

*Speak No Evil: The Triumph of Hate Speech Regulation.* By Jon B. Gould. Chicago: University of Chicago Press, 2005. Pp. 241. \$48.00 cloth.

Reviewed by Ryan D. King, State University of New York at Albany

In *Speak No Evil*, Gould goes beyond politicized and partisan debates concerning hate speech regulation to provide a theoretically rich and empirically driven account of the rise, persistence, and impact of hate speech regulation on U.S. colleges and universities. Gould introduces some puzzling questions at the outset. Why did campus speech regulation arise when it did? And more intriguingly, how did hate speech triumph in academia in the wake of *contrary* constitutional precedent? As the author discovers, not only did many universities retain hate speech policies following a series of appellate court decisions ruling them unconstitutional, but some actually defied these decisions by adopting new hate speech codes. In related fashion, the author asks how nearly unenforceable hate speech codes became fairly effective? And why have appellate courts validated speech restrictions in the workplace (e.g., hostile work environments) while they have limited restrictions in educational settings? These questions motivate a well-researched and lucidly written book.

Gould positions his theoretical argument against that presented by hate speech critics. In this sense, he partly constructs an intellectual nemesis from a collection of columnists (e.g., George Will) and interest groups, few of which identify as social movement theorists per se. Gould labels this the “traditionalist” explanation, which claims that the creation and diffusion of hate speech policies reflected liberal activism pervading higher education in conjunction with organized advocacy group mobilization from marginalized communities. Gould maintains that the traditionalist argument is plagued by reliance on case studies and limited empirical data. Indeed, prior to his endeavor, little reliable data existed on the prevalence and nature of hate speech regulation.

Gould fills this informational lacuna by collecting data from a stratified random sample of U.S. colleges and universities accompanied by in-depth interviews with administrators and active players in the hate speech movement at strategically selected universities. While the analysis clearly takes us beyond prior work, the data have limitations. The survey data rely heavily on proxy indicators and suffer from thorny collinearity issues, which might have been dealt with more effectively. These limitations aside, the analysis suggests that group mobilization and identity politics had only limited influence on speech code adoption. Gould then turns to the interview data and delivers his theoretical punch. He finds that

high-level administrators acting on instrumental, utilitarian concerns instigated hate speech regulation. Administrators sought to diffuse racial unrest on campus and deliver “symbolic, perhaps even cynical” (p. 89) gestures to appease marginalized groups and keep pace with what they perceived as “mainstream” academic administration.

Speech regulation advocates found resistance in the appellate courts, and many policies were subsequently deemed unconstitutional. Gould applies a heavy dose of persuasive logical reasoning to scrutinize the courts’ First Amendment jurisprudence. Suggesting an apparent constitutional duplicity, Gould compellingly argues that while the courts have legitimated speech regulation within the workplace, they have simultaneously limited speech regulation on campus. But as the reader soon learns, appellate court rulings may have been impotent. Gould illustrates a counterintuitive consequence where many universities either retained their hate speech policies or even crafted new codes despite countervailing precedent. As with original policy adoption, the interview data again suggest that university administrators either complied or defied the appellate court decisions largely because of utilitarian concerns. Administrators gauged the costs and benefits of compliance, with many desiring to maintain the symbolic benefits associated with speech codes. Rescinding codes, many administrators feared, would make the university appear soft on racial intolerance that could subsequently fuel protest and negative media attention. While this argument is largely convincing, one might question how to falsify it. The quantitative data do not allow an empirical test of Gould’s explanation, while the qualitative data do not allow him to convincingly dispel the traditionalist argument. To that end, it remains unclear what actions would indicate that administrators did not act in their self-interest.

Gould’s balance of legal reasoning, political and social theory, and empirical rigor will appeal to a wide audience of legal scholars, political scientists, and sociologists. This work also provides theoretical leverage in the study of policy diffusion by emphasizing utility calculus more so than neoinstitutional accounts. To this end, he further underscores the importance of qualitative inquiry in the study of law and social change. This book will also spur critical discussion. Gould’s assertion that “adopting a hate speech policy . . . could have persuasive power even if it were rarely enforced” (p. 175) will spark debate. The data seem more compelling when explaining the striking resilience of speech codes than their persuasive power. Others may criticize Gould’s conclusion that renewed free speech norms increasingly proliferate civil society, in line with his idea of “mass constitutionalism.” That speech codes largely remain dormant may challenge the contention that they represent a new norm, particularly when numerous universities

have resisted hate speech policies without incident. These issues will likely be debated in the wake of this important book, and they represent but a few of the many intellectually engaging debates motivated by *Speak No Evil*.

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*Courting Conflict: The Israeli Military Court System in the West Bank and Gaza*. By Lisa Hajjar. Berkeley: University of California Press, 2005. Pp. 312. \$24.95 paper.

Reviewed by Vanessa Barker, Florida State University

After 38 years of military occupation, Israel has recently withdrawn from Gaza and the West Bank. Readers seeking to understand the historic proportions of this move, especially as it is enmeshed in the legacy of Israeli control over Palestine, will be interested in Hajjar's first-rate ethnography, *Courting Conflict: The Israel Military Court System in the West Bank and Gaza*.

Operating within a complex legal framework, Israel's military court system, Hajjar argues, functions as a highly repressive form of governance even as it remains shrouded in the principles of formal rational law. The military court system, Hajjar explains, has governed the everyday lives of Palestinians in the occupied territories since 1967. That is to say, the military court system not only prosecutes cases of security violations and armed resistance, but it regulates how Palestinians live their lives in the occupied territories. By applying various military orders, the court regulates how Palestinians actually move through the territories (e.g., curfews, checkpoints, permits), how they can or cannot display signs of Palestinian nationalism, how they can or cannot protest the occupation, and how they make a living, marry, and go to school, among other more mundane activities (p. 186).

Pushing her point further, Hajjar argues that the military courts along with other legal institutions in the occupied territories have created what Foucault characterized as a "carceral" society. Governed by intensive surveillance, discipline, and practices of domination, Hajjar argues that Palestinians have become imprisoned in their own homeland (p. 186). Hajjar's application of Foucault is problematic. Foucault analyzed how modern *democracies* created carceral societies based on insidious forms of surveillance, normalization, and discipline. But they did so in ways deemed legitimate by citizens who actively participated in their own subjugation. In the case of the Israel/Palestine conflict, the court system has created a real prison inside Palestine, a conquered land.