

Hate Speech and the Problems of Agency: A Critique of Butler

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Abstract: At the center of the hate speech controversy is the question whether it constitutes conduct. If hate speech is not conduct, then restricting it runs counter to free speech. But even if it could be shown that it is a kind of conduct, complicated questions arise. Does it necessarily follow that we restrict speech? Practically speaking, can speech even be restricted, either through new legislation or the enforcement of existing laws regulating conduct? Are measures such as hate crimes legislation both useful and appropriate in protecting individuals and groups from violence? The present paper aims to address these questions by reconstructing and assessing Judith Butler's important treatment of speech-acts and hate speech in her book *Excitable Speech: The Politics of the Performative*.

Hate speech remains an ongoing social and political issue for a U.S. public that values both freedom of speech and individual protection from harm. At the center of the controversy is the question whether hate speech that is directed at individuals or members of minority groups constitutes, in one form or another, conduct. If hate speech is not conduct, then restricting it runs counter to free speech. But even if it could be shown that hate speech is a kind of conduct, complicated questions arise. Does it necessarily follow that we restrict speech? Practically speaking, can speech even be restricted, either through new legislation or the enforcement of existing laws regulating conduct? Are measures such as hate crimes legislation a useful and appropriate method of protecting individuals and groups from violence?

Judith Butler astutely raises these very concerns by asking why "words that wound" continue to enjoy a protected status when they subject individuals as members of targeted groups to further violence and abuse. In Butler's view—one increasingly shared by the public—the relation between speech and conduct cannot be clearly delineated. Indeed, the very raising of

the question whether such distinctions can hold is already an indication that they do not.¹ Following work done by Foucault on the normalizing tendency of social practices, she argues that the normative distinction made between physical violence and the vocalized content of background beliefs expresses contingent historical relations of power. Once the speech-conduct distinction is recognized as historically situated, maintaining a separation between the two becomes an increasingly difficult position to defend. It is clear that the relation, for example, between "speech acts" and conduct is a continuum which is not divisible into discrete parts, because "prior" beliefs and language seem to be the conditions of the possibility for intentional acts. Keeping this in mind, we would expect Butler to endorse a view that hate speech is a kind of conduct, and so should be restricted in order to protect individuals and group members from harm.

Butler's position, however, is more complicated. While she does recognize the real effects of hate speech on minority identities, both in constructing that identity and in subjugating it, the very instability of the distinction between speech and conduct raises a number of *aporiai* about how best to address the problem of hate speech. For example, collapsing the distinction between speech and conduct results in the following politically ambiguous and seemingly incommensurable results. If we are to maintain that speech is conduct, then pornography is a kind of violence against women, and so should be regulated. But collapsing that same distinction allows conservative critics to claim that art with homoerotic content should be restricted as well. Even more perplexing, the claim that speech is conduct, in some sense, underwrites policies like "don't ask, don't tell" in the military, where an individual, by merely stating openly that she is homosexual, is regarded as somehow "practicing" homosexual "acts." This last problem remains especially pressing for members of the gay community who are still excluded from even the most "civil" of American activities, namely, participating in the Boy Scouts.

These are difficult commitments to defend once the speech-conduct distinction is called into question, according to Butler. In order to avoid defending pornographers, censorship of art, or discriminatory policies, Butler thinks it is important to push the instability of the normative distinction between speech and conduct further, rather than collapse it and so fall prey to the inconsistent political commitments described above. There are two important and related questions to ask, and the purpose of the present paper is to demonstrate the limitations of Butler's theory in answering them adequately. First, how do we "push" the instability of the speech-conduct distinction further? What does this require? And how can this best be achieved, either by showing that some speech is conduct or not? And second, what do we achieve, if anything, by

doing so? Are the effects socially "measurable" in some sense, which would justify the theoretical approach Butler adopts? In other words, does Butler's theory do the work in resolving or deflating the problems raised by the complexities of the hate speech phenomenon?

In addressing these questions, I hope to show that there are serious and perhaps unresolvable difficulties raised by Butler's approach, although her treatment of the problems is by no means unsophisticated. In the first section, I begin with Butler's general account of agency, which I think is the source where most of these difficulties begin to take shape. In section two, I examine the range of social and political problems posed by various hate speech controversies. Section three returns to Butler's treatment of this topic in order to identify its limitations in either solving or at least meeting the challenge of these problems. Finally, I conclude with a brief discussion of why I think Butler's appropriation of Foucault is used and abused in a way that runs counter to the aims of her project. Thus, my critique of Butler aims to bring some background considerations on Foucault's thought to the fore in order to address the limitations of her theory rather than dismiss it outright.

I. The Problems of Agency

Butler's account of agency is certainly one of the most sophisticated and interesting currently available in feminist theory. Responding to essentialist varieties of subjectivity, she rejects three categories of feminist liberatory thinking: (1) there is a true "feminine" nature which has been devalued, (2) there is a universal form to women's oppression, and (3) there is a single, totalizing symbolic system of patriarchy that transcends class, race and ethnic intersections. She thus positions herself against three prevalent movements in feminism: lesbian separatism, phenomenological and dialectical theories of agency, and poststructural psychoanalytic feminism.² In this section, I shall concentrate on the ways in which Butler's theory of agency engages these theories in order to provide an important account of the social construction of agency and political identity.

As early as *Gender Trouble*, Butler provides an ongoing critique explicitly of phenomenological and dialectical theories of subjectivity, as well as Kristeva's psychoanalytic account of the feminine.³ Implicit in this critique, however, is her own position on the social constitution of identity. Following Foucault's analysis of the discursive practices within which gender and identity are connected, she articulates her own position on the social construction of subjects and the possibilities of "post-liberatory" resistance: "If subversion is possible, it will be a subversion from within the terms of the law, through the possibilities that emerge when the law turns

against itself and spawns unexpected permutations of itself."⁴ The theory is more developed in *The Psychic Life of Power*, in which Butler tries to come to grips with the difficult post-Hegelian problem of how agency is both constructed and subjugated by power. She argues that if we follow Foucault, and "understand power as *forming* the subject as well, as providing the very condition of its existence and the trajectory of its desire, then power is not simply what we oppose but also, in a strong sense, what we depend on for our existence and what we harbor and preserve in the beings that we are."⁵

The problem with Foucault's account of agency is, of course, that in being both formed by and constrained by power relations, the question of liberation from power remains closed. We can never escape power because, as the mantra goes, it "always-already" constitutes us. This formulation is further complicated by what Butler calls the "psychic life of power," or the internalization of relations of power by subjects who become "attached" to those same relations which create and sustain their identity. As Butler puts it, "If, in a Nietzschean sense, the subject is formed by a will that turns back upon itself, assuming a reflexive form, then the subject is the modality of power that turns on itself; the subject is the effect of power in recoil."⁶ In being the subjects that they just *are*, their identities are coextensive with those power relations. Without this constitutive function, an agent's identity would unravel at the point where consciousness and its individuation, as a certain identity in the context of discursive formations, is reproduced. In short, the identity of an agent just is the sum of the practices that designate the conditions for its agency. This view follows the line from Rousseau and Kant that only by following a self-legislated rule can an agent be said to be free.

The "post-liberatory insight," according to Butler, need not lead to an impasse for agency in terms of its constitution by relations of power, whereby we would have to give up resisting subjection simply because there is no way "out" of the subject. Certainly, the dual meaning of subjection—that subjects are the product of "subjectivation" (*assujétissement*), or made subjects, and subjugation—does not leave much room for radical changes in relations of power. Butler thinks she can steer her way between this Charybdis and Scylla, however. She wants to avoid "politically sanctimonious" views of the subject which amount to fatalism, as well as "classical liberal-humanist" accounts which represent "naive forms of political optimism."⁷ Accordingly, the gap she is left with is very narrow. Butler's account of what I shall call "weak agency," by which I mean a conception of agency that is strongly determined, aims to press new possibilities for resisting hegemonic and regulatory forms of power. What this account does not offer is a way *out* of power, a way forward, say, to some utopia based on a non-coercive, nondiscursive set of relations. What, then, is left for agency, especially in terms of its ability to act as a vehicle for social change?

I think that the answer is somewhat deflated, and as such indicates to what degree Butler's account as it stands outstrips even the potential for achieving post-liberatory aims. The main problem is that agents, in and of themselves, do not have a definite political horizon to work towards in order to turn resistance into something more than "merely cultural."⁸ Let me illustrate this problem by way of example. If it is true, as Butler says, that agency binds itself to its attachments as a form of complicity in its own subjection, then political change is constrained from the start to the site of the subject itself. The political horizon is not *out there*, so to speak, where oppressed groups can gravitate toward in order to change institutions and social arrangements. The political horizon is *in here*, that is, in the very subject itself, and what we can expect to change in terms of power relations appear to be simply *ad hoc* adjustments of the self. This "post-liberatory" frame of reference is already at work in *Gender Trouble*. "The more insidious and effective strategy it seems is a thoroughgoing appropriation and redeployment of the categories of identity . . . in order to render that category, in whatever form, permanently problematic."⁹ This kind of adjustment represents, it seems to me, the inevitable outcome of the logic of identity politics after Nietzsche. Nietzsche is one of the first thinkers to recognize the way in which power operates *through* subjects by the creation of a form of conscience that turns on itself, that is, controls and subordinates itself within the socially formed identity it inherits through a history of normalization practices.¹⁰ Butler continues this idea in her appropriation of Foucault by arguing that the cultivation of the desires, for example, that are constrained by the socially constituted self, can help free us from the grip of regulatory power.

There are cryptic comments throughout *The Psychic Life of Power* indicating just this *ad hoc* adjustment of the self as a political strategy for social change: "I want to suggest that, although there is no final undoing of the reflexive bind, that posture of the self against itself, a *passionate deregulation of the subject may perhaps precipitate a tenuous unraveling of that constitutive knot*."¹¹ Butler continues: "What emerges is not the unshackled will or a 'beyond' to power, but another direction for what is most formative in passion, a formative power which is at once the condition of its violence against itself, its status as a necessary fiction, and the site of its enabling possibilities."¹² I have emphasized this last point for good reason. In identifying the effects of a constituted agency which resists regulatory power, Butler remains generally vague about the details. But "the site of enabling possibilities" is precisely the agency which is both formed through and informed by relations of power. Resisting those relations remains at the level, then, of subjectivity, and what remains for "post-liberatory" aims is the *ad hoc* adjustment of subjectivity in the service of new possibilities of identity and agency.

One has to de-categorize oneself, as it were, in order not to fall into categorical descriptions which identify and demarcate agency.

II. Butler and the Politics of Speech

I am arguing that Butler's account of weak agency cannot provide a strategic location for promoting concrete effects of social change. Furthermore, we are left in the rather unsavory position of changing the relations of power only insofar as we change ourselves. How this remains to be done is also a significant problem for Butler, which I shall now explore. Butler admits that we cannot just "change" who we are: "We cannot simply throw off the identities we have become, and Foucault's call to 'refuse' those identities will certainly be met with resistance."¹³ The question remains open how much change is possible and what effects such modifications of the self will have on antecedent social relations of power. In this section, I shall examine more fully the concrete issue of hate speech in order to demonstrate that the possibility for real change is foreclosed. My concern with Butler's project is that we are unhappily left with accepting a number of commitments that leave us tied to the formations of regulatory discourse which first motivated us to find "a way out" of those relations in the first place.

In *Excitable Speech*, Butler takes up these issues by examining the performative dimension of the subject. Her emphasis here is the linguistic field within which identity emerges: "One comes to 'exist' by virtue of this fundamental dependency on the address of the Other. One 'exists' not only by virtue of being recognized, but, in a prior sense, by being *recognizable*."¹⁴ Language and subjection are connected to the extent that language is the "vehicle" of power. Speech-acts thus constitute identity in a discursive field of power relations which both bring the subject into being and constrain the subject to those same regulatory discourses. Butler's examination of the problems of hate speech identifies the possible ways in which "counter-speech" can be an effective instrument against the prevailing social forms of power which subject (or subjugate) minorities. What she wants to examine, then, is the important connection between "speech" and/as "acts". Her theory of performativity predisposes her to conclude that speech is a kind of action. In fact, her appropriation of Austin's speech-act theory informs her theory of gender and identity as performativity, providing an important distinction between illocutionary and perlocutionary forms of speech, or iterations (what we say) as an ongoing type of conduct (what we do).¹⁵

At the outset, I identified the uncomfortable position we find ourselves in by opting for such a performative theory that equates some speech with action, while denying the complete conflation of speech with conduct. This

forces Butler to reject regulations on pornography that feminists like Mackinnon advocate, which equate representations as actual physical violence.¹⁶ But it also leads her to defend gay rights, for example, by demonstrating that utterances about one's sexual orientation are constructed as conduct by policies like "don't ask, don't tell." Both of these positions are ambiguous and raise questions, given the performative theory here. If it is true that speech enacts social being, and so can cause real damage to agents who are linguistically vulnerable, then we would expect that the relation between speech and act to be the strategic position of changing the power relations. Women are represented as mere sexual objects in pornography, and this enacts their social being in ways which subject them to the ongoing constitution of sexual objectification. So, why does she reject regulating this form of speech which enacts a vulnerable and subjecting social being for women?

The problem is that speech-acts which target minorities are themselves not targeted as potential sites for changing the power relations. Rather, the terrain upon which resistance is to take place, on Butler's view, is once again moved back to the subject targeted by such acts. Butler does not want state protection against the kinds of injurious speech-acts that compromise minority subjects. She wants "counter-speech" in order to hold open the possibility of "reverse-discourse," which again places excessive emphasis on modifying the subjects who find themselves in the position of being socially enacted through their vulnerability. As targets of "words that wound," their identity both enables their agency and subjects them to insidious forms of power. In order to preserve the sense in which agents are produced, they cannot be fully liberated from the possibility of being exposed as "vulnerable" subjects. "Instead of obliterating the possibility of response, paralyzing the addressee with fear, the threat may well be *countered* by a different kind of performative act, one that exploits the redoubled action of the threat . . . to turn one part of that speaking against the other, confounding the performative power of the threat."¹⁷ The idea that speech-acts have the potential to serve as counter-speech is unambiguous enough. But how effective is it, ultimately? What does it mean to "counter" successfully a performative act with another performative act? Here we get the sense that new and novel categories of description are *replacing* (rather than displacing) subjecting categories for individuals who are members of targeted groups.

Butler insists that deferring the problems of hate speech to the solutions of legislation and state-power only recirculates the linguistic economy of injurious words: "The collapse of speech into conduct, and the concomitant occlusion of the gap between them, tends to support the case for state intervention . . . To insist on the gap between speech and conduct, however, is to lend support for the role of nonjuridical forms of opposition, ways of

restaging and resignifying speech in contexts that exceed those determined by the courts."¹⁸ Her worry is that the state not only constrains the language of those accused of exercising a kind of violence against minorities, it also has the unintended but serious consequence of circumscribing the limits of speech that can be appropriated in the service of those who are violated by injurious speech-acts.¹⁹ She calls this a more insidious and implicit form of censorship, one which "always-already" operates in a "circumscribed field of linguistic possibilities."²⁰ Since state regulation of speech closes the gap between speech and act, possible acts of resistance performed in counter-speech by subjected individuals are also compromised. Butler concludes that it is "impossible to regulate fully the potentially injurious effect of language without destroying something fundamental about language, and more specifically, about the subject's constitution in language."²¹ Censorship of the kind entailed by state intervention amounts to recirculating the speech-acts without delinking them from their chain of signification. Inevitably, it repeats the signifying terms in a linguistic economy, but does not, in doing so, dislodge their harmful features as acts of violence against vulnerable targets. "The proposals to regulate hate speech invariably end up citing such speech at length . . . the censor is compelled to repeat the speech that the censor would prohibit. No matter how vehement the opposition to such speech is, its recirculation inevitably reproduces trauma as well."²²

Butler's solution to the posed dilemma is odd in this respect. She identifies the ways in which injurious speech is recirculated and thus reproduces injury by trying to regulate it. Yet, her solution is to maintain the gap between speech and conduct politically in order to allow for counter-speech *linguistically*. "The political possibility of reworking the force of the speech act against the force of injury consists in misappropriating the force of speech from those prior contexts."²³ Such a "solution" or strategy is questionable for a number of reasons. Primarily, the limits of resignification seem excessively bound to their contexts, which does nothing to diminish the kind of injury accomplished when a group of males standing on a street corner vocally identify, say, a "faggot" in public. In that context, the possibility of resignification is minimal at best and dangerous at least. Either affirming that he is a "fag" or returning the favor to the attackers would compromise the safety of the victim further. If, however, the target of that speech-attack calls himself "faggot" among his friends, the change in scenery, so to speak, seems to satisfy the kind of strategy Butler advocates: the term has been appropriated from its injurious context and used in a way that counters its violent potential against the intended target of such speech. The "solution" is in claiming a "speech act as an insurrectionary act."²⁴ But this kind of "insurrection" does not do anything to change the ways in which performative

acts are directed against and make possible violence toward individuals or marginalized groups.

Such "reenactments"—for example, when blacks call one another "nigger" or gays call one another "fag"—is extremely limited in its potential for resituating vulnerable agents in relations of power. If anything, it indicates that what is important are not terms themselves, but antecedent relations of power within social practices which give the use of such terms their meaning and context. It is relatively unproblematic for two friends to call one another "nigger" or "fag," but the use of these terms to denigrate blacks and gays by whites and homophobes has different status, precisely because relations of power constructed prior to their use reflect a history of hostile practices against African Americans and gays. Not only do such "misappropriations" of speech, as Butler calls them, recirculate the injurious terms (something the state allegedly does in attempting to restrict speech they continue to make available their appropriation and abuse. The words do not just become obsolete and so fall out of use. Such resignification seems to me to continue the problem of subjects being complicit in their own subjection by attaching themselves even more to such categories of description.²⁵ In a very subtle way, it further binds the subjects to the very attachments of power which they intended to resist. For example, the self-hatred of subjected minorities has been well documented, and the tactic of resignification is surely a contributing part of this story.

Finally, Butler is critical of hate speech legislation because of the potentially subversive effects that state-power may have on language itself. Since she does not think agency is undermined when one is targeted by hate speech she argues that those in favor of state intervention deny the very critical agency they meant to protect through such legislation. "To give the task of adjudicating hate speech to the state is to give that task of misappropriation to the state . . . reproduc[ing] them this time as state-sanctioned speech."²⁶ But as I argued in the prior section, such "critical agency" is already in question. If a form of critical agency does exist in and through misappropriations of speech, then it is a very *weak* kind of critical agency, one ill-equipped given the problems just described, to counter hate speech without further subjecting itself to violence in the process.

III. Agency and the Limits of Resistance

Butler continues this kind of "politics is personal" formulation by urging us to invent forms of counter-speech against injurious words. The problem is that the site of resistance does not appear to be the most politically efficacious site for resistance to take place. I shall explore this question in greater detail in this section. I argue that if we adopt Foucault's ideas of power as multiple and embedded:

varying strategies, then it follows that our resistance to different forms of power cannot be restricted to mere modifications of agency. Resistance will have to operate at multiple sites as well, on different levels, and with different tactics.

To this end, I think there are several problems with features of Butler's social theory and its limited application to the social and political problems raised by hate speech. First, Butler's characterization of the social being of a discursively constituted agent has a univocal sense. "Called by an injurious name, I come into social being, and because I have a certain inevitable attachment to my existence, because a certain narcissism takes hold of any term that confers existence, I am led to embrace the terms that injure me because they constitute me socially."²⁷ Put another way, the agent who has a gay identity is oppressed because he is the *subject* of gay identity. I should qualify this claim because I do not want to suggest that gays are not subjected in both senses of the term, i.e. being made a subject and being subjected. Rather, I want to question the idea that subjection takes place in a univocal way with any one given identity. Gays and lesbians are also subjected in different ways unrelated to their explicit identification with sexual difference. The fact that many individuals can pass as heterosexual, and so enjoy the benefits and rights of those heterosexual members of the community, suggests that subjection in their case is mediated by the prohibition of explicit and public identification with their sexual orientation.²⁸ Why, then, is resistance equated with explicit reappropriations and redeployments of only these terms and categories of identification? Butler claims, "As a further paradox, then, only by occupying—being occupied by—that injurious term can I resist and oppose it, recasting the power that constitutes me as the power I oppose."²⁹ Gays and lesbians are also citizens, taxpayers, workers, and community members, and their discursively constituted identities are informed by all of these, rather than *just* their sexual orientation. This means that resistance to relations of power may take place through social roles and categories other than those which subject individuals in any one given sense. As citizens or taxpayers, the fight for equal protection under the law by those categorized as sexually different is not *merely* a question of explicitly identifying themselves as gays or lesbians.³⁰

I do not want to suggest that categories of sexual orientation are not part of the determination of subjection experienced by the "heteronormatively challenged." But neither does it follow that the only form of resistance available to them must be limited to the self-identification of their sexual difference. I disagree with Butler's narrow sense of construing one's enactment into social being only through the categorical identity of one's subjection. It follows from this that such an identity cannot be construed to be the only site of resistance to subjecting forms of power. Here, at least, I follow Hegel's explication of the various ways in which modern agents are made where Butler seems to diverge from him.³¹ Subjected individuals of marginalized groups do not resist such identity-constituting forms of power

just as subjected agents in those terms, but also as citizens, workers, consumers, family members and so on. After all, the social relations of power are varied and multifaceted.

This leads me to my second criticism. The narrow frame of reference implied by Butler's account of weak agency compromises the establishment of concrete political aims across groups. Butler seems to foreclose the possibility of multiple sites of resistance taking shape against certain regulatory forms of power, because she limits the call to resistance to the subjected identity itself. What agents of a group can then do to resist such power is make *ad hoc* adjustments of subjectivity. Such a limited range of resistance is unwarranted on the Foucaultian reading of power, which identifies the potential for unrelated and multiple strategies to counter-act and reverse power relations. What about inter-group solidarity, for example, when discursively constituted identities speak on behalf of oppressed groups other than their own? The question of "how we can work the power relations by which we are worked" must formulate an answer here, part of which must include an incorporation of the sites of resistance that are not within the subjection-identity matrix under consideration.³² Butler's theory, which paradoxically is a weak account of agency in being strongly socially determined, leaves too much work to be done by subjected agents themselves.

A third problem is this. The reason why multiple sites and strategies of resistance are foreclosed in Butler's analysis is due to the indeterminate nature of a strategy that limits itself to resignifying and redeploying injurious terms. I have already described the limits of resignification insofar as it continues the circulation of terms in a linguistic economy. Beneath this problem, though, is Butler's analysis which presupposes the indeterminacy of the sign chain. It is my contention that such an indeterminacy also has the effect of rendering indeterminate any political aims. If we begin with the assumption that indeterminate sign chains allow for the resignification of injurious speech, for example, I do not see how we can avoid the problem raised by having indeterminate aims underwriting the motivation to resignify. What do we want such resignification to accomplish? And what makes these aims motivate agents to resignify in the first place? Furthermore, when we acknowledge the plurality of identities, which have intersections among class, race, gender, sexual orientation, ethnicity, and so forth, we lose the ability to formulate a coherent picture of resistance with clear strategic aims in mind.

In this respect, Butler's account of agency parallels an excessively libertarian outlook on the constitutive limits and powers of subjects. The multiple sites of resistance I have identified in the examples above do not follow from Butler's social theory. She probably would not disagree with certain claims I have made about the necessity of coalitions to resist power relations. But neither can she account

for their importance or functioning within the narrow frame of reference implicit in her weak account of agency. In identifying the libertarian strain in Butler's theory, I do not mean to suggest that similar political commitments are entailed. But the poverty of libertarianism, with its excessive emphasis on individuality without due regard to the interdependency of social relations that construct social reality, is replicated, oddly enough, in Butler's overdetermination of the very *weak* agency she *heavily* depends on for theorizing resistance. Some feminist thinkers have identified this strain of commitment as a problem for building group coalitions based on identity politics. Iris Marion Young, for example, argues that this appeal to individual agency is one way in which traditional liberal theories of autonomy mask group-based oppression.³³

IV. The Use and Abuse of Foucault

From the outset of this paper, I have implicitly criticized what I perceive to be a use and abuse of Foucault by Butler. I have implicated, for example, the way in which Butler limits resistance to the very subjectivity that is under attack by injurious forms of speech, leaving nothing to be said about broader political and social movements that seek to change the context within which such speech-acts are made possible. Additionally, I claim that a set of theoretical commitments like Butler's—an account of weak agency, resignification as a strategy of resistance, etc.—run counter to the political commitments of feminism in general and Foucault in particular. These are controversial claims. It now remains to defend them briefly in the context of my critique of Butler.

Foucault's main contribution to our understanding of power is that we need to be circumspective about the subtle and implicit ways in which power is exercised and transformed along with the development of new historical formations of knowledge.³⁴ An important component of this view is that in the modern era power both produces and subjugates, and always in ways which are inexorably intertwined. Identity is one such construct in which it is impossible to be liberated from power, since it would also require one to be liberated from the self, which is an impossible task in light of the strong way in which the self is constituted by the prevailing social practices relative to a given set of knowledge formations. We think of ourselves as modern agents, take that view as authoritative, and the preconditions of this are related to practices of objectification in which we become objects of knowledge to ourselves. But does this way of thinking about power commit us to the view that no wide-scale social change is possible? Surely not, and it is the strange fate of Foucault that this view is too often attributed to him.

Foucault's own interests, for example, in the nature of critique and revolutionary praxis provide important counter-examples to the argument that his

theoretical commitments restrict him to local critique and narrow strategies (or worse, no normative commitments at all).³⁵ The genealogical method of examining specific problem-areas in relation to their historical genesis and construction (disciplinary regimes, clinical medicine, sexuality) is local in its application and "global," I argue, in its implications.

Rather than narrowing resistance against a specific form of subjection, say, in the realm of gender and sexuality, resistance must be thought of architectonically, much like the way in which power is theorized as a system of multiple and strategic practices, composite sites, and networks.³⁶

These relationships [of interaction between individuals and groups] are in perpetual slippage from one another....Each interaction can be re-situated in a context that exceeds it and conversely, however local it may be, each has an effect or possible effect on the interaction to which it belongs and by which it is enveloped. Therefore, schematically speaking, we have perpetual mobility, essential fragility or rather the complex interplay between what replicates the same process and what transforms it...In speaking of archeology, strategy, and genealogy, I am not thinking of three successive levels which would be derived, one from the other, but of characterizing three necessarily contemporaneous dimensions in the same analysis.³⁷

Foucault himself engaged in praxis with such a multiple view of resistance in mind: he actively supported social movements for change on numerous fronts, ranging from prison reform to the Algerian colonial war.³⁸ Interestingly, while he did lecture widely on the history of sexuality in relation to his research, and gave a few select interviews on the social and political issues of homosexuality specifically, he did not engage himself in the kind of activism that characterizes gay politics.³⁹ He seems to be a living example, then, of the way subjected agents can resist forms of power which are not specifically tied to the terms in which they themselves are subjected. That his ideas and research are used to promote resistance against the subjecting categories of sexuality demonstrates the elastic ways in which resistance, like power, is mobile in crossing demarcated lines between forms of knowledge and power. It is this important feature of Foucault's revolutionary praxis that I would like to preserve, what he obliquely called "a form of critical thought which will be an ontology of ourselves, an ontology of the actuality."⁴⁰ On my view, this kind of praxis is underdetermined by the narrowing of the limits of resistance in Butler's theory.

If we broaden that field, I think some practical considerations follow which allow us to appreciate these multiple strategies of resistance. Claiming that she does not subscribe to an opposition between "aesthetic" and "juridical" domains, since the latter often enforces the former, does not necessarily free Butler from the political implications that follow her theoretical commitments.⁴¹ I have argued that Butler's theory does, in fact, leave us with a kind of "merely cultural" solution to

the problem of subjection without any form of praxis. This "aesthetics of existence" is the kind of self-serving libertarianism that political philosophers like Ronald Beiner have accused Foucault of endorsing.⁴² Surely, this is not a strategy that feminism can endorse broadly, since it can be misconstrued to mean that women can free themselves from patriarchy simply by adopting and stylizing more radical forms of femininity. (A problem Butler implicitly identifies, for example, in Kristeva's theory of the feminine.) While the intervention of the state is a problematic and questionable "solution" to the problem of hate speech reproducing subjection for minorities, I do not think it is as harmful, intentionally or otherwise, as Butler seems to suggest.

Admittedly, it would be difficult to enact hate speech legislation of the kind that would prohibit public utterances that target vulnerable minorities. But hate crimes legislation, for example, is a symbolically appropriate way to counter in legal discourse the effects of hate speech by providing public recognition that such uses of speech, when carried out at the level of conduct, are unjustifiable and deserving of highly scrutinized legal circumspection. Such protection for minorities does not amount to explicit censorship of speech, but it does circumscribe the limits of where speech leaves off and harmful conduct begins.

In this way, Butler's caution about state forms of protection also strikes me as libertarian in its orientation. The state in its current historical formation is certainly a consolidated site of power relations, but it does not follow that its power cannot be utilized to strengthen the very weak agency which is socially determined by subjecting speech-acts. The necessity of past social movements to find legal recourse in the courts demonstrates the fact that social norms cannot be changed solely by nonpolitical, "merely cultural" means.⁴³ Furthermore, a practical context is provided by such legislation for society-wide discussions about the acceptability of speech-acts targeting individuals as members of historically marginalized groups. And this opens the possibility of facilitating the crossing of intersections of identity among groups in order to promote large-scale movements seeking to change antecedent relations of power. Liberation from power need not be our immediate political aim, even if it is a theoretical impossibility. But pushing for social change to favor marginalized groups at different levels of discourse, including legal and political ones, it seems to me, is the political horizon within which we must work. That Butler follows Foucault without accounting for an informed praxis, including various strategies of resistance and counter-practice, is the strange fate I have been referring to as his "use and abuse." Strangely, for feminists and others promoting real social change, it seems to be a kind of fatal *misappropriation*.⁴⁴

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Notes

1. For a sociological treatment of hate crime in the U.S., see Valerie Jenness and Kendal Broad, *Hate Crimes: New Social Movements and the Politics of Violence* (New York: Aldine, 1997), who argue, along with social problems theorists, that "what becomes recognizable as a social problem is the product of practical and political activity" (173).
2. Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (New York and London: Routledge, 1990), esp. Ch. 1.
3. See, for example, *Gender Trouble*, Ch. 3.
4. *Ibid.*, 93.
5. Judith Butler, *The Psychic Life of Power: Theories in Subjection* (Stanford: Stanford University Press, 1997), 2.
6. *Ibid.*, 6.
7. *Ibid.*, 17.
8. Judith Butler, "Merely Cultural," *New Left Review* 227 (Jan/Feb 1998): 33-44. Butler here defends her theory against criticisms that it fails to account for more fundamental power relations located, for example, in the social relations of production under capitalism; and she argues that the construction of sexuality is central to the oppression of capitalism, sexism, etc. Her claims against some theorists who urge against reducing social movements to the "merely cultural" sphere are answered by Nancy Fraser, "Heterosexism, Misrecognition and Capitalism: A Response to Judith Butler," *NLR* 228 (Mar/Ap 1998): 140-49.
9. Butler, *Gender Trouble*, 129.
10. Friedrich Nietzsche, *On the Genealogy of Morals*, trans. Walter Kaufmann (New York: Vintage, 1967).
11. Butler, *Gender Trouble*, 66; my emphasis.
12. *Ibid.*, 66; my emphasis.
13. Butler, *Psychic Life of Power*, 102.
14. Judith Butler, *Excitable Speech: A Politics of the Performative* (New York and London: Routledge, 1997), 5.
15. J. L. Austin, *How To Do Things With Words* (Cambridge, MA: Harvard University Press, 1962). For Butler's reconstruction and integration of speech-act theory, see *Excitable Speech*, 43-52.
16. See, for example, *Excitable Speech*, 17-18. For a short and concise defense of the view that pornography is a kind of conduct, see Catherine Mackinnon, *Only Words* (Cambridge, MA: Harvard University Press, 1993).

17. Butler, *Excitable Speech*, 12.
18. *Ibid.*, 23.
19. For Butler's distinction between explicit and implicit (or external and internal) forms of censorship, see *Excitable Speech*, Ch. 4.
20. *Ibid.*, 129.
21. *Ibid.*, 27.
22. *Ibid.*, 37.
23. *Ibid.*, 40.
24. *Ibid.*, 160.
25. Social psychological research of "stereotype activation" demonstrates that the use of words is cognitively linked to a network of implicit associational concepts. One relevant example is the "Neighborhood Activation Model," which shows that the use of a word sets off a chain of "neighboring" concepts of negative association, for example, those usually associated with the use of slang terms. See Paul Luce and D. Pizzoni, "Neighborhood Activation Models," *Ear and Hearing* (1998).
26. *Excitable Speech*, 101.
27. *Psychic Life of Power*, 104.
28. For a reading of the "double-bind" of homosexuality in the "coming out" process, see the classic treatment by Eve Kosofsky Sedgwick, *The Epistemology of the Closet* (Berkeley and Los Angeles: University of California Press, 1990).
29. *Psychic Life of Power*, 104.
30. I was reminded of this often-overlooked viewpoint in a recent editorial by Paul Varnell, "How To Be Gay: 101," *Chicago Free Press* 1, no. 32 (April 5, 2000), 13. Varnell's response to conservative critics who want homosexuality as a social issue kept out of public education is to remind everyone that "we pay taxes too and we expect some representation for our taxation."
31. I am thinking here of Hegel's argument that the institutions of the modern social world allow the individual to be reconciled to a range of different roles, such as that of family member, self-interested agent, member of an association, and citizen. See *Elements of the Philosophy of Right*, ed. Allen Wood (Cambridge, UK: CUP, 1994), Part III, esp. par. 149, 157 *inter alia*. For a feminist interpretation of the self that is multiple in this way (called an "aspect theory" of the self), see Ann Ferguson, *Sexual Democracy* (Boulder: Westview Press, 1991). I am indebted to Patricia Huntington for pointing out the overlap here.
32. *Psychic Life of Power*, 100.
33. Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990), esp. Ch. 1, 6, 7.

34. For an initial attempt to defend Foucault's views along these lines, see my "Foucault and the Critical Tradition," *Human Studies* 23, no. 4 (October 2000).
35. For these important and overlooked dimensions, see Foucault, *The Politics of Truth*, ed. Sylvère Lotringer (New York: Semiotexte, 1997), esp. the essays, "What is Critique?" and "What is Revolution?"
36. For Foucault's views on the issues I take up here, see the interview "Power: Strategies," *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, ed. Colin Gordon (New York: Pantheon, 1980).
37. Foucault, *The Politics of Truth*, 59.
38. Foucault's views, for example, on the failure of the prison-reform movement to attribute such shortcomings in praxis to a general failure of its participants to link strategies of resistance. See the interview, "Truth and Power," *Power/Knowledge*, esp. 130-33. For a broader treatment of Foucault's political activism, see James Mitchell, *The Passion of Michel Foucault* (New York: Simon and Schuster, 1993).
39. Foucault makes many cryptic comments on the subject in the interview "Sexual Choice, Sexual Act: Foucault and Homosexuality," *Politics, Philosophy, Culture: Interviews and Other Writings, 1977-84*, ed. Lawrence Kritzman (New York: Routledge, 1988), 286-303. For a detailed treatment of Foucault's important contributions to the politics of sexuality, see David Halperin, *Saint Foucault: Towards a Hagiography* (Oxford, UK: OUP, 1995).
40. Foucault, *Politics of Truth*, 100.
41. Butler, *Excitable Speech*, 100.
42. Beiner, "Foucault's Hyper-Liberalism," 3.
43. For a brief history of group movements converging around the question of hate motivated violence, see Jenness and Broad, *Hate Crimes*, 23-30.
44. An early version of this paper was presented at the 16th International Society for Philosophy Conference at Villanova University in July 1999. I would like to thank the participants who discussed these issues with me and two anonymous referees who provided comments. Special thanks to Patricia Huntington of Loyola University Chicago for her Feminist Philosophy seminar on Butler's work and for her extensive comments on an early draft. Finally, an ongoing thanks to my feminist interlocutor at Loyola, Kristi Sweet, who has discussed with me all the issues raised in the paper at one time or another.