacist group.⁴⁴ Meddaugh and Kay consider the audience here as ‘active participants’ in the creation of meaning but also ill-prepared for the pitfalls of the forum.⁴⁵ There are a number of points that could be raised here in relation to the positioning of the audience in creating meaning and the assumption that all those individuals are somehow manipulated by the forum of the internet. If Iganski’s point is remembered here, then it is feasible that the audience are actively seeking reinforcement regardless of where it comes from. Perhaps a more

⁴³ Stormfront has been widely labelled as the first hate website to become established.

⁴⁴ The article considers the white supremacist movement and notes that increasingly, members are economically successful, socially heterogeneous and well educated (Meddaugh and Kay 2009, 252)

⁴⁵ Meddaugh and Kay state they are hesitant to support legal restrictions on hate speech because of the implications it has for freedom of expression. Instead they advocate a different response suggesting ‘new pedagogical approaches in critical ways of reading, seeing and thinking for students of all ages’ (Meddaugh and Kay 2009, 264) to equip them with the tools to expose and reject hate speech on the internet.

significant counterpoint is the type of performative speech act hate speech has been shown to be. Since the hate speech performative can constitute linguistic subjects in particular ways and transform its contexts, it is not necessarily the forum of communication that is important nor the intention behind the words. Nevertheless, the example that questions Barak Obama's claim to the Presidency, the EU, and multiculturalism remains powerful for understanding this element of the concept of hate speech.

A second point to consider raised by Meddaugh and Kay is the obscurity of the authors or originators of hate speech on the internet. This is also a theme presented in '*Hate speech in Cyberspace*' (Delgado and Stefancic 2014). The definitions discussed in chapter one demonstrated that hate speech can break with context, does not require a direct originator, and exceeds the speaker. The points become pertinent again here. In contrast to the *Stormfront* article, Richard Delgado and Jean Stefancic propose that most internet speech is 'anonymous or voiced amongst like-minded people, and so can give the false impression that a viewpoint is widely shared when in reality, it is not.' (Delgado and Stefancic 2014, 339) Explaining how this occurs, they offer the argument that normal social restrictions placed upon behaviour during other types of communicative interactions do not apply in cyberspace. Delgado and Stefancic reason that in the absence of these boundaries (such as social contact or confrontation), individuals become more likely to engage in the use of hate speech than they would be in a normal social setting. However, if the challenges of distinguishing between hate speech and hate crime are remembered, perpetrators of hate crimes are likely to reflect the views of their community. Hence, it is not easily proven that these individuals are not engaging in hate speech in their 'normal' social

setting. The internet after all is as much a part of everyday communication as a smart phone, television, radio or podcasts.⁴⁶ What is important for the concept of hate speech I argue is the break from the original speaker and the perceived absence of boundaries that might place a limit on someone's behaviour. Forms of deterrent that may be effective in combatting internet hate speech are suggested as 'unmasking; group condemnation and economic sanctions' (Delgado and Stefancic 2014, 341-342) What both Meddaugh and Kay, and Delgado and Stefancic, each point to is that a wider social view needs to be taken to understand and respond to hate speech. Particularly in terms of hate speech that is not in contravention of a legal restriction, a concept of hate speech understood through law is not sufficient. Where hate speech can infiltrate everyday discourse it can serve to almost anonymously support or construct structures of discrimination and suppression. In order to change those structures then a dominant viewpoint may need to be disrupted and changed. One way to attempt such a change could be through the deterrents Delgado and Stefancic suggest. An alternative is provided by participants from the Hate Crime Project:

When interviewees were asked what they thought would prevent people from committing a hate crime in the future, the majority were in favour of adopting an educational approach, as opposed to a criminal justice or punitive one. (Chakraborti, Garland, and Hardy 2014, 64)

These issues aside, Delgado and Stefancic are correct in suggesting that normal social conventions that might ordinarily temper an individual's effluence of hate speech change when the web is used. Delgado and Stefancic present this behavioural change as one whereby the offender is released from the binds of oppressive social forces that prevent them from expressing their real hate.

⁴⁶ It is also important to acknowledge that a large proportion of the population has no access to the internet.

Equally, Delgado and Stefancic's perpetrator would not actually be breaking their behavioural shackles but would instead be enacting the pre-constructed desires of their community. In addition, the 'reasonable racism' identified as in use by Meddaugh and Kay is not limited to the internet. Robert Lanning notes a range of different researchers who have considered the propaganda of hate groups in the *'Irrationalism: The Foundation of Hate Propaganda.'* (Lanning 2012, 50) What seems to be consistently found is that communication mechanisms considered include the internet but also music, linguistics, radio speeches, written literature, and analysis of communication strategies. The means by which different hate groups draw people in is attributed to a range of different 'techniques employed as persuasive or deceitful, a soft-sell approach or one that is guilt inducing, to prod the listener or reader to accept a group's message and purpose.' (Lanning 2012) The internet itself does not appear to me to stand out in any significantly different way here. For example, the rhetoric used during the EU Referendum campaign in the UK during 2016 can demonstrate the appearance of 'reasonable racism' within other modes of communication that have a considerable audience reach:

If we vote to remain in the EU, we'll be stuck with an out-of-control immigration system which is bad for our security. The European Courts will be in charge of who we let in, and who we can remove. *Imagine if Turkey joins this broken system.* (Vote Leave Campaign Leaflet, 2016)⁴⁷

Specifying the internet as a special place of concern for abuse or hate seems to me to be misleading. It may or may not be true that fewer barriers to accessing or expressing hate speech exist in this forum. Equally it may or may not be true that sanctions (social, political, legal or any other kind), are more difficult to enforce and that tailored responses could be helpful. Nevertheless, maintaining anonymity as a

⁴⁷ The Vote Leave campaign leaflet does not receive a full reference as there is a lack of information but it does refer to the website voteleavetakecontrol.org

hate speaker or, the expressing of extreme viewpoints amongst like-minded groups, are not isolated to the ether of cyberspace. The internet may make anonymity appear easier but it is not an essentially unique characteristic of this technology. Telephone numbers can be withheld by callers, graffiti does not include a name and address (although the artist may leave a tag - much like an IP address), the Ku Klux Klan famously wore hoods to disguise their identities; it is not unusual for extreme political parties (such as the British National Party (BNP)) to hold closed meetings. All of these can be argued to provide the type of anonymity described in these texts. What is crucial for the concept of hate speech is the point that is made about hate speech taking a form that allows it to exist through apparently reasonable contexts. As Robert Post has written:

Much hate speech regulation follows an analogous logic. It permits statements about race, nationality, and religion, so long as such speech maintains a 'decent and moderate' manner. (Post in Hare and Weinstein 2009, 128)

Nevertheless, and despite my own objections outlined above, the internet is increasingly represented through media and general reporting - in line with the views of Meddaugh and Kay, and Delgado and Stefancic - as a place of special concern for hate speech. It is an interesting viewpoint given the seemingly limitless reach and lack of accountability the web provides. Initiatives such as the recent 'Recl@im the Internet' campaign (launched in the UK and designed to tackle on-line abuse) do appear add weight to the claim.⁴⁸ I only suggest here that caution should be used to avoid elevating the problems of hate speech on the internet over and above those of any other form of communication.

⁴⁸ The campaign is designed to promote action that challenges on-line abuse. It follows in the footsteps of the 'reclaim the night' campaigns begun in the late 1970s <http://www.reclaimtheinternet.com/> [accessed 13 June 2016].

It seems to me that the internet does not create a new form of hate speech. Instead, it provides another mode of communication for hate speech to invade. In itself, that is not a reason to begin to treat hate speech on the internet differently from where it occurs in other media. Especially as Lanning has observed through examining other forms of propaganda, that:

what is promoted as a rational assessment of a social problem is a means of making a perspective acceptable to the consumer of hate propaganda where the more volatile or violent message might be rejected as too extreme. (Lanning 2012, 50)

The concept of 'reasonable racism' is one of importance for the concept of hate speech. It often becomes easy to think of hate speech as always devastatingly extreme. These 'reasonable' forms of hate speech are all caught up in the concept of hate speech itself. To say the concept of hate speech is limited to encompassing only extreme forms of these utterances that conflict with rights to freedom of expression or law is limiting. The site of conflict for these 'reasonable' hate speech incidents is based more in a performative masquerade that constitutes subjects in social and political ways and disrupts assumptions that hate speech is something that is always extreme.

Extreme dangers of hate speech

Before concluding this chapter, there is a final influence that I will propose contributes to the construction of the concept of hate speech. Sadly, though necessarily, this particular influence returns us to the eye of the storm. Turning from the vile and terrifying dangers of extreme hate speech for too long risks allowing its devastating force to evade capture or as in the next example, to unleash its full violence. The worst harm hate speech threatens for its victims is death. And yet, where theoretical arguments about freedom of expression redirect attention to offence, and 'reasonable racism' stalks everyday activities and debate, this can be too easily forgotten.

Hate speech received its name and gained its force in the twentieth century, which has been described by Arendt as ‘...a century of wars and revolutions, hence a century of that violence which is currently believed to be their common denominator.’ (Arendt 1970, 3) If, as Arendt suggests, violence defines the century where hate speech found its name, then perhaps it is not surprising to find violence can be shown to be a significant factor in constructing the concept of hate speech. The wars and revolutions that Arendt emphasises are military and political ones. Many other social and cultural struggles were taking place across this period. Arguably, each of these is in essence violent in some form or another and they are not restricted to any singular political or legal model.⁴⁹

For this section, I will focus on the 1994 Rwandan genocide. Earlier in this chapter under the heading ‘*Freedom of Expression*’, I argued that the construction of the concept of hate speech is tied to models of Western liberal democracies through the concept of freedom of expression. Although this historical connection heavily influences the current concept of hate speech, it is important to acknowledge that freedom of expression is not a right exclusively associated with Western liberal democracies. Consequently, a more direct argument can be made to consider ‘hate speech’ in more universal or generalizable terms through consideration of events taking place in other parts of the world. Noorloos provides some support for this position by devoting a chapter to international laws relating to hate speech in ‘*Hate Speech Revisited*’ (Noorloos 2011). She notes that ‘in 1948, the right to freedom of expression was adopted in the *Universal Declaration of Human Rights*’ (Noorloos 2011,

⁴⁹ This is not to say violence, war and political struggle are not features of other centuries, of course they are. I am aiming to demonstrate that the role hate speech played during genocide is relevant, for shaping the conditions that have constructed the current concept of hate speech, as it relates to violence, force and institutional frameworks.

141) and that the *International Covenant on Civil and Political Rights* ‘includes several provisions relevant to hate speech and extreme speech (particularly articles 19 and 20).’⁵⁰ (Noorloos 2011, 142) Rwanda is a member of the United Nations and has ratified the *International Covenant on Civil and Political Rights* which means, the genocide that took place there can be considered to place hate speech, through links to freedom of expression, within an international context. The destructive horror of hate speech can as a result, be argued to pose risks to all nations and citizens across the globe, far beyond its initial ties to Western liberal democracies.

Parekh’s words resonate when considering the appalling violence of genocide as he provides a reminder that hate speech:

...strikes at the root of the shared communal life and represents a gross misuse of the right to free speech. It breathes the spirit of aggression and violence, lowers the tone of public discourse, expresses and promotes hostility... (Parekh in Herz and Molnar 2012, 54)

Hate speech is not imprisoned by national borders or local state laws but instead threatens our ‘shared communal life,’ our civil relations, and ultimately our lives. The Rwandan genocide is not the first atrocity of this kind to take place during the twentieth century. The Holocaust is an alternative example that could be discussed; however, space limits the analysis. I argue here that the Rwandan genocide has greater significance for understanding hate speech because it allows the current concept of hate speech to be viewed through a broader lens. The genocide took place during the years that the concept of hate speech became seriously established.⁵¹

More importantly, as Yared Legesse Mengistu has explained:

⁵⁰ A detailed analysis of international laws on hate speech can be found in Chapter V of ‘*Hate Speech Revisited*’ (Noorloos 2011, 141-179). This international expansion allows for the earlier arguments relating to freedom of expression and hate speech to be positioned in a more global context.

⁵¹ In addition, David Fraser has argued that ‘the concept of “genocide” did not exist until Raphael Lemkin’s study popularized the term in 1944.’ (Hare and Weinstein 2009, 515) By focusing on Rwanda I hope to avoid any confusion in relation to the term ‘genocide’ and its meaning.

in the “radio based culture” of Rwanda, where people tune in for the entire day, the role of RTLM in instigating and fanning the genocide was immense. (Mengistu in Herz and Molnar 2012, 372)⁵²

Language is acknowledged as being an instrumental feature of the atrocities. The significant role hate speech can play in violence and death becomes undeniably exposed. Previously discussed points of influence on the concept of hate speech see hate speech masquerade as less dangerous forms of language that hide the discriminatory practices it requires to harm. The example of genocide unmasks the performative violence of hate speech and the discriminatory practices that sustain it. Demonstrating how genocide influences the concept of hate speech through the Rwandan example allows a claim to be made that, the understanding of hate speech presented in this thesis, may have a more general applicability beyond a context limited to western liberal democracies.

Tirrell has authored an arresting essay ‘*Genocidal Language Games*’ (Tirrell in Maitra and McGowan 2012, 174-221) that analyses the power of derogatory terms through their effects upon the ‘social being’ during the massacres. The relationship between state and hate speech is laid bare through the text showing how linguistic practices, preceding and during the Rwandan genocide, inflicted the ultimate injury. Although I raised the levels of harm inflicted by hate speech earlier in relation to freedom of expression, Tirrell draws a different linguistic distinction between deeply derogatory terms, casual derogations, and slurs. She makes the first category the focus of her text distinguishing ‘deeply derogatory terms’ from the two other categories by asserting their ties to ‘systems of oppression.’ (Tirrell in Maitra and McGowan 2012, 190) Tirrell identifies five key features of deeply derogatory terms

⁵² Radio Tele Libre Mille Collines (RTLM) was a private radio station that broadcast a mass of anti-Tutsi propaganda, including the names and locations of people to be killed.

and positions these alongside features of language games. In doing so, she gives an explanation for how these deeply derogatory terms contributed to the genocide.⁵³

The crux of Tirrell's argument is that 'the use of derogatory terms played a significant role in laying the social groundwork for the 1994 genocide of the Tutsi in Rwanda.' (Tirrell in Maitra and McGowan 2012, 175). She draws parallels between physical and linguistic violence to demonstrate how linguistic violence 'created permissions for the very acts of physical violence' (Tirrell in Maitra and McGowan 2012, 176) that resulted in genocide. Tirrell sees linguistic violence as 'constituting psychological and cultural harm' and as distinctly different to physical violence. Her analysis states that the impact of linguistic violence was disregarded because of the more immediate need to avoid physical violence. Within this thesis I am maintaining a broader conceptualisation of violence in order to understand how the violence of hate speech is reinforced by state institutional frameworks.⁵⁴ This broader concept of violence encapsulates the distinctions between the physical and linguistic violence Tirrell distinguishes.

Although Tirrell writes that avoiding physical violence was a priority, disregarding what she terms linguistic violence was also dangerous. Applying extreme derogatory terms to Tutsi, such as '*inyenzi*' and '*inzoka*', took the form of an organised and unrelenting process.⁵⁵ During the genocide pre-existing practices of social and

⁵³ A full explanation of Tirrell's five defining features of deeply derogatory terms and the key features of Ludwig Wittgenstein's language games used in her analysis are provided in the essay. She identifies the major influence as being that these terms are 'action-engendering within a context' claiming this is how they contributed to the 'preparation for an execution of a genocide' (Tirrell in Maitra and McGowan 2012, 193).

⁵⁴ I use a broader concept of violence so as to encapsulate violence within language itself, violence that is present and enforced through institutional frameworks, and violence that inflicts injury. Further consideration will be given to violence in chapter three.

⁵⁵ '*Inyenzi*' meaning cockroach and '*inzoka*' meaning snake. Tirrell provides an account of the position of the snake in Rwandan culture observing a cultural tradition where boys are trusted to kill snakes in a

institutional discrimination were exploited and exacerbated in order to divide and dehumanise. These acts were state sponsored, premeditated and targeted: ‘because of the action-engendering force of derogatory terms, actions hitherto unthinkable (i.e. the extermination of a people) came to be regarded as socially appropriate and even required.’ (Tirrell in Maitra and McGowan 2012, 176).⁵⁶ Through this horror and in a particularly extreme way, each element that comes to influence the concept of hate speech can be seen. Hate speech avoids conflict with freedom of expression in this circumstance by violently invading everyday discourse and receiving authorisation from the state. Social and institutional discriminatory practices were reinforced through the use of hate speech, and the performative character of this injurious language not only harmed, but even dictated methods of killing.

The warning that Tirrell provides about these deeply derogatory terms and how they came to result in the extermination of people should not be forgotten when reading the statement below:

And I really feel the word cockroach ... it may be slightly crude, but again, really, is it any harsher than words used in the media ... in papers like The Sun, The Mail, The Express at the time, they used words like “pests”, “vermin”, “scroungers” ... it’s not really – I feel – any harsher than those terms. (Collett, 2006b)⁵⁷

When these types of terms become commonplace in news media and hate speakers evade the reaches of the law, concerns should be raised.⁵⁸ It seems to me that for this

very particular way. It is later stated that the use of the word ‘*inzoka*’ resulted in the same method of killing being used on people. The argument is that the power of the linguistic violence not only resulted in death but in a specific method of killing.

⁵⁶ ‘Action-engendering’ is the fifth and final key feature of ‘deeply derogatory terms’ that Tirrell identifies. It is described as enacting an inferential role that authorises particular kinds of treatment towards those classified as belonging to the term.

⁵⁷ This quote is taken from the court transcripts of Regina v Nicholas John Griffin & Mark Adrian Collett, [23 January 2006, Evidence of Mark Collett (part), pg 14]. Collett was charged with inciting racial hatred and the quote forms part of his response when asked why he had said ‘I don’t hate asylum seekers. These people are cockroaches and they’re doing what cockroaches do.’

⁵⁸ Collett was acquitted of all charges against him and so strictly speaking he is not legally a hate speaker. From a more general hate speech position it is likely he would be considered a hate speaker by a majority of the general public.

to happen, hate speech must either, be supported by institutional frameworks, or at least able to exploit them. Although the Rwandan genocide was clearly much more serious than the court case example above, both raise an important point about the role of the media since, ...'the role of RTLM in instigating and fanning the genocide was immense.' (Mengistu, in Herz and Molnar 2012, 372)⁵⁹ Where hate speech can disturb the boundaries between extreme speech and 'everyday' or 'moderate' speech then its power to injure can increase exponentially. The social norms that might otherwise arrest the spread of hate speech where it is not in conflict with the law cease to function because hate speech becomes the normal state. In part, through the use of radio, it can be argued that the tool for broadcasting because it was such an important part of Rwandan culture, created a space to authorise extreme hate in public discourse. As Tirrell points out, hate speech was even responsible for directing particular forms of killing that people adopted. Perhaps it should not be too much of a surprise then to learn that:

...the role of RTLM has become indelibly imprinted on the nation's psyche; it has informed the substance and spirit of hate speech regulation and discourse in Rwanda and serves as an impetus to set narrow parameters for freedom of expression. (Tirrell, in Herz and Molnar 2012, 373)

And so, in this site of extreme violence a return to the beginning is signalled with a return to the parameters of freedom of expression. Again, it is clear that freedom of expression is not unfettered, and the boundaries which define it are set by the state and through law.

Evaluating a concept

A point is now reached where these six sites of influence upon the concept of hate speech must be drawn together. The concept of hate speech is clearly expansive

⁵⁹ See footnote 52 for a description of RTLM.

and although it is not possible to do so here, each of the themes I have identified through the chapter could be developed further. Brown has suggest that:

There is always the chance, of course, that as society as a whole co-opts the term 'hate speech' and puts it to myriad purposes, the term itself will be emptied of its original, legal-technocratic meaning to such an extent that it becomes merely an empty vessel...But even if we are on the path toward emptying the term 'hate speech' of substantive meaning, I do not think we are there yet. (Brown 2017, 427)

The term 'hate speech' being emptied of meaningful substance is a possibility.

However, it has also been shown that hate speech is adaptable and able to create the conditions to sustain its own existence. What Brown neglects to mention is that the emptying of the term 'hate speech' could also present an opportunity for hate speech to adapt and reinvent itself in a new form and under a new name.

Throughout this chapter, the focus I have given to the sites of conflict that allow the concept of hate speech to absorb opposing perceptions has proved beneficial. Initially, considering current work that finds roots in theories of tolerance and freedom of expression generates a link back to the Enlightenment period. Through this, a very specific concept of hate speech emerges tied to the state and the relationship with freedom of expression. Initially this connects the concept of hate speech with values and ideologies associated with Western liberal democracies. However, rights to freedom of expression have expanded across the world and, co-exist with a number of different political and social models. These models may vary by nation but they can be argued to find a common connection through international law, thereby opening up the possibility that the influencing points for the current concept of hate speech, share some potentially universal qualities.

Hate speech has been shown to be bound to public order, toleration, law, and civil relations. Because of the conflict between tolerating hate speech as a part of free

expression and restricting hate speech on the basis of the harm it causes, the concept has absorbed all levels of possible harms across a range of contexts. In doing so, the concept comes to incorporate a site of debate that focuses upon which harms are significant enough to warrant restriction and which are not. This leads to the understanding that the concept of hate speech includes the ability of hate speech to sustain and fuel oppressive or discriminatory structures.

A second site of conflict was identified when attempting to distinguish between hate crime and hate speech. The boundaries between the two are indistinct and the concept of hate speech must house the uncertainty that that brings. The term, 'hate speech', is never used in a legislation despite the law heavily influencing how hate speech is conceived and regulating forms of expression that amount to hate speech. Though the law serves an important function in placing limits on freedom of expression and therefore hate speech, it can also ignore, sanction, and authorise these forms of expression. Hate speech is both legal and illegal simultaneously and the habit of individualising hate speech to a single speaker detracts from understanding how institutional frameworks both produce and sustain hate speech.

A third moment I argued heavily contributes to the construction of the concept of hate speech, arises through the 'fighting words' doctrine. 'Fighting words' creates the foundations from which hate speech can become considered as a performative speech act. This is done when the court recognises the ability of words to inflict injury in the moment of the utterance. The concept of hate speech is again directly tied to the law but this time specifically through public order. Here it begins to become evident that the motivation of the state in regulating hate speech is not based in the

desire to uphold freedom of expression. Instead the law places a focus on the ability of words to incite a breach of the peace and acts to maintain order.

Considering hate speech as a performative speech act becomes the next site of interest for the concept of hate speech. Situating hate speech as a performative speech act demonstrates that these forms of expression have the capacity to act and therefore inflict injury. The hate speech performative is shown to be violent and political with an ability to constitute subjects in social and political contexts. Connecting the performative hate speech act to the idea of masquerade illuminates how hate speech can claim its synonymous terms and through them, mask the harm it can inflict.

Following from this, the concept of hate speech was shown to be heavily influenced by 'everyday' hate speech. What this demonstrated was that hate speech is not always in conflict with the law and disrupts notions that it is always to be found in extreme situations. Hate speech is not always on the limits of what is considered publicly sayable. Because hate speech can masquerade as moderate, these forms of expression can become authorised as part of public discourse. Hate speech gains an ability to almost anonymously reinforce social and political structures of discrimination and subjugation. However, it was important to end the discussion of the concept of hate speech with a reminder that hate speech at its most extreme can and does kill. Focusing too heavily on the everyday appearances of hate speech in more 'moderate' forms can be misleading when considering its danger. Hate speech is able to saturate institutional frameworks and play a direct role in mass murder.

What each of the key influences creates is a porous concept of hate speech that can expand to absorb a wide and varied set of conflicting ideas. Hate speech

becomes more difficult to define as a result, but breadth of the concept ensures that it can become meaningful to for a wide variety range of people and circumstances. As I have shown, the concept of hate speech has foundations tied to democracy and freedom of expression. The conflict between politics, law, and free expression, injects a violence into the heart of the concept of hate speech from the very beginning. As the concept adapts to new conditions it becomes able to reach beyond academic and legal spheres and 'enter the field of politics, popular culture, the arts, sport, media, education, science, and may more besides.' (Brown 2017, 429). Understanding the concept of hate speech in this way means recognising that wherever a form of hate speech can be tolerated, hate speech can also inflict harm.

Chapter Three: Violence, hate speech and institutional frameworks

The two earlier chapters have established how the definitions and concept of hate speech are influenced and have developed. A position has been reached where it is possible to directly engage with the relationship between hate speech, violence and the institutional frameworks. I will argue throughout this chapter that the violence associated with hate speech, identified through the definitions and concept explored in chapters one and two, can be reinforced by institutional frameworks.¹ This chapter will give primacy to legal and legislative frameworks in order to demonstrate how the violence of hate speech can be, legitimized and ultimately reinforced by them.

Earlier chapters have shown that the relationship between law and hate speech is complex yet significant for, understanding the definitions and concept of hate speech. This is the case despite 'hate speech' as a term having no direct legal status. Previous arguments have demonstrated that laws relating to hate speech are actually, more closely aligned, with maintaining the limits of free expression and public order, than with directly protecting people from hate speech. Legal interventions to control hate speech can create requirements for injurious language to be tolerated in public discourse. From this point of departure, I will argue that, although there is a need for the state to attempt to control the violence of hate speech, legal state institutional frameworks also function to perpetuate the violence of hate speech.

¹ The violence I refer to here is meant to incorporate the violence that has been shown to be inherent within hate speech itself, within the concept of the term, and within the contexts through which hate speech harms.

Institutional frameworks are understood here as formal and informal systems that shape activity or behaviour. Within this chapter I refer to institutional frameworks as those systems that are controlled and operated by the state.²

In the last decade or so, we have seen record levels of net migration in Britain, and that sheer volume has put pressure on public services, like schools, stretched our infrastructure, especially housing, and put a downward pressure on wages for working class people. (The Rt Hon Theresa May MP, 2017).³

However as the quotation from May shows, other institutional frameworks that are in place concern areas such as public services, schools, and infrastructure. The frameworks through which the state institutions function serve to provide security, maintain order and to fulfil a range of other responsibilities that can be political, educational, social or cultural. It is worth considering the quotation for a few moments to identify some of the themes that have been arising through the earlier chapters. Positioning this chapter within the context of those themes can help provide ways to consider how the violence of hate speech can become legally legitimized. At the same time, the themes emphasise the need to maintain an awareness of the broader social and political influences that also shape the concept of hate speech.

May is making a political statement and seems to be attributing the increasing pressure on services directly to net migration levels. She also states that the migration levels are the cause of decreasing income for 'working class people'. If the immigration poster discussed during chapter one is recalled, a comparison can be

² There may be some important connections between hate speech and other forms of institutional frameworks not linked specifically to the State. Types of institutional frameworks such as those operated by private companies, for example through recruitment policies or practices, fall outside the scope of this chapter.

³ A quotation taken from *'The government's negotiating objectives for exiting the EU: PM speech'*. Published by Prime Minister's Office, 10 Downing Street, Department for Exiting the European Union, on 17 January 2017. <https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech> [accessed 28/01/2018]. Used here to demonstrate how a political speech that directly links pressures on education, housing, wages and public services directly with immigration, can be used to direct blame towards a particular group of people and deflect it from policy decisions that directly impacted each area.

drawn.⁴ Initially this would seem to place May's words within a political framework and within the context of the 'hostile environment policy.'⁵ I argue that this is an example of hate speech being 'normalised' through May's words because they demand a level of toleration in discourse. A case could also be made that her words are actually a form of 'reasonable' hate speech.⁶ The words appear moderate and tempered, designed to appeal to a particular audience. They can be argued to show the masquerade hate speech performs, concealing its threat, and constituting its victims in a particular way. Individuals are being assigned to a specific group through being considered a 'migrant' or a 'working class person.' If a person is not attributed to either of those groups they are still being positioned to access the meaning of the statement in a particular way. Migrants are targeted here as the cause for a number of social ills. An argument could be made that the message is designed to incite others to think about migrants in a particularly negative way. Directly identifying the institutions and other people that are being affected (housing, schools, etc.,) is reminiscent to me of the way in which hate speech can harm civil relations. May attributes the harm being done to those civil relations as the fault of migrants (they are overburdening services and making people poorer). I attribute the harm being done to civil relations as occurring due to May's negative constitution of the migrant subject. Additionally, the quotation also points to the theme of this chapter. By making the claim that schools, housing, and even jobs are being affected, May highlights the kinds of institutional frameworks that I will propose can function to reinforce the violence of hate speech. Although I will focus on legal frameworks and

⁴ The discussion of the poster can be found in the 'Acting normal' section of chapter one.

⁵ See chapter one footnote 11 for an explanation of the policy.

⁶ See the section 'Hiding in plain speech' for an explanation of 'reasonable' hate speech.

the law more broadly, it is important to remain mindful that these other frameworks are equally important when considering hate speech.

As has already been indicated in the earlier chapters, the institutional framework of the law is highly significant for understanding the definitions, concept and functioning of hate speech. Academic work features state regulation of hate speech frequently, particularly in the context of its relationship to freedom of expression. A number of countries across the world have adopted 'hate speech' laws. I will argue that when legislative attempts are made to control hate speech, the violence of this injurious language can actually be reinforced through established institutional frameworks.⁷ However, this does not necessarily mean that hate speech legislation is undesirable. Laws restricting hate speech are important for determining the limits of what is acceptable in public discourse and for responding to extreme forms of these dangerous utterances. I have argued that definitions, including legal definitions, identify and expose vulnerable groups considered most at risk from hate speech. These categories are argued to be shaped by social and political influences that are equally important when considering harms inflicted by hate speech. Nevertheless, it is important to be mindful of Matsuda's observation that 'ours is a law bound culture. If law is where racism is, then law is where we must confront it.' (Matsuda 1993, 51) This is a particularly important point as Matsuda suggests that law, and presumably its institutions and frameworks, can itself reaffirm structures of racism. If this is the case then law, through hate speech legislation may have the potential to reinforce the violence and injury of hate speech because hate speech could be a part of that

⁷ Benjamin's notion of where a cause becomes violent relies on the notion that the concepts of law and justice influence the sphere of social relations. The institutional frameworks I raise here include both formal systems of regulations and informal conventions that serve to give material reality to the concepts.

institutional framework. By recalling an example from chapter one Matsuda's point can be demonstrated.⁸ The victim being interviewed in the example suggested that the police would act to prevent racist hate speech but not homophobic hate speech. As the police represent a legal institution, then it can be said that in this case, the law confronted hate speech when that language was recognised as racism. At the same time, structures of homophobia were authorised and reinforced by the failure of the law to confront homophobic hate speech.

It seems to me that extreme examples of hate speech, those most visible to the legal system, are only the most easily identifiable versions of these expressions. As I have previously argued hate speech often vilifies in much more ordinary, everyday situations that never register in a formal legal context or courtroom. This concealment 'in statements which at first glance may seem to be rational and normal' (Weber 2009, 5) makes it essential to maintain awareness of the other frameworks that may reinforce the violence of hate speech. However, I would argue that in the context of Matsuda's view all other institutional frameworks are ultimately bound to and by law. In this sense it seems to me that all institutional frameworks can be said to be shaped by law.⁹

Violence as a foundational cornerstone

Violence was established as a foundational cornerstone of the identity of hate speech through the definitions of hate speech considered in chapter one. Equally, violence was found at the centre of the concept of hate speech during chapter two.

⁸ See the section on 'Defining a contested term'. The example is where a victim of hate speech describes how the police provide support for her in one circumstance but do not support her in another.

⁹ Although I am considering less obvious forms of hate speech at stages during the chapters, the other frameworks that may reinforce their violence will not come under direct scrutiny here.

However, the purpose of those analyses was to gain an understanding of the term 'hate speech' and subsequently, how the concept of hate speech can be understood. A different perspective must now be taken in order to focus upon the relationship of violence, hate speech and institutional frameworks. Initially, it is necessary to accept that 'meanings of violence are multiple, complex and contradictory.' (Stanko 2003, 4)¹⁰ Refusing a more limited sense of violence is necessary in order to trace the force of violence, and the forms violence takes, which can result in state institutional frameworks functioning to reinforce the violence of hate speech even through attempts to control hate speech.

In the book '*Violence: six sideways reflections*' (Žižek 2008), Slavoj Žižek writes that:

When we perceive something as an act of violence, we measure it by a presupposed standard of what the 'normal' non-violent situation is – and the highest form of violence is the imposition of this standard with reference to which some events appear as 'violent'. (Žižek 2008, 55)

In many respects Žižek's words can be argued to be echoed in the forums where hate speech can be heard. When violence is understood as at the heart of hate speech then it seems to me that other forms of language that are not hate speech might be considered 'non-violent'. Where this is the case, hate speech could be considered as in conflict with those 'non-violent' forms of language. These other forms of 'non violent' language would then be used to form the standard against which hate speech was judged.¹¹ However, Žižek makes an important point that 'the highest form of violence' is actually to be found in the 'imposition of this standard' against which the situation is measured. Recalling the definitions of hate speech from chapter one, it can be argued

¹⁰ As I have done throughout this thesis, I am using the term 'violence' in its broadest sense encompassing physical and abstract forms, including force.

¹¹ However, caution should be used as it is not certain that forms of language that are not hate speech are always non-violent. To complicate matters further I have already shown that hate speech, is not always guaranteed to be called, or recognised as, hate speech.

that such a standard would be applied to instances of hate speech through a variety of different value judgements. To deem an utterance offensive one must judge that utterance against those that do not cause offence. To distinguish the level of harm hate speech inflicts one must judge hate speech against statements that do not harm. To show hate speech amounts to a hate crime one must provide evidence that meets a legal standard.¹² However when considering hate speech the situation is more complicated. Where hate speech is judged against utterances that may be considered only offensive or insulting, then it can be argued, that hate speech is not being measured against a form of non-violent language. In this case, the imposition of the standard and the standard itself, could both be argued to be a form of violence. An indicator appears here that hate speech may not only be saturated in violence, but may also be subject to violence through the way in which the boundaries of what is considered 'sayable' are drawn. The implication is that a framework, through which an injury inflicted by hate speech can be judged, is imposed by an external power. That external power can force a form of violence upon hate speech itself by, imposing a value judgement upon language linked to the perceived levels of harm it threatens.¹³ The point serves as a reminder of the question of the external authority that arose in chapter one and has haunted proceedings since its first appearance.

This leads to the question of what the external power might be and what the framework in which it operates is? An answer to these questions can be sought in Walter Benjamin's essay '*Critique of Violence*.' (Benjamin, Bullock, and Jennings 1996)

¹² Chapter one demonstrated the points being reiterated; however, the implied external authority remained unknown. That authority will be uncovered during this chapter.

¹³ The scenario being proposed is complicated further by the fact that hate speech is not always identified or may be tolerated as was demonstrated in chapter two. Where hate speech appears 'moderate' there is potential for the 'standard measure' to be corrupted. Hate speech could function to generate a false standard or even elude a measure completely.

Benjamin makes the claim that ‘a cause only becomes violent once it enters into moral relations’ because those relations are ‘defined by concepts of law and justice.’

(Benjamin, Bullock, and Jennings 1996, 236) Moral relations are concerned with the principles of right and wrong behaviours. I argue that the standard that Žižek observes exists because it is within the sphere of moral relations. If these relations are defined by law and justice, then it seems to me, that legal institutional frameworks may be dictating the standards Žižek argues are used to measure violence. Should that be the case, it can be argued, that where legal restrictions aim to control hate speech they can also be argued to reinforce the violence of injurious language.

However, there is another influence to consider when thinking about violence in the context of the ‘*Critique of Violence*’. In the original German language of his text, Benjamin uses the word ‘*Gewalt*’ which is translated into English as ‘violence’. In German though, *gewalt* can mean violence or force. The word is not irreducible to either force or violence and carries both meanings simultaneously.¹⁴ Derrida understands *gewalt* differently and refers to it as ‘violence and legitimate power, justified authority.’ (Derrida 1990, 927)

It cannot be assumed that the ‘violence’ in question is the same homogenous concept for both Derrida and Benjamin. Initially, they appear similar since Derrida is situating his translation within the context of Benjamin’s essay. However, Benjamin’s ‘task of a critique of violence can be summarised as that of expounding its relation to law and justice.’ (Benjamin, Bullock, and Jennings 1996, 236) Derrida is exploring ‘the force of law of a legitimate power and the supposedly originary violence that must have established this authority.’ (Derrida 1990, 927) Therefore, Benjamin considers

¹⁴ The difficulty presented by translation is one of the reasons a broad conception of violence must be retained.

violence in terms of its relation to law and justice but Derrida looks beyond the law, for the 'justified authority' that established the force of law. In contrast, Arendt considers all of these terms (power, authority, violence, force) as distinct from one another. She goes so far as to state 'in a head-on clash between violence and power, the outcome is hardly in doubt; violence would prevail and power would be destroyed.' (Arendt 1970, 53)

The conceptual language of discussions of violence is undergoing a subtle but distinctive change between the texts. In some ways, this can be argued to be reminiscent of the earlier discussion relating to the concept and definitions of hate speech. What became clear was that no single unified meaning of hate speech can exist. This was because hate speech can cover all forms of expression and act through all modes of communication. Both the concept and definitions of hate speech have been argued to be instilled with violence. Perhaps it should not be too surprising that the conceptual language of violence is also difficult and elusive.

The challenge of the terminology here is also a reminder that there is a continuing violent struggle between controlling hate speech and being a victim of hate speech. It can often be presumed that a hate speaker must hold a position of power and authority over their victim in order to inflict an injury upon them. Given this licence, the speaker's words would be able to wound and hurt because the speaker would be considered to be, in control of the speech situation. A speaker may be assumed to be in control of the violence of hate speech:

To the extent that the speaker of hate speech is understood to effect the subordinating message that he or she relays, that speaker is figured as wielding the sovereign power to do what he or she says...(Butler 1997, 80-81)

However, the earlier chapters have demonstrated how hate speech can exceed the speaker because of its performative agency. A hate speaker should not be thought of

here as being absolved of their responsibility for inflicting harm upon a victim. Instead an additional layer of complexity is added because the hate speech performative can politically constitute both the speaker and the addressee. During chapter two, the 'fighting words' doctrine exposed the vulnerability of a speaker to the 'heckler's veto.' What this showed was that words have a capacity to threaten the state by provoking civil disobedience. Speakers could be held to legal account as a result of the way an audience might react to their words. Over and above the speech content or the intent of a speaker, a need was uncovered for the state to control language in an effort to maintain public order. In addition to this, understanding the tension between hate speech and hate crime as an influencing point for the concept of hate speech is also significant here. As has been previously argued, the process of seeking to individualize hate crime and hate speech, can allow institutional frameworks to function in ways that reinforce discriminatory practices and structures and to obscure those effects from view.

To resolve this apparent conflict it is necessary to return to an earlier theme where I argued, hate speech can be normalised in so far as it can be authorised to occupy a place in discourse. Again it is necessary to consider what form that authorisation may take. Because of the relationship between hate speech and freedom of expression, hate speech forms part of public discourse and should not be considered as separate from public discourse. Conditions are imposed upon a hate speaker when unconditional hospitality is removed from language, when freedom of expression is qualified with other conditions.¹⁵ There are a range of conditions that

¹⁵ In reality freedom of expression always has limits and responsibilities attached (see chapters one and two) but the extent to which these are transparent and clear varies. The concept of hospitality is important for hate speech since hospitality can never be unconditional yet, at the same time, it must also seek to be unconditional. To be hospitable requires a certain element of power, of authority.

could be considered here; however, I argue that it could be suggested these all fall within the realm of 'moral relations' and that all of the conditions are in fact subject to law and justice. As a result, I propose here that it is the law that creates those conditions and, therefore, the law (in addition to the performative agency of hate speech) that can potentially wield a power to remove authority or control over hate speech from the hate speaker.

There are situations where conditions might demand a language of hate be imposed as the dominant one, for example at a meeting of a white supremacist group. However, these conditions change when hate speech laws are enforced through the legal system. A form of regulation is introduced through law that functions to determine if the limits of what is legally sayable have been breached. Earlier in the chapter the standard by which violence was judged was discussed. Here it can be seen that the law is determining how that standard is constructed. Consequently, where a hate speaker becomes formally disempowered through being legally convicted, the limits of what is acceptable in public discourse become redrawn or reinforced. Where a defendant is found not guilty of hate speech offences, their words can be argued to become confirmed as acceptable within the boundaries of the law. As it is already known that hate speech is saturated in violence, this structure ensures the law provides a mechanism through which hate speech violence can be subjected to legal control.¹⁶ And so, it can now be suggested that the law inflicts a type of violence upon the hate speaker through its judgement that serves to remove their authority.

However, should that hospitality be overtaken by the 'guest', the 'foreigner', then there is no longer control and the choice to be hospitable is removed. I am making reference here to Derrida's theory of hospitality in 'Of Hospitality' (Derrida 2000b)

¹⁶ I am maintaining a focus on legal influences for this chapter. It is equally feasible that other institutions could work in a similar way. For example, a school can introduce behaviour codes that could set levels of tolerance around hate speech in the same way.

Individualising the problem of hate speech to the hate speaker ensures the broader social and political influences that shape hate speech remain masked. But, if violence can disempower in this sense then perhaps it can also act to empower.

Arendt writes that:

Violence does not promote causes, neither history nor revolution, neither progress nor reaction; but it can serve to dramatize grievances and bring them to public attention (Arendt 1970, 79)

Arendt explains through giving examples of student riots in France that in the short-term, violence can be a way to achieve certain goals and to empower minority groups. If this is the case, then it may be possible for the legal violence, that has been argued to disempower the hate speaker, to function in a way that could result in a form of empowerment for minority groups targeted by hate speech. By recognising the danger of hate speech through law an option is presented to victims to seek redress for their injuries. Where guilty verdicts are reached the boundaries of acceptable speech become redrawn. It seems to me, that a form of indirect empowerment for victims of hate speech may be realised through, the process of legally redefining what becomes judged as acceptable speech. Such a relationship between violence and hate speech can perhaps be thought of in terms of authorised and unauthorised forms of violence. Authorised violence would be the violence hate speech inflicts when the state, via the law, enforces a standard against which hate speech can be judged regardless of what that judgement turns out to be. Unauthorised violence would relate to instances of hate speech that avoid the legal structure altogether. I argue that this is one reason legislation, definitions, and social practice, often emphasise the effects of hate speech. Where the violence of hate speech is being contained and managed within an 'authorised' framework, then its effects can be quantified, measured and controlled. In the act of legitimizing the violence of hate speech within the legal

structure, the institutional frameworks serve to reinforce the violence of hate speech. Although the law may enforce penalties, it also ensures hate speech is publicly recognised and to some extent, tolerated in public discourse. The boundaries of law, having encompassed the violence of hate speech, become threatened with decay through exposure to that same violence.¹⁷ As a performative speech act, hate speech possesses an ability to transform its contexts. As a result, hate speech, can never be fully restrained by law and can therefore threaten, the civil relations law seeks to maintain. Nevertheless, and regardless of whether or not hate speech is sanctioned, the laws enacted to restrict hate speech also expose those forms of expression to the violence of the legal system.

Elizabeth A. Stanko has expressed a concern that ‘...we prefer to pass laws than to look carefully at how violence is so much welded to (often unequal) social relations.’(Stanko 2003, 4) She goes on to write that ‘more often than not, people find a way of coming to terms with ‘what happened’ outside of the law’ (Stanko 2003, 5) when they suffer violence. But it seems to me, this view limits ‘law’ only to the sphere of pre-existing legislative restrictions and as somehow separate from social relations. When Benjamin’s view is taken in to account - that a cause becomes violent when entering moral relations - the relationship changes. The influence of the law can be argued to, be expanded to encompass all relations governing behaviours. This is important, because hate speech, has been argued to harm civil relations because it can both produce and be a product of social discriminatory practices.

¹⁷ For Benjamin, language was originally inaccessible to violence. However, he argues that the creation of laws against fraud allowed violence to infiltrate language because they attached a legal punishment to using deception for specific ends.

Using the term, '*gewalt*', Benjamin incorporates the concept of force as well as violence within the word he uses. From this, a broader understanding of violence can be explored than might otherwise be attempted. Violence is diminished by the translation of '*gewalt*' into English as there is no comparable word that encapsulates the full meaning of the original term. A violent and inaccurate intervention is made and yet, it is simultaneously an essential necessity. Whilst something might not seem overtly violent, violence can still be demonstrated through alternative shows of force.

Legitimising violence.

To begin this section it is important to recall Benjamin's statement from the earlier part of the chapter. He asserted that moral relations are governed by law and justice and therefore are necessarily violent. Violence has been shown previously to be at the centre of the concept and definitions of hate speech. When legal controls are imposed on hate speech, I will argue that this results in the violence of hate speech being given a legitimacy. As the aim of this section is to address the idea that hate speech violence can be legitimised through institutional frameworks, it is helpful to consider the following extract from '*The Force of Law.*' (Derrida 1990) Derrida writes that:

....in many countries, in the past and in the present, one founding violence of the law or the imposition of state law has consisted in imposing a language on national or ethnic minorities regrouped by the state. (Derrida 1990, 957)

Two areas of discussion that I will pursue are prompted by Derrida's words. These relate to the imposition of a language on minorities regrouped by the state, and to how that imposition can contribute to the legal legitimacy given to hate speech violence. As this thesis is concerned with hate speech, it seems to me necessary to consider the imposition of a language that Derrida emphasises. This consideration must precede any discussion of how the violence of hate speech may be legitimized by

state institutional frameworks. A point of departure is provided by Derrida when he considers the language in which he is to address a colloquium:

Je dois speak English (how does one translate this “dois”, this devoir? I must? I should, I ought to, I have to?) because it has been imposed on me as a sort of obligation or condition by a sort of symbolic force or law in a situation I do not control. (Derrida 1990, 923)

Derrida remarks that a language, that is not his language, is imposed upon him and it is through those conditions that he is asked to communicate. Although Derrida is the speaker he does not control the situation. An immediate violence is revealed through this example that determines the language that must be spoken, forcing its use.

Derrida states that, at this moment, ‘it is more just to speak the language of the majority especially when, through hospitality, it grants a foreigner the right to speak’ (Derrida 1990, 925)¹⁸

A comparison can be made here with the moments when states enact legislation to restrict hate speech. It can be argued that a particular language becomes forced upon all those who encounter the law in relation to hate speech. This could include a victim of hate speech, a hate speaker, and all communities that make up a society. This is a legal language: a language of the state that conveys that hate speech carries a legal penalty. Where this takes place the legal language becomes the language that must be spoken in relation to hate speech, and it articulates the limits and boundaries those forms of expression become subject to. However, chapter two revealed that hate speech is not named in law. Provisions to restrict hate speech become subsumed within other measures relating to race, religion, and public order (amongst others), that were outlined through the discussion of hate speech

¹⁸ The concept of hospitality is important for hate speech since hospitality can never be unconditional yet, at the same time, it must also seek to be unconditional. See footnote 14 for an explanation in ‘Of Hospitality’ (Derrida 2000b)

definitions. Although the legal institutional frameworks provide authorisation for a legal language relating to hate speech to be imposed, those same frameworks also strangely withhold their authorisation. Hate speech is not directly named in law; it has no 'legal' name. This prompts a second consideration. Where groups are named in law as vulnerable to hate speech but hate speech itself is not named through law, it seems to me, the violence of hate speech can be argued to be reinforced upon those groups because hate speech masquerades as something else (for example offensive speech).

Derrida continues by relating the process of imposing a language to some contemporary scenarios 'precisely in this place where questions of politics, education and law (*droit*) are inseparable....'(Derrida 1990, 957) Here it is appropriate to recall the discussion from chapter one, where definitions of hate speech create and reinforce divisions between groups identified as most vulnerable to hate speech. The state acts, through the law, to expose minorities thereby reinforcing their vulnerability to hate speech.¹⁹ The first move of law then, it seems to me, is not to limit violence but to inflict violence. A legal language is effectively forced upon those who are vulnerable to hate speech that potentially rejects their injury if, hate speech is considered to remain within the legal boundaries that apply limits to free expression. The language is not a choice between English and French as Derrida's was. Instead, I argue it is a legal language linked to situating and constituting subjects in terms of their vulnerability to hate speech. This language determines who is protected through legislation and who is

¹⁹ I am using 'law' to encapsulate a full range of social and legal rules and regulations. The primary suggestion of this argument is that where hate speech restrictions are in place the legal language takes precedent. However, where there are no or minimal legal restrictions placed upon hate speech then social conventions and behavioural practices are also implied.

not.²⁰ In turn, in the act of regulating hate speech through legislation, the legal institutional framework functions to 'actively produc[e] the domain of publically acceptable speech.' (Butler 1997, 77). I argue here that two acts are taking place that show how state institutional frameworks can function to legitimise forms of violence. Firstly the law forces a type of violence upon those vulnerable to hate speech. In doing so, the law makes the claim that its violence is legitimate by presenting hate speech regulation in relation to freedom of expression. Secondly, the legal framework functions to determine what can be considered publically sayable. Hate speech that falls within the domain of the 'sayable' becomes legally sanctioned as legitimate.

And so, it would seem that legitimacy is being given to the violence of hate speech through the legal institutional framework. In many countries hate speech regulation forms part of a state's formal laws.²¹ Regulations and legal procedures fall within this structure as do informal conventions and standards. The frameworks both precede and follow the concept of law that defines them. They shape laws and are shaped by the law thereby engaging in a continual struggle for dominance. I have suggested in the earlier chapters that the legal approaches to hate speech can often focus on maintaining public order as opposed to placing direct limitations upon hate speech. If state institutional frameworks are accepted as acting to control or even produce hate speech, then potentially those frameworks may also have the power to manoeuvre and manipulate the violence of hate speech.

²⁰ These groups are identified in the definitions of hate speech and cover groups such as age, gender and religion.

²¹ Hate speech itself may not be named in these laws explicitly but they are designed to address extreme speech of this nature.

Legislation that relates to hate speech cannot necessarily be presumed to prevent the violence these utterances inflict upon a victim. There are no laws that directly name hate speech as an object of illegality. In some senses, this could be argued to mean that no specific hate speech laws actually exist. Butler's theorisation must be followed here for a moment as she proposes a full and decisive legal intervention against hate speech is not yet a possibility. She claims that "...there is no hate speech in the full sense of that term until and unless there is a court that decides that there is..." (Butler 1997, 96) However, the earlier chapters have shown that hate speech exists before any court might name it as such and hate speech is not guaranteed to come into conflict with the law. What is important here is the legal institutional frameworks that have the power to intervene and legally label something as hate speech. The result is that there becomes a need for the state to respond because through the law, the state can exert a level of control over hate speech. It can be argued that the state must control, restrict and punish expressions of hatred in order to control the violence that hate speech threatens to civil relations. It is important to note here that controlling the violence is not the same as eliminating the violence. It seems to me that the elimination or even reduction of the violence of hate speech is neither the intention nor the outcome of state interventions in hate speech.

To explain the point it is worthwhile dwelling on a lengthy quote:

- Q. You are before this jury in respect of two speeches. I do not want to look at them at the moment, but first, on the 19th January 2004, I just want to ask you straight-forward questions about that speech. In making that speech did you intend to use threatening words? –A. I did not.
- Q. Did you intend to use abusive words? –A. No.
- Q. Did you intend to use insulting words? –A. No.
- Q. Did you intend by your speech to stir up racial hatred? –A. No, I did not.

Q. Were you of the view in making that speech that racial hatred was likely to be stirred up? – A. No. (*Regina v Griffin & Collett*, 2006b)²²

What can be immediately seen from the words above is the application of the standards and judgements raised through Žižek at the start of the chapter. The language being used in the courtroom appears to be functioning to disguise hate speech to some extent by substituting other descriptions for it. By individualising hate speech to the speaker, the court fails to consider the wider community to which he belongs and the influences that may shape and legitimise his words within that community. It can be argued that in this example, the courtroom in which hate speech should be visible, appears to work in a way that fails to expose hate speech. The institutional framework can be said to be reinforcing the violence of hate speech through the failure to reveal it. The eventual verdict of this trial was a ‘not guilty’ one that served to ensure the words that were used by the defendant were not legally deemed hate speech. This refers back to Butler’s earlier quotation because again, the institutional framework is acting to create the parameters of what becomes ‘sayable’ in public discourse.

Since 1965, the UK has seen new regulations come into being that have informed, shaped or dictated, the relationship between hate speech and the law. A high proportion of these developments are evident from 1998 onwards. These include *The Human Rights Act (1988)*, *Terrorism Act (2000)*, *Anti-Terrorism, Crime and Security Act (2001)*, *Communications Act (2003)*, *the Racial and Religious Hatred Act (2006a)*, *Equality Act (2010)* and most recently *The Counter Terrorism and Security Act*

²² This extract is taken from a court transcript of evidence given by Nicholas John Griffin (at that time the leader of the far-right British National Party) on 25th January 2006. He was charged under the *Racial and Religious Hatred Act* with inciting racial hatred in relation to two speeches he had given in 2004.

(2015b).²³ The *Public Order Act* (1986) includes provisions designed ‘to control the stirring up of racial hatred.’ (1986, 3) The *Racial and Religious Hatred Act* (2006) (2006a) amended the *Public Order Act* provisions to include ‘stirring up hatred against persons on religious grounds.’ Overarching legislation, for the UK and other European Union states, exists under the jurisdiction of the European Court of Human Rights. This takes the form of the *Convention for the Protection of Human Rights and Fundamental Freedoms* (1950). Even this very brief summary of some of the relevant legislation currently in force in the UK serves to demonstrate the validity of Butler’s theory. Each piece of legislation includes elements that can be applied to hate speech. However, in one sense, hate speech is only fully exposed when the court recognises it as such. The courts decide what legally counts as hate speech and they simultaneously exclude forms of hate speech that do not transgress the parameters of the law. Legal judgements that might formally identify hate speech, are always and necessarily, made after a harm has been inflicted. As a result, I argue that each piece of legislation imbues hate speech with a certain power. They either, reaffirm the hateful violence of this language by recognising it or, they authorise the harm inflicted upon a victim through non-recognition. The judgement can only ever take place after these of expression have wreaked their violence upon their victim(s).

Although this chapter is considering how state institutional frameworks can reinforce the violence of hate speech, it should not be forgotten that the dangers of hate speech are real not theoretical. Hate speech exists beyond the boundaries of normal, civilized behaviours even where it masquerades as moderate or makes claims

²³ The Acts named here are not a comprehensive list of laws created addressing hate speech or elements of hate speech. They are given to provide an indication of the variety of legislation enacted between 1998 and 2016 that can apply to hate speech which can focus on a range of content such as communications, equality, tolerance, security, crime, terrorism and human rights.

to be tolerated. The threat hate speech poses has become so powerful that the law must and does respond. Chapters one and two have shown that there is frequent conflict and confusion as to whether legal efforts to restrict hate speech are justified because of the way in which hate speech has become positioned in relation to freedom of expression. Legislative approaches pursued in the United States and in Europe do differ but, it seems to me, those differences can be over-emphasised. Where the differences between legal approaches are over-emphasised, the result can be to detract from a clear consideration of the relationship between law and hate speech that can unhelpfully polarise positions. Roni Cohen has articulated the difference between the traditions as:

Whereas the United States, or at least its Supreme Court, views freedom of expression in nearly absolute terms, European nations, and the international community more generally, seek to promote values such as dignity and equality above other rights. (Cohen 2014, 238)

It seems to me there are three issues arising here that help to develop an understanding of what the act of legislating against hate speech can do. Firstly, it can provide a public condemnation that positions this language as unacceptable in public discourse. Hate speech can harm both individuals and civil relations and so specific restrictions that acknowledge and attempt to deal with its danger can be argued to be necessary. Secondly, legislating creates a space that focuses debates on questions of equality and tolerance in terms of where the limits of what is 'sayable' are drawn. A distraction is generated here through a false binary between free speech as a democratic principle, and hate speech as its undesirable but necessary part.²⁴. Thirdly, and most importantly, it legitimizes the violence of hate speech. Responding to hate speech through legislation provides a recognition that hate speech poses a

²⁴ This point has been elaborated within chapters one and two and will not be repeated here.

threat so great it must be contained within law. And yet, one result of this means that hate speech that is normalised or might appear ‘reasonable,’ can be accepted as ‘sayable’ despite the violence it may inflict.

It could be suggested that through the act of legislating the state promises a certain protection from violence or harm to its citizens. Individuals are asked to relinquish their own personal violence (their right to retaliate against something) to the state because the state provides them with legal protections. When hate speech is considered, it can initially appear that protection from this language is delivered through law. However, I argue that universal protection is actually impossible, in part, because not all hate speech is illegal. If Butler’s view is recalled then the intervention of legislation serves to produce (and continually redraw) what is considered acceptable speech in public discourse. The process cannot encompass all forms of hate speech and could therefore, be argued to deceive us into relinquishing rights to challenge hate speech through non-legal means. This can be outlined by a recent example from the UK. The creation of the *Counter-Terrorism and Security Act (2015b)*²⁵ prompted the human rights and civil liberties organisation *Liberty* to publish a briefing paper for the bill’s second reading in the House of Lords.²⁶ Amongst many issues the paper raised was that the Bill would:

... for the first time, allow the State to require British communications service providers to retain communications information on the British population that they don’t already retain for billing purposes, just in case that information is in future useful for law enforcement. This is a major step change in relationship between the individual and the State. (Robinson, Ogilvie, and Sankey 2015, 20)

²⁵ <http://www.legislation.gov.uk/ukpga/2015/6/enacted> [accessed 25 May 2015]

²⁶ The briefing paper was published in January 2015 and the bill received its Royal Assent in February 2015.

Here, a number of problems arise that the state, through legislative frameworks, gains the ability to exploit. A change is taking place that shakes the foundations of the relationship between the citizen and the State which are explored below.

An address by David Cameron, the then Prime Minister, to the National Security Council in May 2015 explains this point further. A number of social media platforms, picked up and widely publicised, his comments because he said: ‘for too long, we have been a passively tolerant society, saying to our citizens: as long as you obey the law, we will leave you alone.’(2015a)²⁷ The implication that upholding a duty as a citizen to obey the law is no longer enough signifies the step-change *Liberty* signalled. The statement challenges the integrity of the concepts of both the individual citizen and the private sphere. Cameron’s words suggest that attempts are being made to increase the power and force of the government, through the police, on the basis of an imagined crisis. ‘Obey the law, we will leave you alone.’ ‘Passively tolerant.’ These phrases can be argued to directly challenge, established ideas and practices surrounding presumptions of innocence and proven guilt, changing the territorial conditions under which they exist. This seems to me to be emphasised by Étienne Balibar when he writes that:

...traditionally, and in conformity with both their juridical definition and “cartographical” representation as incorporated in national memory, [borders] should be at the edge of the territory, marking the point where it ends, it seems that borders and the institutional practices corresponding to them have been transported into the middle of political space. (Balibar 2004, 109)

Previous boundaries marking the edge of the legal territory can be argued to be being politically redrawn in the statement Cameron makes. There is no explanation or reference for why that is happening. What I mean by this is that it could be assumed

²⁷ <https://www.gov.uk/government/news/counter-extremism-bill-national-security-council-meeting> May 2015 [accessed 26 May 2015].

that a border would be positioned between where law is obeyed and the law is broken. However, Cameron's statement indicates such a border is being transported so that the point at which the territory of the police might be thought to end becomes changed. As a result, I would argue that the act of legislating can be viewed as an institutional practice that works to enforce and redraw those borders. In legislating against hate speech it is made possible for violence to recur repeatedly in a range of forms. As Benjamin writes, 'law sees violence in the hands of individuals as a danger undermining the legal system.' (Benjamin, Bullock, and Jennings 1996, 238)

Introducing hate speech legislation protects the legal system by removing the ability of the individual to retaliate through the use of their own individual violence. Perhaps this is a reason that 'at the level of policy, the dominant response to current problems [of racist violence] has been to advocate increasingly restrictive immigration policies.' (Gordon in Coliver, D'Souza, and Boyle 1992, 17)

A second example is also relevant here. Commander Mak Chishty has been quoted in an interview with *The Telegraph* newspaper as saying:

We need to now be less precious about the private space. This is not about us invading private thoughts, but acknowledging that it is in these private spaces where this [extremism] first germinates. The purpose of private-space intervention is to engage, explore, explain, educate or eradicate. (Riley-Smith 2015)

He made the comments as a way to justify 'more intrusion into Muslims's "private space" to counter extremism.' (Riley-Smith 2015) The argument here is the authorities would be justified in invading individuals' private space because, private space has become a dangerous threat in itself and needs to be controlled. What this could suggest is that attempts are being made to eradicate the boundaries between public and private spaces in order to expand state power and influence over some minority groups, in this case Muslims.

Consideration should be given here to the narratives of the state and the risk of violence these pose to minority groups and individuals as a result. If the language of such minorities is at odds with the language of the state, they run the risk of becoming victims of state violence. The proposal is not to invade everyone's private space in order to counter extremism, only that of Muslims. This is problematic and shows how the state narrative around extremism serves to condemn all Muslims as extremists. Chishty is a police commander and his comments show how the state via the police is able to tolerate some forms of violence in order to retain or extend its own power. It can be argued here that hate speech that labels Muslims as extremists becomes sanctioned by the state, through the institution of the police, and is able to inflict violence upon individuals and civil relations as a result. However, the situation is tolerated because it allows the state to expand its power over the private space of individuals. While the state may condemn hate speech, its institutions can simultaneously work to control hate speech and exploit its violence to achieve different ends (such as private-space intervention). Such a situation means opposition to state constructions of acceptable language can be tolerated as long as the status-quo is ultimately unchanged. The legal system remains intact and the law remains unchanged. Simultaneously this type of legal force brings together the elements of the discussion relating to the balance of power between individuals and the state. People can become additionally vulnerable to hate speech because they can be constituted in ways that subject them to the violence embedded in hate speech, and the reinforcement of that violence through an institutional framework.

A different example is provided through the European approach to placing legal restrictions on hate speech as it is based around striking a balance between

fundamental rights afforded to citizens. Article 10 of the *'Convention for the Protection of Human Rights and Fundamental Freedoms'*(1950) exposes one of the common sites of conflict in hate speech debates.²⁸ It states that 'everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...' (1950, Article 10, pg 6) Such freedoms of opinion are one of the founding principles of democratic societies. However, Article 10 continues with the qualification that enforcement of state restrictions is necessary within a democratic society. Freedom of expression is thus granted to people on the basis of the conditions outlined within the following passage:

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. (1950, Article 10, pg 12)

The importance of this passage lies within the constraints it articulates to the exercise of freedom of expression. In the extract above, the reach of the law is clearly expanding beyond the prevention and punishment of crime or disorder. Boundaries are reaching as far as territorial integrity, and health or morals. Considering this expansion can make clear how a state can reinforce the violence of hate speech and also how violence of this sort can be legitimized.

Developing the lines of enquiry outlined above can be aided by considering the wider context to Article 10: the Council of Europe's Parliamentary Assembly,

²⁸ Now known as the European Convention on Human Rights.

Recommendation 1805 (2007).²⁹ The *Recommendation* explicitly states that expressions ‘that may shock, offend or disturb the state or any sector of the population’ are protected language within the limits of Article 10 of the *Convention*. Immediately, the vocabulary of the *Recommendation* separates expressions that may shock, offend or disturb, from those that are considered hateful. A certain degree of tolerance for offence is acknowledged, not only for individuals who are granted the right to freedom of expression but crucially, for the protection of the wider democratic society and its associated moral standards. Shocking, disturbing and offensive expressions that do not breach the limits of the *Convention* are acceptable in a public domain. By separating and categorising some types of distasteful language from hate speech, the wording of the *Recommendation* suggests that hate speech is somehow different and more threatening. As explored in the earlier chapters the wording also ensures that the *Recommendation* cannot fully encompass all forms of hate speech and especially those that performatively masquerade as offensive or shocking.

When discussions of hate speech are linked to freedom of expression, they are frequently framed in terms of judging the levels harms that hate speech can inflict. However, the violence of hate speech remains inescapable and destructive because it is ingrained in the language itself and always present. But, violence can also be argued to fulfil the function of providing a means of protection or entertainment. For example, violence may be required in self-defence, or upheld as a spectacle though film or sport. The use of violence or the presence of violence is not always unjust, illegal or undesired in terms of moral relations. To always approach violence as an enemy to

²⁹ Council of Europe Parliamentary Assembly, *Recommendation 1805 (2007)*
<http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta07/erec1805.htm> [accessed 27/02/2011]

subdue or eliminate, is to remain blind to the totality of its influence. It is also to overlook the point that in order to suppress violence, the use of violence is usually required. I would argue that state institutions that seek to control hate speech must inevitably perpetuate the violence of this language since their intervention in itself, ensures that hate speech must break with and transform its context.

Statements of Exception

This goes some way to explaining why every single wing of the Irish state supported gay marriage, from the police, who proudly waved the rainbow flag, to all the political parties, the public sector, the health establishment and the cultural establishment. It's because they recognise, at a gut level, that unlike pretty much every other demand for liberty or equality in modern times, the campaign does nothing to threaten their authority – on the contrary, it expands it, in a way that the most authoritarian among them could only have dreamt of. (O'Neill 2015, 35-36)

Benjamin states that 'law making and law preserving violence ensure the territorial integrity of the law.'³⁰ They define and determine its reach and ensure its power or force. However, the state of exception creates a territorial void that lacks definition (that could be described as lacking integrity) and generates a confused space between acts of executive power and acts of legislative power.³¹ And so, the power and force that hate speech exerts through violence and institutional frameworks can be further explored through '*State of Exception.*' (Agamben 2005) I will argue that Giorgio Agamben's work comes to play an important role for understanding the relationship between violence, hate speech and state institutional frameworks because he develops ideas relating to power and state structures.

Agamben traces the first use of the term 'state of exception' back to 1922. He follows Carl Schmitt's construction of a theory of the state of exception through two

³⁰ Benjamin considers the concepts of law-making and law-preserving violence within the *Critique of violence* (Benjamin, Bullock, and Jennings 1996, 236-52)

³¹ The sentence paraphrases a page from '*State of Exception*' (Agamben 2005, 38)

books. Agamben proposes that Schmitt's work be read as a response to the ideas presented by Benjamin in the *'Critique of Violence'*. He states that, Benjamin's essay aims to 'ensure the possibility of a violence...that lies absolutely "outside" and "beyond" the law.' (Agamben 2005, 53) Agamben views Schmitt's work as attempting to capture this pure violence in the state of exception. Agamben writes that the theory of the state of exception really began to become significant between 1934-48, specifically in debates surrounding 'constitutional dictatorship' (Agamben 2005, 6).³² He argues that during those years, 'democratic regimes were transformed by the gradual expansion of the executive's powers during and after the two world wars.' (Agamben 2005, 6)³³ Agamben suggests that examples of the existence of a state of exception are still evident today, within state efforts to increase surveillance or erode protections that grant privacy rights to citizens. In his book Agamben uses the Patriot Act in the United States as an example of the 'state of exception.' He explains that the Act erases an individual's legal and political identity 'thus producing a legally unnameable and unclassifiable being.' (Agamben 2005, 3) . It seems to me that the state of exception is important for hate speech because the law has been shown, to attempt to control hate speech while simultaneously failing to encompass all forms of this injurious language. Because hate speech cannot be wholly contained within the parameters the law sets, then hate speech must also be positioned outside and beyond the law. Through the institutional framework of the law, the state positions hate speech as both legal and illegal, tolerated and ostracised, nameable and unnameable. Combining this contradictory positioning with the performative violence of hate speech, arguably shows how, the state could potentially use hate speech as a

³² The idea of the state of exception is attributed by Agamben to Schmitt in 1922.

³³ Agamben also adds that a state of exception was experienced during and after the two world wars.

tool to create particular social and political conditions, and constitute subjects in specific ways.

Agamben distinguishes between pure violence and individual rights in order to highlight the ways in which states will attempt to increase their power in times of crisis. He argues the distinction is 'particularly significant to our political selves as it is the structure through which law encompasses living beings through suspension of itself.' (Agamben 2005, 3) Here we should be reminded of Benjamin's decision to consider violence in relation to law and justice because they define the sphere of moral relations where causes become violent. Where law could be suspended in a time of crisis then there is a possibility that hate speech could exploit those circumstances and unleash its full force and violence. The examples used from Cameron and Chishty are suggestive of how this could take shape. Although the law is not suspended in the examples, Cameron is indicating that the state could function to erode the individual liberties of law-abiding citizens through disrupting the territorial integrity of the law as it is currently constructed. Cameron suggests that even if someone obeys the law the state may still exert additional force over them if the executive power deems it appropriate. Chishty also suggests something similar through 'private-space intervention' that could be used to eradicate what the state considers to be extremism. This is not a response to an act of extremism that would fall under legal jurisdiction. He is suggesting an earlier intervention at a point where no crime has taken place. While these are not strictly speaking suspensions of the law in the sense Agamben is suggesting, they are nevertheless examples of where the state attempts to expand the boundaries of executive power over the individual.

Since hate speech can be legal, normalised, or presented as ‘reasonable,’ some responses to these forms of expression can reveal a refusal to publicly or legally challenge injurious language. Comments such as, ‘just ignore it’ or ‘sticks and stones’ serve to illustrate this. The suggestion is that we are able to refuse injury and choose to remain unaffected by hate speech. The force of hate speech in this sense becomes obscured because the implication is that responses or the lack of a response, at an individual level can negate the harm posed by these utterances. Dangers threatened by hate speech seem to me to be increased if the burden is placed upon an individual victim to respond in this type of scenario. One would not ask a victim of assault to ignore the injuries inflicted upon them. And yet, I have also argued, that when the obligation to respond to hate speech resides with the state, the violence of hate speech becomes reinforced through the legal structures. Even where a hate speaker may be convicted, the state does not and cannot reverse the injury inflicted upon a victim. The harm has already been exacted upon a victim prior to any legal judgement. An indication that the law alone is not an effective response to responding to the harm hate speech inflicts arises here. As has been argued earlier hate speech can create or reinforce social hierarchies, shape people’s behaviour, produce as well as result from discriminatory practices, and can even lay the groundwork for genocide. Although officially condemned in political spheres, a number of examples I have used throughout the chapters demonstrate that hate speech is nevertheless present in political arenas. This would appear to provide additional evidence for the claim I made above, that hate speech could be used as a tool to generate specific conditions and to constitute subjects in particular ways. It can be argued that what is being seen here is how such a process could take place beyond legal institutions through the use of executive power.

Justifications for either the complete or gradual erosion of the rights of the individual citizen should not be assumed to have merit or contain truth. In the examples provided in this chapter, states can be seen to use legislative means as a way of increasing their power over communication, information, the individual linguistic subject, and over hate speech. However, the examples also show how states can employ other means and frameworks to unleash hate speech to increase executive power. In these scenarios, people can be silenced, marginalized, and they can be exposed to the full force of hate speech violence in its service to power. For a moment it is appropriate to remember Liberty's warning about the retention of communications information 'just in case' it is useful for law enforcement in the future. 'Just in case' is not defined and not secure. It removes the certainty of what might constitute evidence against an individual and begins to set foundations for a future state of exception. Given the tension that is ever present for hate speech – it is at once both legal and illegal, sayable and unsayable – this thought can be taken a step further. Perhaps it is possible that the inevitable tension seen within any attempt to confront hate speech could be exploited by the state, 'just in case,' hate speech becomes a useful tool for the construction or maintenance of specific political or social conditions.

The relationship between hate speech and violence must be exposed as twofold. In the first sense is of the immediate violence of hate speech in the utterance itself, and the legal violence, that both precedes and follows the act. In the second sense the violence of hate speech links with the concepts of power, force and political and social relations. Damaging and tragic hate speech attacks take place every day.

Sadly, it does not mean they are recognised as such or are subject to the full force of the law in terms of protecting a victim. Language of this type is not solely an abstract expression of an idea. One need only ask a victim of hate to establish that.

Responding to regulation.

As is being shown within this chapter violence, through its connection to institutional frameworks and hate speech, seems impossible to evade. However, there are sites of resistance available beyond the legal forums of the courts. While these may not be free from violence they may still offer some alternative forums through which hate speech might be challenged. It seems to me that the arts could provide one of these possible areas of response. For example, as was discussed during chapter two, the theatre can be a site of challenge to the traditional boundaries of acceptable discourse and the subjects constituted within it.

I propose here that it is helpful to consider the work of Jurgen Habermas in *'The Structural Transformation of the Public Sphere.'* (Habermas 2008) For Habermas, the modern public sphere begins to develop in the UK during the eighteenth century.³⁴ He argues that this is the case because it is when the construct of the public sphere begins to function in a political arena. Habermas makes an association that relates the development of the public sphere to a bourgeois society, arguing that the combination of the two creates a bourgeois public sphere. He describes this creation as 'a sphere of private people come together as a public' (Habermas 2008, 27)³⁵ As the bourgeois public sphere develops a process of erosion is being seen between the divisions that

³⁴ The date resonates with the earlier sections relating to the construction of the concept of hate speech.

³⁵ The meaning here surrounds private individuals engaging the public authorities in a sphere governed by commodity exchange and social labour.

had separated the public and private spheres. As the erosion takes place, private individuals who make up the so called bourgeois public sphere, find a space within it through which they are able to engage and challenge public authorities (which can include state institutions). What follows is the creation of a secondary public/private divide within the category originally designated as the private sphere.³⁶ Habermas rightly points out that caution should be used in drawing simplistic divisions between the categories of public and private spheres. They are inevitably and inextricably associated, necessarily relying upon the existence of their apparent opposite, for definition and power.

A significant point must be foregrounded here which is that the public sphere according to Habermas, arises from theatre, arts, and literature to eventually encompass politics. If the example of English PEN in chapter two is remembered, a new association strikes out. PEN objected to the introduction of the *Racial and Religious Hatred Act.(2006a)* The objection was not because the organisation considered hate acceptable. Instead, fears were voiced that the Act would put all artists at risk of prosecution if the law were to be misused by the public authorities that implement it. Through considering the cancellation of the play *Behtzi*, I argued that the theatre poses a threat to the authorities because the authorities create the limitations placed upon what is acceptable speech and who recognised as able to speak. The theatre is able to influence civil relations, through challenging the limitations imposed by those authorities. This is an example of the functioning of the public sphere as Habermas conceptualises it. The authorities are being challenged by

³⁶ I would also argue that a similar process is taking place in the Chishty example. However, in that example it is not the public who are challenging the authorities but the authorities challenging the people.

private individuals through the public sphere. However, the development of the public sphere and the concurrent erosion of the previously distinct public and private divisions, creates Habermas's bourgeois public sphere. The fracturing and destruction of previously held conceptions about what constitutes public and private spaces takes hold and comes to life in the examples from Chishty and Cameron. This serves as a reminder that law courts are not the only spaces to find, confront or reinforce hate speech. While law may currently form the dominant framework for responses to hate speech, other viable alternatives exist. The public sphere, where the public can challenge the authorities seems to me to be one of those sites.

A second example from the theatre can also be considered through the following quotation:

May 1969. The Waterfront. River Aire's polluted waves lap at the filthy shore. POLICEMAN stands over a body bag. FROGMAN puts items from a wet duffel bag into an evidence bag. He looks around impatiently and lets a soggy piece of paper fall to the ground. (Aspden and Agboluaje 2009, 23)

The extract is taken from the play *'The Hounding of David Oluwale'* (Aspden and Agboluaje 2009) performed at the West Yorkshire Playhouse between 31 January 2009 and 17 February 2009. The body described is that of David Oluwale and the play tells his story as the victim of horrific, systematic, police brutality. This is relevant not only due to the role of the law in this study of hate speech but also, for initiating the discussion of responding to regulating hate speech with a play; a response beyond the law. If hate speech is regulated by law but can also exceed and legitimately evade those laws, then perhaps law cannot provide an adequate response to these injurious utterances. In fact, it has already been argued that different levels of hate speech are tolerated in public discourse and that often, the law is more aligned to preventing civil disorder than with directly protecting victims from hate speech. If institutional frameworks serve to reinforce the violence of hate speech, perhaps a non-violent site

can be found from which the stories of hate speech victims might be used to create a genuine and effective response to hate speech? By creatively responding to a story of police brutality the play about David Oluwale, was able to reframe the debate about what the victim had suffered. Performed in the theatre which is arguably the type of forum where the public and private boundaries are dissolved, a play can be argued to be able to reach an audience that is not directly invested in hate speech as a victim or a hate speaker. As a result, the audience that witnesses the play may do so from a position where there is no direct risk of injury from hate speech. A theatre provides a break from the original context of the events and seems to me, to generate an opportunity to reimagine Oluwale's experience of brutality. Under these circumstances the performative power of hate speech could potentially be reduced because in this forum, hate speech may not be able to create the conditions that it requires to be sustained. Placing the horror that ended in death within this new context, may allow for a response to be created without the direct threat of the original brutality being present, or at least without the threat of being directly exposed to that violence. A play can remove the burden of evidencing a harm which is always a requirement of any legal solutions to hate speech. Though a piece of theatre may not negate the threat of hate speech, if Rancière is remembered for a moment, the theatre can make audible the inaudible.³⁷ Perhaps a play can reveal and expose the hate speech masquerade and in the process attempt to diminish some of its violence.

The final example I will provide in this section comes from Katharine Gelber who offers a theory she calls 'speaking back'. The approach is designed to counteract the disempowering effects of hate speech and is fully explained in her book *'Speaking*

³⁷ See 'Hate speech or hate crime' in chapter two.

back: the free speech versus hate speech debate. (Gelber, 2002). Gelber's view is that by providing support through institutions, material, and education, possibilities for victims of hate speech to respond are created. Victims are provided with an opportunity to 'speak back.' For Gelber hate speech is a public act and she considers public policy to be failing to provide sufficiently effective solutions to the harms hate speech inflicts. She identifies the root of the failure to be situated in opposing the need to secure individual rights to free speech against the need to improve public protections against hate speech. (Gelber 2002, 4) She argues that such binaries require private and individual solutions to what is an essentially public problem. Because private resolution does not allow for 'a broader, public initiation or generation of a response to hate speech' (Gelber 2002, 4), the (legal) protections already in place are weakened. However, I have argued, that a more significant problem lies in opposing individual rights to freedom of expression with a requirement to tolerate forms of hate speech in public discourse. As a result, legislative measures to control hate speech can have the effect of individualising the problem, as opposed to the solution, and overlooking the social and political conditions that can shape hate speech and hate speakers. Nevertheless, Gelber's proposal of the 'speaking back' theory provides a refreshing possibility that indicates how some state institutional frameworks could function in ways that can empower victims of hate speech to respond. It seems to me that the empowerment of victims may not diminish the violence of hate speech but, is potentially powerful for exposing normalised or 'reasonable' hate speech. For example, an educational framework could present a viable alternative to legal structures. Different institutional frameworks may have the potential to be reconstructed in ways that could function to illuminate, the discriminatory practices that produce and are a product of hate speech.

Reinforcing violence through state institutional frameworks.

If you consider yourself a global citizen, you are a citizen of nowhere' May, Theresa, PM. [Conservative party conference, 15/10/2016].

The aim of this chapter was to argue that the state can reinforce the violence of hate speech through its institutional frameworks. Legal frameworks have been used as a focal point in order to make the argument that the violence of hate speech can become legitimized by the state. I have proposed that through enacting hate speech legislation, the state is able to validate and reinforce the violence of hate speech. What has been shown is that legal frameworks can function to perpetuate the violence of hate speech without, ever encompassing the full force of hate speech. Despite this tension the state, is to some extent, able to control and command the violence of hate speech.

The chapter began by considering how hate speech can be, positioned as in conflict with other forms of language, through being judged against a 'non violent' standard. However, hate speech laws have previously been shown to measure these utterances against other forms of offence, insult, or otherwise harmful language. As a result, it was argued that, hate speech is never actually judged against a standard that can be considered 'non-violent.' The imposition of the standard and the standard itself, have both been argued, to be forms of violence that come into conflict with hate speech. Consequently, hate speech can be said to be subjected to violence through legal institutional frameworks because, it is the law that determines what levels of harm inflicted by instances of hate speech are deemed unacceptable. Possessing this power means that the law has the capacity to remove authority from a hate speaker by deeming their words illegal or unsayable. However, in order to exert control over hate speech itself, laws also generate a situation where freedom of expression

becomes inextricably tied to some level of toleration for different forms of hate speech. Under these circumstances, any authority attributed to a hate speaker, is argued to be further diminished since the legal frameworks function in a way that individualises the problem of hate speech. The result of this process is to unveil how legal institutional frameworks, through their interaction with hate speech, serve to reinforce practices and structures of inequality and division.

Legal institutional frameworks are shown to inflict a type of violence upon all those who encounter the law in relation to hate speech. This is evidenced by the way in which a legal language is imposed to encompass, a victim of hate speech, a hate speaker, and any group that forms a community within a society. This legal language signals that hate speech carries a legal penalty while simultaneously being able to, articulate and manipulate the boundaries that attempt to control these forms of expression. The legal language employed to harness the destructive force of hate speech can determine who is and who is not, recognised by the law as at risk from the harms perpetrated by hate speech. An element within legal restrictions of hate speech is made visible that is both inclusive and exclusionary. Recognising that some types or instances of hate speech are legal and tolerated means that the law, must always and simultaneously, fail to encompass all forms of hate speech. This contradiction, I argue, lies at the heart of these considerations of hate speech since the state, in order to exert a level of control over hate speech, must always position these utterances as both legal and illegal, audible and inaudible, tolerable and intolerable. When this uncertainty meets with the performative violence of hate speech what is revealed is, an opportunity for, the state to generate particular social and political conditions through the authorisation or legitimisation of hate speech.

Two main acts are argued to be taking place that show how state institutional frameworks can function to legitimise hate speech violence. Firstly the law can be said to inflict a type of violence upon those vulnerable to hate speech by enforcing a judgement that determines if something is recognised as hate speech or not. In doing so, the law makes the claim that this violence can be legitimate by situating hate speech regulation in relation to freedom of expression. Secondly, the legal institutional framework functions to determine where the boundaries are positioned in terms of what can be considered acceptable speech in the public domain. Therefore hate speech that falls within the domain of the 'sayable' becomes legally sanctioned as legitimate.

It would seem then that the law could be, considered as the 'external authority' that authorises hate speech and has been the spectre haunting proceedings from the start of this thesis. However, while this is to some extent true, the overarching 'external authority' can now be argued to be the executive power of the state. As has been shown, the law both ensures the violence of hate speech and legitimises that violence at the same time. The executive power possesses the capability to disrupt the territorial integrity of the law, and to change the construction of legal institutional frameworks. The executive power exerts a force over hate speech regardless of how those utterances may relate to law, and far beyond any intention of a hate speaker. I suggest that it is at this point, where executive power shows its hand, that the state could begin to exploit the violence of hate speech for its own ends.

The horror of hate speech and the danger of its violence can begin to seem depressingly inevitable. However, this chapter has also indicated that there are possible sites of resistance to hate speech available beyond legal institutional

frameworks. While it is not possible to say that these sites are themselves free from violence, they nevertheless indicate that alternative forums to fight hate speech exist. It has been argued that the arts, and particularly the theatre, can potentially become productive sites of challenge to hate speech. A number of reasons are presented to support this view, with one being simply that, a play need not carry the burden of having to evidence a particular level of harm as is required for a legal response to hate speech. More interestingly though, art forms or forms of art, have the potential to temporarily reposition traditional boundaries of acceptable discourse thereby, transforming how linguistic subjects might be constituted within that domain. Additionally, a play has been argued to be able to, challenge the hate speech masquerade by transforming and exposing it. One outcome of this is the possibility that the power of the hate speech performative could be lessened. Perhaps hate speech could be prevented from creating the conditions that it requires to be sustained or, at least that process could be made significantly more difficult. The potential could arise for the theatre to effect a reduction in the power of hate speech to harm.

More explicitly connected to state institutional frameworks is Gelber's theory of 'speaking back,' that articulates how some of these frameworks might be engaged with to respond more productively to hate speech. Her proposal of 'speaking back' provides a way to consider how victims of hate speech could be empowered through responses that are enabled by state institutional frameworks. It seems to me that, although Gelber's approach does not limit or reduce the violence of hate speech, 'speaking back' could prove powerful especially, for exposing forms of hate speech that appear as normalised or 'reasonable.' This chapter as a whole has demonstrated

how state institutional frameworks, most particularly the legal framework, reinforce the violence of hate speech, and that states could potentially use these frameworks to unleash hate speech violence for the purpose of increasing executive power. However, it seems to me appropriate to suggest here that, there remain possibilities for reconstructing institutional frameworks in ways that could mean they expose or diminish the violence of hate speech, as opposed to continuously reinforcing and reproducing, the discriminatory practices that ultimately sustain injurious language.

Conclusion

Hate speech harms in subtle and extreme ways. The violence of hate speech threatens individuals and tears at the fabric of society. Despite this threat, it has been argued here, that hate speech receives a level of authorisation from the state, and is both legitimised and reinforced through institutional frameworks. The persistent and inevitable tension that is produced as a result plays a role in the survival of these forms of expression. The original aim of this thesis was to gain an understanding of the shadow hate speech casts through force, violence and institutional frameworks. Through demonstrating a mutually exploitative relationship between hate speech and institutional frameworks, the ways in which institutional frameworks function to reinforce the violence of hate speech have been exposed.

Engaging with four definitions of hate speech has illustrated how these forms of expression have come to claim a place within discourse. The lack of a universally accepted definition of the term 'hate speech' makes a shared and consistent understanding of hate speech impossible. Nevertheless, it has been possible to argue that hate speech does have some identifiable common characteristics. The uncertainty of meaning generated by contested definitions allows hate speech to exist in a continual state of revision, and to maintain currency in diverse and changing social and political environments. As a result of existing in this site of perpetual change, it has been argued that, hate speech always incorporates a capacity for redefinition and transformation that can ensure its own continuation.

When hate speech is named as a general term, or is legally recognised by the state, then hate speech can demand a place in discourse. This process of naming or recognising 'hate speech,' has been argued to normalize the appearance of these

forms of expression, and to be authorised by an 'external authority' which is separate from any individual hate speaker. Hate speech is performative speech and consequently, the agency it possess ensures these utterances are able to break with contexts, generating new and alternative ones that disconnect these forms of expression from any originating point. Furthermore, the agency of these injurious utterances ensures that hate speech always exceeds a speaker and possesses a power that can inflict harm within civil relations. Equally the capacity of hate speech to generate an autonomous space in discourse, coupled with its ability to constitute individuals in particular ways, has been argued to make clear how vulnerable, people and civil relations, are to its force. The status of hate speech as a performative speech act has been argued to be essential to, understanding the ability of these utterances to invade all forms of expression, act, and inflict harm. Through the consideration of definitions of hate speech, it has been revealed that violence both precedes and is fundamentally embedded within, these forms of expression. Consequently, it has been argued that, violence allows hate speech to claim a place in discourse, and that it is violence that lies at the heart of hate speech.

Hate speech is elusive and sometimes difficult to expose. One of the reasons for this has been argued to be the ability of hate speech to masquerade; to hide within its synonymous terms and mask the harm it inflicts. When hate speech masquerades in this way it can appear less dangerous than it really is. Connecting the performative hate speech act to the idea of masquerade, has been used to demonstrate how hate speech can hide in plain speech or demand a level of toleration in discourse. As a result, hate speech is argued to create opportunities to sanitise its own appearance and disguise the threat it poses. Subsequently, especially where hate speech is

revealed to masquerade, instances of hate speech and the harm they inflict risk going unseen, or worse still, being accepted as tolerable.

To further understand the relationship of hate speech with violence, force and institutional frameworks, six points of influence for the concept of hate speech have been identified. These points of influence were: freedom of expression, hate crime, the concept of 'fighting words', becoming a performative speech act, 'reasonable' hate speech, and genocide. This approach was taken in recognition of the ability of these forms of expression to obscure any definitive sites of origin. It was argued, that because hate speech can break with originating contexts, following a linear history of the concept of hate speech was likely to be unproductive. Focussing instead upon sites of influence for the concept was designed, to illuminate some points of disruption that have resulted, in conflicting perceptions becoming part of the concept of hate speech itself.

The root of the concept of hate speech has been argued to, be found through its connections to rights associated with freedom of expression. Initially this relationship was argued to tie the concept of hate speech to values and ideologies associated with Western liberal democracies. However, a common connection with other nations was found through international law, and as a result, it has been argued that hate speech has some potentially generalizable and perhaps universal qualities. What has been emphasised is a continual struggle for balance between requirements to restrict forms of hate speech and requirements to uphold commitments to rights of free expression. It has been argued that through legally restricting hate speech, the concept of hate speech comes to incorporate a site of debate, centred upon, which harms are judged significant enough to warrant restriction. The continual conflict

between tolerating hate speech and restricting hate speech has been argued, to be one of the elements that sustains these forms of expression.

What has become clear throughout the course of this investigation is that hate speech is not always in conflict with the law and is never only found in extreme situations. Where forms of hate speech are considered publicly 'sayable,' the influence of 'everyday' or 'reasonable' hate speech has been argued to be pervasive. Hate speech is able to masquerade as moderate or tolerable and these forms of expression receive a form of authorisation that ensuring they become accepted in public discourse. When this masquerade takes place, hate speech is argued, to become imbued with a power that allows it to function in ways that reinforce structures of discrimination and inequality. At the same time, hate speech, is shown to function as both a producer of and product of those same political and social structures that it reinforces. While this may be considered dangerous enough, it has also been argued, that focusing too heavily on 'reasonable' appearances of hate speech can function to obscure the full violence of these forms of expression. The viewpoint is presented that where hate speech can saturate institutional frameworks in its violence, then it can also become dangerous enough to play a direct role in genocide. What must not be forgotten during the concluding statements of this thesis is that hate speech, in its most extreme forms, can and does kill.

The argument has been presented that the violence of hate speech is legitimized and ultimately reinforced by institutional frameworks, in particular legal and legislative frameworks. Rather than providing people with direct protection from hate speech, legal approaches that restrict these forms of expression, have been said to relate more directly to, defining the limits of free expression or the maintenance of

public order. The result has been to suggest that legal interventions to control hate speech create formal requirements for injurious language to be tolerated in public discourse. Therefore, enacting hate speech legislation, where the laws have been established in relation to upholding rights to freedom of expression, has been argued, to enable the state to legitimise and reinforce the violence of hate speech. In this context, the law has been said to impose a legal language that engulfs victims of hate speech, hate speakers, and even whole communities, especially those identified as most vulnerable to hate speech. One result of this imposition is a public signalling of a legal penalty attached to the use of hate speech. However, the legal language employed to restrain hate speech also has, an arguably, more important function. That function is to determine who is and who is not, legally recognised, as suffering harm from hate speech. Legal institutional frameworks are therefore argued, to fail to encompass the full violence of hate speech. Not all victims and not all instances of hate speech are recognised as such; not all hate speech comes in to conflict with the law. It has been argued that where the state both regulates and tolerates these forms of expression, then the state is to some extent, able to control and command the violence of hate speech through its institutional frameworks. Equally, it has been shown how those same institutional frameworks can simultaneously function, to perpetuate the violence of hate speech.

Under these circumstances the law has been proposed as the 'external authority' that authorises hate speech. However, the overarching 'external authority' has been argued to be the executive power of the state. This is because the executive power has the ability to disturb the territorial integrity of the law and alter how legal institutional frameworks are constructed. This leads to the statement being made that

when the executive power exerts its force over hate speech, a possibility is presented for the state to exploit the violence of hate speech in order to increase its own power.

The violence of hate speech appears to threaten an inescapable harm. However, possible sites of resistance to hate speech have been identified. And so, the thesis draws to a close by arguing that the arts, and more specifically the theatre, can potentially become productive sites of challenge to hate speech. Art forms or forms of art, are not burdened by a need to provide legal evidence to prove something is hate speech. Instead, they have been argued to have the ability to dislocate traditional boundaries for what determines acceptable discourse. As a result, forms of art could harness a power to transform how linguistic subjects become constituted, and expose the hate speech masquerade in ways that potentially, diminish the power of hate speech to harm. Consequently, a possibility arises that art forms may be able to prevent the conditions that hate speech requires to be sustained from being created.

An additional possibility that has been presented for challenging hate speech is Gelber's theory of 'speaking back.' The theory explicitly connects with state institutional frameworks by articulating how some of these frameworks can be used to empower victims of hate speech and enable responses to injurious language. Though Gelber's approach does not limit or reduce the violence of hate speech, it has been argued, that 'speaking back' could prove to be an important response mechanism to forms of hate speech that can appear as normalised or 'reasonable.' The argument for alternative responses to hate speech is important because hate speech is always able to carry an underlying and sustaining threat to wound. Institutional frameworks have been shown to, reinforce the violence hate speech threatens and to be used to

exploit opportunities to harness the destruction it unleashes. In conclusion, it must not forgotten that, hate speech always harms.

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