Hello to all of my Queers and Dears and welcome to the **[February 2023]** monthly video essay! I hope you enjoyed that amazing new intro by my friend Xel Writer with music composed by yours truly—most of my creative works I upload that use it will have a shorter version, but if you see any of my work that has the longer version know that it's work I'm especially proud of; the essay you are about to watch included.

This month we're continuing our foray into one of the biggest political issues of our time: freedom of speech. What is it and what should it be? What rights and limits do we actually have, and what rights and limits *should* we have to manage the harm speech can cause? Who controls it? Who *should* control it?

That's not even everything, so many complicated questions and so much debate around all of them, seemingly with very little understanding, or at least highly divisive conclusions.

I'm hoping this video will be useful for anyone with any political affiliation, so whether you're left, right or center I hope you'll give this video a shot and approach it in good faith. I really hope to help break down some of the nuances of modern speech issues, explain some more issues that don't get as much attention and address some misconceptions as well as hopefully provide some steps in the right direction going forward, and as always I will be citing my sources and linking them in the description. I always try to cover my bases and create well-researched and accurate videos for you all, but topics this sensitive in particular require a thorough, well-researched academic approach that I'm hoping I have been able to achieve.

Because of the depth of this topic, in order to release an essay this month—and not torture my poor editor more than I already have— I had to split this into two parts. The first part was focused on clarifying the issues we are dealing with—including breaking down the 1st amendment, the way it's implementation has failed, and the dangers those failures have introduced—while this part will focus on where these issues come from, what specifically needs to be addressed, and some suggestions for how to address them.

If you find yourself liking the video and have the financial means to support my work, please consider joining my patreon! I've got some cool stuff I'm planning and I want to be able to pay everyone involved fairly. More details at the end of the video.

Before we begin, it's important to be up front that I am not a lawyer, nor do I claim to be an expert in any of what I cover in this video. I'm not going to be able to explain all the ins and outs of free speech law, the business models of social media platforms or entertainment conglomerates. My hope is simply to offer some new ways of framing the

discussion and hopefully offer some intelligent approaches to dealing with modern issues relating to speech.

It's also important to give some content warnings, because we will be covering some very difficult topics.

This video includes discussions of suicide, trauma, threats to inflict bodily harm, school shootings, terrorism, doxxing, stalking, racism, transphobia, homophobia, antisemitism, xenophobia, and other forms of bigotry and hate.

Without further ado…let's dig in

Adam Myers and Adam Splitters Entertainment Present
The Inevitable Limits of Speech: Part Two
Edited by RemnantBardock and Adam Myers

A Small Recap

If you don't need a recap, no worries—my editor will put the time code of the next section on screen now. If a recap is helpful, let's get to it!

In Part One, I broke down some of the history of the 1st amendment, explaining the purpose of the bill of rights and by extension the 1st amendment as concessions made because the states believed the constitution as it was would not sufficiently prevent the repeat of the issues with the british monarchy the colonists were desperately trying to get away from. I then introduced and explained the precise wording of the 1st amendment—that is, *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the <u>freedom of speech</u>, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

After that, I broke down some of the cases that have informed what that wording has legally come to mean, and some common misunderstandings from the public such as the lack of any legal definition of or consequences for hate speech.
I talked about how the various court cases that have influenced how 1st amendment law is interpreted today, from the "clear and present danger" test created during *Schenck v. The United States ,* to the arrest and conviction of communist labor party organizer, pacifist, suffragist and racial justice activist Anita Whitney, to the "immediate lawless action" test created in *Brandenburg v. Ohio.*

I then began to explain how a flawed and inherently hypocritical ideology formed known as free speech absolutism. Free Speech absolutists have advocated that even the tiniest bit of censorship could become the death knell for the 1st amendment, so the only way to successfully defend speech was to allow as much speech as possible to fight it out in the so-called "the marketplace of ideas". The idea that allowing all speech to compete will inevitably result in the best and most truthful speech fails on the same grounds as the arguments for unregulated capitalism because it doesn't address the ways powerful and influential figures and corporations find to manipulate, control and crush the markets according to their own interests, nor does it take into account systemic biases that favor some speakers over others.

Finally, I talked about the biggest threat that these failures have led to: Stochastic terrorism.

I talked about Alex Jones and the way the conspiracies about sandy hook he promoter led to years of harassment and pain for the families who lost their children in that tragedy, about Chaya Raichick and Libs of TikTok and how her posts have led to bomb threats and impacted anti-lgbtqia+ legislation, and how the network of right-wing pundits, politicians and billionaires have created a culture of fear and despair in their political base that has repeatedly resulted in their conspiracies about various minorities leading directly to acts of terrorism, with those same conspiracies or other figures who did cite those conspiracies praised, embraced or even outright stated as motivation by the terrorists themselves.

Now that all that's out of the way, it's finally time to dig into Monetary Politics, Gatekeepers of Speech and then end asking that terrifying question—what do we actually *do* about this?

Monetary Politics and the Gatekeepers of Speech

So is free speech under attack? Short answer: Yes. Long answer: yes, but with a lot more nuance than the conversation about it tends to hold, no matter which side of the political spectrum it's being discussed on.

As I've detailed, the 1st amendment has always been a contentious issue, in large part because whatever restrictions on speech can be legally enforced can be utilized in different ways and on different people depending on who wields political power at that moment in history. We see political power wielded in such a manner through the waves of anti-lgbtqia+ legislation that argue that queerness —with a particular focus on transness and gender-nonconformity—is by its nature obscene, thereby attempting to

legislate queerness out of society by use the 1st amendment exception for censorship of obscenity

The speech of those who aim to silence and harm others is protected, creating a social environment where the speech of those targeted may be *in theory* equally protected, but where silencing them is simple and legal through the use of fear and stigma—such as passing laws vague enough to be implemented in ways that the average citizen would be unable to guard against.

For example, terms like "age-appropriate" or "instruction" create a culture of fear for many teachers, causing them to toe any line they become worried might be punishable under the parental Rights in Education Act—more commonly known as the Don't Say Gay bill. Terms like these are highly malleable depending on who is interpreting them and for what reason.

That said, we shouldn't ignore that leftists can perpetuate similar cultures of fear around speaking up. The rhetoric of "silence is violence" demands everyone have a take on every issue—and not just have a take, but have what's believed by the loudest, angriest people to be the "right" take. In practice, this fails to consider those who are fatigued or overwhelmed for any variety of reasons that may be personal, internal, political or some other factor we can't know implicitly, as well as anyone simply feeling not certain they know what they're talking about—particularly in an age of rampant misinformation. Possibilities of experiencing dogpiling, public humiliation, harassment or even contributing to the very harm they have felt pressured to speak up against are very real and valid realities to fear.

Despite some sentiments on the American left, cancel culture *is* real, it just doesn't affect the people who yell about it the most. Figures like Dave Chappelle, JK Rowling and Tucker Carlson have maintained highly influential platforms despite their supposed canceling, but the existence of long term wide scale harassment campaigns against people considered problematic is absolutely a real issue. Contrapoints has a great video on canceling as she experienced it herself, and it's amazing and heartbreaking how the American political left let their belief in their righteous mission against dangerous forces convince them they are absolved of their capacity to slide into harming marginalized groups and innocent people by simply considering certain kinds of behavior, rhetoric and actions that "the enemy" has utilized not only acceptable but righteous in the name of fighting said enemy.

The actions of both the left and right alike could technically be defined as a form of censorship since censorship, according to Britannica, is "the changing or the

suppression or prohibition of speech or writing that is deemed subversive of the <u>common good</u>".

That said, as mentioned earlier, exceptions for when government censorship is considered necessary have existed in America almost as long as the laws created to prevent government censorship. Censorship has its place in maintaining a healthy society and a stable democracy—though unfortunately we've had to deal with a lot of biased and problematic policy in the creation of censorship laws, as well as non-government enforced decisions about speech. This is where monetary politics come in.

Some vocabulary needed for this discussion:

When I use the term *"gatekeepers of speech"*, I'm referring primarily to the corporations—and specifically the executives of those corporations—that produce, host and/or distribute information and expression. This obviously includes all social media platforms—Facebook, YouTube, TikTok, Twitter (I refuse to call it X) and so on—but it also includes entertainment studios like Disney, Netflix and Warner Bros Discovery, as well news outlets like Fox News, the Washington Post, the BBC, the New York Times and the Hollywood Reporter. I'm sure there are others as well I'm not currently thinking of, but generally the gatekeepers of speech decide what speech of expression gets prioritized through what I call monetary politics.

"Monetary politics" is the term I've coined to describe the analysis of risk vs reward of impact on the bottom line that speech and expression gatekeepers use to decide which speech is moderated, which is protected, which is given an algorithmic microphone and which is shuffled off into the corner.

There are many ways that monetary politics is implemented among the various gatekeepers of speech depending on through which that gatekeeper receives money, their public brand and how they operate their services for their customers. The decisions about speech that come from those monetary politics then often surface as the relationship non-gatekeepers have to brand safety, legal risk, algorithmic reach, access to the services the gatekeeper provides, lawsuits, monetization ability, and the operation of copyright protection systems and complaint responses, among others limits or privileges that can be applied.

Gatekeeper 1: Social Media

Social media, especially social media with global user bases such as twitter or YouTube, has sometimes been compared to what's legally known as a "public forum" as a way to make sense of how their role in how speech should operate can be handled. This is complicated as these are privately owned businesses, yet it is true that the spaces they operate resemble public spaces more than they do private ones—with some exceptions that we will touch on soon. First let's go over the rights that we are guaranteed in a public forum, and then we can see how those rights do or don't hold up on social media.

As detailed by the ACLU on their page *Know Your Rights*,
"Your rights are strongest in what are known as "traditional public forums," such as streets, sidewalks, and parks. You also likely have the right to speak out on other public property, like plazas in front of government buildings, as long as you are not blocking access to the government building or interfering with other purposes the property was designed for."

The ACLU goes on to detail that Police must treat protesters and counter protesters equally and that they have equal rights to free speech, but that law enforcement is permitted to keep antagonistic groups separated—though they should allow them to be within sight and sound of one another.

The ACLU also notes that there are some instances where a protest requires a permit.

Marches or parades that require blocking traffic or street closure; a large rally requiring the use of sound amplifying devices; or a rally over a certain size at most parks or plazas. While certain permit procedures require submitting an application well in advance of the planned event, police can't use those procedures to prevent a protest in response to breaking news events, and Restrictions on the route of a march or sound equipment might violate the First Amendment if they are unnecessary for traffic control or public safety, or if they interfere significantly with effective communication to the intended audience—nor can a permit be denied because the event is controversial or will express unpopular views.

What this makes clear is that while officials can't prevent speech entirely, there are restrictions they can put in place in order to preserve public safety.

This becomes relevant when we address the two biggest differences between genuine public forums and social media platforms thanks to their private interests–algorithms.and section 230.

Section 230 of the Communications decency Act was passed in 1996, and according to Casey Newton at *The Verge*, it states

"an 'interactive computer service' can't be treated as the publisher or speaker of third-party content. This protects websites from lawsuits if a user posts something illegal, although there are exceptions for copyright violations, sex work-related material, and violations of federal criminal law."

Newton goes on:
"Sen. Ron Wyden (D-OR) and Rep. Chris Cox (R-CA) crafted Section 230 so website owners could moderate sites without worrying about legal liability. The law is particularly vital for social media networks, but it covers many sites and services, including news outlets with comment sections — like The Verge"

Basically, publishers in the traditional sense such as news outlets are legally liable for the material that they publish, so in order to allow the internet to flourish in its infancy section 230 was established to draw a line between speech that a platform hosts and speech that they publish.

While this arguably was a good move in the infancy of the Internet, today section 230 is far more controversial. With the immense power many social media platforms hold these days and the way they have informed the modern political landscape, how they moderate the material they host has become an increasingly large concern. Due to section 230, they are isolated from the consequences of that material, and to avoid any situations that might cause lawmakers to determine their control over the material on their platform makes them essentially publishers, most platforms stay out of moderating anything that they believe—you guessed it—won't lose them any money. While I don't wish to imply no one at these companies care about making their platforms better, the biases in moderation decisions are undeniable.

First, let's talk about Sssniperwolf and JacksFilms. JacksFilms is a youtuber and sketch writer who has been on youtube practically since its inception, and Sssniperwolf is a "reaction youtuber" who, well, watches stuff other people make and reacts. There is a whole other conversation to be had about reaction videos and whether they are transformative enough to be fair use and not outright theft, but this isn't the video for that.

If you're on youtube, you probably heard about this, and genuinely if you want a better breakdown of what happened there are other videos that will do a better job of discussing the ethics and legality of Sssniperwolf's uploads such as this video from EchoIsWeird, or this video from Council of Geeks that covers some of the lead up to the situation I'm about to discuss, as well as youtube's reaction to it which is actually what i wish to talk about, so thanks Vera for such a great and helpful video.

JacksFilms spent a lot of time criticizing Sssniperwolf's content output–i hate the term content but from what i understand about Sssniperwolf, "content output" seems like an apt descriptor–and calling it lazy and unethical. A few months ago at time of writing, Sssniperwolf lost her patience and decided to visit Jacksfilms private residence unprompted and without his knowledge or consent, as well as exposing it to her millions of followers on instagram.

Now, as broken down by Legal Eagle, what Sssniperwolf did does not technically constitute a crime, and luckily it seems none of her fans have followed up on the information she exposed. Even so, it was absolutely not at all guaranteed that none of her millions of fans would have taken her accusations of intense obsession and harassment and decided to do something about the guy apparently being so mean to their favorite creator.

What Sssniperwolf did rightly terrified Jacksfilms and his wife, and was for all intents and purposes doxxing. Doxxing is the term for exposing the private identifying information of an individual on the internet without their consent, and despite quickly taking the instagram story down there is no reason to assume no one could have determined Jacksfilms' home through it and decided to cause him and his wife further distress over their safety.

YouTube's community guidelines state that they do not allow

"Content that shares, threatens to share, or encourages others to share non-public personally identifiable information (PII). PII includes, but isn't limited to, home addresses; email addresses; sign-in credentials, like a username or password; phone numbers; passport numbers; medical records; or bank account information."

Yes, it is true that the guidelines state that what is against their terms is uploading videos to YouTube that do these things. However, Sssniperwolf, a massive creator on YouTube, shared another YouTubers home without their consent to millions of strangers. There's no argument to be made that this is not an issue relevant to YouTube simply because the violation itself happened on instagram.

A principled approach to standing against this kind of behavior would have consequences for a creator regardless of which platform the doxxing happened on, but it took *days* of being hounded after by jacksfilms for them to do anything at all–and what they did do was give her a *temporary* suspension on her monetization ability. Not even a strike.

Compare this to my fellow creator Daniel Goldhorn, who just went through the ordeal of having *every video on his channel* completely demonetized without warning for "reusing content", something he did not do. The reasons why the automated processes of YouTube would do this to him were not made clear and while he was able to successfully make an appeal video that got him his monetization back, it took significant effort and caused him genuine distress and concern.

First of all, if Daniel was "reusing content" by commenting and analyzing media using his personal avatar, why on earth wasn't Ssniperwolf for just watching other creators' videos? But more relevant to this essay, demonetizing an entire channel potentially forever with no warning and no concern for the impact on the creator is seemingly acceptable collateral damage for a creator of Daniel's size, but Ssniperwolf can blatantly violate youtube's rules and the worst she gets is *temporary* demonetization. All she has to do is wait it out and the consequences will disappear on their own. In the meantime, YouTube continues to receive money from every single ad playing for every one of her 34.3 million subscribers—monetization or no, those ads still play.

However, if this argument for this decision being rooted in monetary politics isn't good enough for you to recognize bias due to the wording of the community guidelines making this a technicality rather than a definite violation, there is an example that is more clearly breaking the rules on this platform.

Matt Walsh is a host of The Daily Wire, a right-wing "news" site, and he has flourished on Youtube. He currently stands at 2.82 million subscribers, while the Daily Wire which hosts similar content–again, using the term content intentionally here–stands at 3.28 million subscribers.

On YouTube, protected groups under the platforms hate speech policy include:

> Age
> Caste
> Disability
> Ethnicity
> Gender Identity and Expression
> Nationality

Race
Immigration Status
Religion
Sex/Gender
Sexual Orientation
Victims of a major violent event and their kin
Veteran Status

Youtube's hate speech policy includes statements against hosting videos that, among other concerns:

-Encourage violence against individuals or groups based on their protected group status.
-Incite hatred against individuals or groups based on their protected group status.
-Dehumanization of individuals or groups by calling them subhuman, comparing them to animals, insects, pests, disease, or any other non-human entity based on their protected group status.
-Praise or glorification of violence against individuals or groups based on their protected group status.
-Use of racial, religious, or other slurs and stereotypes that incite or promote hatred based on protected group status. This can take the form of speech, text, or imagery promoting these stereotypes or treating them as factual.
-Claim that individuals or groups are physically or mentally inferior, deficient, or diseased based on their protected group status. This includes statements that one group is less than another, calling them less intelligent, less capable, or damaged. This also includes calls for the subjugation or domination over a protected group
-Conspiratorial claims that individuals or groups are evil, corrupt, or malicious based on their protected group status.

On a different platform, to show this isn't just a youtube problem, there are two contrasting decisions from Meta on which ads to ban from Facebook.

As reported by BoardGameWire earlier this month as of time of writing, ads for a widely praised board game about women's right to vote have been repeatedly denied.on the basis of it being a "sensitive social issue."

 [publisher] "Fort Circle founder Kevin Bertram told BoardGameWire the Facebook ads for the campaign he has been submitting since the start of the New Year are all being rejected after a very short amount of time on the site.

The automated response Bertram is receiving from Facebook says the ads are being rejected because they either mention a politician or are about 'sensitive social issues', which 'could influence how people vote and may impact the outcome of an election or pending legislation'.His requests for review have also all been rejected.

Bertram said, 'Facebook has, of course, ignored any requests for information – so I do not know for sure it is a human taking the ads down, but that is what appears to be happening.'"

If celebrating womens' right to vote is going to impact upcoming legislation, that's a problem with the legislation, not the right to vote that suffragists fought so hard for.

Comparatively, Meta has earned over a million dollars from ads they allowed on their platforms for The Daily Wire's recent film *LadyBallers*. *LadyBallers* and The Daily Wire make no attempt to hide the vitriol for the trans community that the film is built on, with even its marketing going out of its way to make it clear that the movie is about laughing at the very notion trans people exist. Even absent any hate speech policies that these ads may violate, this is arguably a far more "sensitive issue" that "could influence how people vote" or "impact the outcome of an election or pending legislation" than a board game about a fundamental right women have had for decades.

As covered by *Media Matters*:

"Since November 27, Meta has earned over $1.6 million from ads The Daily Wire has run to promote its first feature-length "comedy," *Lady Ballers*, a movie pushing anti-trans rhetoric about women's sports. Meta has a record of failing to adequately moderate anti-LGBTQ content and has profited from anti-trans Daily Wire ads in the past, earning over $5 million on such ads from June 2018 to March 2023".

I will not argue these biases towards the ads or videos that are protected are intentional or even actively malicious, but it's undeniable they exist, and certainly seem to be influenced and even sometimes completely controlled by the monetary politics of those at the most influential levels of a given company.

The second major difference between social media and a traditional public forum is algorithms, but I will save discussion about that for the next section.

Ads, algorithms, creator treatment and user experiences–all guided by monetary politics.

Gatekeeper 2: News Outlets

Journalism has been facing increasing difficulties since the birth of the internet, and the struggle to remain sustainable has introduced a variety of factors influenced by monetary politics.. Where once newspapers could rely on people and businesses alike buying ad space as a separate, sustainable source of income, as the internet grew and ads became a business unto themselves tech giants like Google or Facebook have inserted themselves as intermediaries between the news and its intended audience to siphon off much of that income for themselves.

The internet has opened journalism up for the masses, but not all who call themselves journalists today hold themselves to journalistic standards. This often results in cheap, easy clickbait articles fine-tuned for algorithmic optimization that traditional news outlets have struggled to compete with. Searching on Google or any given search engine doesn't guarantee the best or most accurate articles, just the ones most optimized for the code to pick up and prioritize for maximum potential of clickage.

The financial incentives and needs that these new issues have introduced for news outlets often leads to the side effect of spreading a narrative of a much darker and scarier world than actually exists, ignoring stories from underrepresented groups they believe won't be as attractive to the majority, spinning stories to feed biases, and other compromises on journalistic ethics. Ads are not just evolving into a main priority for often outlets but are actually being integrated into stories being reported, and often in order to gain the most money from the advertising news organizations are incentivized to pursue sensationalist headlines— as sensationalism creates strong emotional reactions that often make people feel obligated to click on the article and thus drives up the algorithmic preferences for it—and/or to make their ads appear more like credible journalism so that the intended audience is more likely to trust the item being advertised than they would be with a flashing banner ad or pop-up or other obvious advertising attempts.

John Oliver discussed the crises modern journalism faces on Last Week Tonight's episodes on crime reporting, native advertising and of course his episode on journalism itself.

In the episode on crime reporting, Oliver notes that crime stories—especially those that indicate an imminent threat to the viewers/readers—have long been seen as cheap,

easy stories to report on that drive ratings. By heightening the sensationalism and making those trying to stay informed feel that the dangers being reported on could or do directly affect their own safety or the safety of those they care about, these stories suck people in. Making the world feel less safe than it is bolsters their bottom line— the term "if it bleeds, it leads" was even the motto of crime reporting back when it was first gaining traction, and even if that motto has been dropped a quick look at today's headlines makes it clear the philosophy has had a lasting impact.

John Oliver and his team may have focused that video on crime reporting, but assuming the factors that cause crime reporting to increase ratings hold true across most topics it makes things plenty clear why our headlines are often so full of negativity.

Now, admittedly there are plenty of bad things happening in the world, and journalists do have a responsibility to keep us informed, but they also have a responsibility to the truth and the truth is that good things happen too. Wars and murder and fascism and tragedy are not the only important things in the world, and without joy and knowledge of success against these forces many people find themselves not so much informed as demoralized.

As David Leonhardt of the New York Times wrote back in 2021 during the height of the pandemic about Covid-19 coverage:

"If we're constantly telling a negative story, we are not giving our audience the most accurate portrait of reality. We are shading it. We are doing a good job telling you why Covid cases are rising in some places and how the vaccines are imperfect — but not such a good job explaining why cases are falling elsewhere or how the vaccines save lives. Perhaps most important, we are not being clear about which Covid developments are truly alarming."

The human negativity bias leads to dour headlines and demoralizing information overload, and yet it also leads to clicks and ad revenue.

In fact, news outlets are also increasingly controlled by advertising. As John Oliver and his team reported in their episode on Journalism, the once strong barriers between the business and reporting sides of news outlets have become quite fragile and in some cases, taken down completely thanks to leadership changes—including members of the 1% who have bought newspapers, supposedly in order to save them but often without the necessary experience to run them effectively and more than willing to lay off vital staff when the paper is struggling rather than use their own money to address the issues.

This leads to excessive layoffs, which means less reporters and editors to fact check or otherwise maintain quality journalism and to uphold ethical standards. Clickbait and divisive opinion pieces end up being relied upon to simply keep the lights on even for the papers owned by billionaires just so ANY quality journalism can be pursued.

To truly dig into the struggles of the news industry and its relationship to the advertising industry would be a massive video all on its own and I'm really no expert nor am I a journalist myself so I suggest watching the recent upload from Some More News on the subject and checking out some of the sources in my bibliography. Personally, alongside that video and the videos from John Oliver and his team, I recommend the articles *How Algorithms Decide the News You See* by Jihii Jolly, *Why the news is so negative — and what we can do about it* by Dylan Matthews, The *media exaggerates negative news. This distortion has consequences* by Steven Pinker, *How Craigslist killed the newspapers' golden goose* by John Reinan, *Study sheds light on how online news algorithms can skew your picture of reality* by Eric W. Dolan, *How local news outlets fail to serve Black audiences* by Samuel Robinson and the study *Negativity drives online news consumption*— just to start, and let me know if you're interested in a video that explores the human negativity bias and the necessary cultivation of hope.

Regardless, when it comes to the modern journalistic crises suffice to say barriers between business and journalism were once recognized as so important they were referred to as "the separation between church and state", but corporate interests, new owners, intermediaries like search engines and social media sites, and general struggles with sustainability have been making it harder and harder to maintain a high ethical standard for journalism, and that has the dangerous result that the news we rely on is now often guided, influenced and sometimes outright controlled by monetary politics, which then itself feeds on the human negativity bias.

Gatekeeper 3: Entertainment Conglomerates

Entertainment gatekeepers like Disney, Netflix and Warner Bros Discovery control speech through which projects they give the green light and from which talent, what's allowed into the project from the executives, and how accessible the project is to the public—as well as how well they market the work of the talent once it's actually finished. All these factors are determined by the type of risk vs reward analysis that is the core of monetary politics.

While all the companies I'll mention operate in many, many mediums, here I'm going to focus on film and television as what is happening there is the clearest example of the power these companies have as gatekeepers.

Hollywood studios like Paramount and Disney have been leaning more and more into movie and television slates of mostly intellectual property with established brand loyalty, forcing even stories about extremely personal experiences to have to exist within a structure decided by risk vs reward analysis in order to appeal to as wide an audience as possible. Otherwise, executives don't feel they can justify the money being spent on it, and even if a story gets made there's no guarantee it will be marketed in a way that ensures the public knows about and is excited for it.

Other examples of the way these gatekeepers control speech include the constant cancellations of interesting and compelling original shows with passionate fan bases on various streaming services–but particularly netflix– executive notes from that tamper down representation to less than the bare minimum as detailed by the open letter from Pixar animators from 2022, and the trend of removing original films and shows in their entirety from the streaming service they were exclusive to—a trend embraced by the likes Warner bros discovery, Disney, and paramount.

Warner Bros Discovery even recently came close to getting Sony to actively revoke access to over 100 tv shows through the PlayStation Store, including the access of those who had already purchased episodes of television within the approximately 1,317 seasons of television that have been removed. Sony was able to extend their license for at least another 30 months, but the ability to do so is concerning to put it mildly. Then just recently, Sony decided that in merging the animation services Funimation and Crunchyroll, longtime Funimation subscribers not only will face a significant upcharge but will completely lose access to the virtual library of media they legally purchased.

Creative expression is an incredibly important part of freedom of speech, but it has become more and more subject to the result of the gatekeepers' calculations concerning monetary politics.

Depending on the value certain talent brings to the table, monetary politics may determine that they receive better treatment, including more creative freedom. As an example of the disparity in treatment due to monetary politics , Netflix has canceled an absurd amount of seemingly extremely popular shows such as *Inside Job* or *1899,* yet are dedicated to ordering more and more specials from comedians that have caused genuine harm like Dave Chappelle, as well as other comedians with material that touches on similar talking points like those of Ricky Gervais.

Speaking of comedy, it is often a highly debated subject when it comes to what speech is acceptable, but it's not often actually a debate about the 1st amendment. Comedians

have the right to say what they like, but so do audiences. Criticism and backlash are consequences to speech that audiences find appalling, not necessarily censorship, and certainly not violations of the 1st amendment as the government is rarely involved.

There are many high-profile comedians who claim to be canceled or censored while literally being paid to say the things they're complaining about not being able to say, with one of the most recent and high-profile examples being (formerly) widely praised comedian Dave Chappelle. In the middle of his supposed "cancellation" for his platforming of transphobic talking points in his 2019 netflix stand-up special *The Closer*, Chappelle gave the opening monologue for SNL.

Netflix co-CEO Ted Serandos defended him wholeheartedly citing "creative freedom", as well as–more relevant to this essay–the value Chappelle brings netflix.

Zoe Schiffer of The Verge reported:
"On October 8th, Netflix co-CEO Ted Sarandos responded to the questions in an internal email. "It never feels good when people are hurting, especially our colleagues," he wrote. "You should also be aware that some talent may join third parties in asking us to remove the show in the coming days, which we are not going to do."
Sarandos also said that Chappelle's last special, Sticks & Stones, is Netflix's 'most watched, stickiest, and most award winning stand-up special to date.'

He added:

'Several of you have also asked where we draw the line on hate. We don't allow titles on Netflix that are designed to incite hate or violence, and we don't believe The Closer crosses that line. I recognize, however, that distinguishing between commentary and harm is hard, especially with stand-up comedy which exists to push boundaries. Some people find the art of stand-up to be mean spirited but our members enjoy it, and it's an important part of our content offering.'

As of writing, Chappelle recently released his follow-up to *The Closer,* in which he doubled down on transphobia as well as threw in some mocking of the disabled community. Also at time of writing, there has been no statement from Netflix executives, Serandos or otherwise, on the reignited backlash to his material.

There are many (though not as many as it often seems) who argue that those upset at material like this simply "can't take a joke" or are "too sensitive"--arguments often invoked not just for comedians, but often for casual uses of hurtful language as well. For example, Trump's statement on air that he has taken opportunities to and enjoyed "grabbing women by the pussy"--publicly admitting to sexual assault– has sometimes

been cited by his supporters as a joke or as "locker room talk"--a term for misogynistic language supposedly exchanged and enjoyed by men as a form of bonding, and one natural and normal for men to participate in. This leads to claims that those upset over it are being too sensitive to something not meant to be taken seriously, or that they wish to stifle the speech of those who simply "hold a different opinion".

On a personal level, I feel if you know something is offensive and you say it anyway, you don't have any right to be upset when people are offended. You knew ahead of time that would be the response.

Ted Serandos is right that comedy and stand-up in particular are important parts of culture that must be protected and preserved, and historically its had moments that were absolutely vital to the progression of culture and human rights—for more details check out this video on Lenny Bruce–and he's also right that it's hard to know when commentary crosses over into harm. However, I would say if hundreds of your employees walk out in a peaceful protest to indicate how hurt they feel, that's a decent hint.

Either way, studios and production houses like Netflix, Disney, Paramount, Warner Bros Discovery, and even Amazon and Apple these days pick and choose the creative expression the public is most likely to receive, and they do so based on the value they believe it will bring them and their shareholders.

It's a self-fulfilling prophecy. Studios put the most marketing behind the blockbusters and IP driven films and franchises because they believe they can get the most money from it and barely put the money in to market anything else, which means the audience is barely aware of anything else, which means the original and non-blockbuster movies aren't as successful, which disincentivizes studios from putting their money into them, and slowly it became that studios decide which films they want made and then to make them approach filmmakers and storytellers–announcing films long before the writers or directors are finalized—rather than storytellers coming up with ideas and figuring out how to bring those ideas to life.

Creative Expression, completely determined through Gatekeepers and Monetary Politics.

Deplatforming, Moderation and Law: Suggestions For Steps Forward

It's been clear for quite some time that the way we treat speech is fundamentally flawed, but demanding censorship of dangerous speech is oftentimes dangerous in itself, regardless of where that censorship comes from—because it always comes from those with power, and those with power don't necessarily have the public's interests at heart.

Even so, something must be done. Things must change. And while monetary politics are a significant hurdle, understanding what they are and how they affect the challenges we face is far from useless because now we know where to spend our energy trying to change things.

Here are three of my personal suggestions on where to spend our limited energy to address the problems with speech we have been experiencing so often.

1

The first place that could use our focus is the use of deplatforming to address those using their speech to pursue harm. There have been studies that showcase that genuine efforts to take away the platforms of those who inspire stochastic terrorism actively decrease the power they hold. It's not perfect, there are limits—particularly for those with the most power or with heavy backers—and it does often send extremists to more fringe platforms, but it's not a pointless exercise, and it does limit the reach of radicalization and make platforms safer.

SHAGUN JHAVER, CHRISTIAN BOYLSTON, DIYI YANG, and AMY BRUCKMAN determine in their research paper *Evaluating the Effectiveness of Deplatforming as a Moderation Strategy on Twitter:*

"Conversations around influencers are reduced…. our results show that deplatforming significantly reduced the number of postings about these influencers. Additionally, the number of new users and unique users posting about them declined dramatically. Thus, we conclude that deplatforming helped reduce the overall impact of these influencers on the platform….another promising moderation strategy to reduce the impact of offensive influencers could be to temporarily limit the number of replies they receive or to disable auto-completion of their handles when tweets are composed. This milder intervention could help encourage influencers to improve their behavior so as to avoid getting deplatformed. Spread of offensive ideas associated with influencers are reduced. We analyzed the spread of many offensive ideas associated with the deplatformed influencers….Activity and toxicity levels of supporters are reduced. Deplatforming influencers could have fired up their supporters and raised their posting activity and toxicity levels….our analysis of the long-term activity of their supporters reveals that

deplatforming helped reduce their overall posting activity and toxicity levels….Thus, deplatforming can have wide-ranging and longer-term positive consequences on platform health."

All this to say, while it may not always seem like it and there are some exceptions, deplatforming is a useful and effective method of depowering hateful individuals. It is, however, not enough purely on its own.

2

The second goal I suggest spending our energy on achieving is changing the way algorithms are designed and used. Algorithms on social media sites are designed to keep viewers on the site, with safety as a distant second priority. Due to the nature of their size, platforms like twitter, youtube or facebook cannot manage all the material on their sites without the help of automation, so by no means am I advocating for discarding algorithms altogether.

However, considering all the lack of communication and/or warning about the changes to guidelines required to be followed in order to be "advertiser-friendly", the majority of creators are constantly having to change their speech to suit the demands of a few just to have the slightest chance to be heard, let alone have the effort they put into their work recognized as labor worth being paid for.

Please check out this amazing video from tailstheintrovert, it goes into fantastic detail about how being "advertising friendly" acts as a sort of modern day Hays Code—that is, not directly censoring anyone through force or law, but creating guidelines that if not followed can risk creators jobs and financial stability by jamming the distribution system—back then, it was the studios. Today, it's the algorithm.

Why do we treat those who haven't achieved success as though it's because they haven't earned it, yet those who have achieved success as though they're oppressed or censored when they lose it? It can't be both. Either we live in a meritocracy or we don't, and seeing as there are people who can change the systems through which we express ourselves to control whose work is seen and whose words are heard— we don't.

There are highly intelligent people in huge teams working at most of these companies to make their sites safer, but the simple reality is that the people actually in charge of these companies have much more incentive and pressure to please shareholders than they

do to fund the tools needed to make their websites genuinely safer in any truly meaningful way.

As former head of twitter Trust and Safety Del Harvey (she left by the end of 2021) told Laura Goode at *Wired:*

"…I made requests in 2010 for functionalities that did not get implemented, in many instances, till a decade-plus later [such as] multiple account detection and returning accounts. If you're a multiple-time violator, how do we make sure you stop? Without going down this weird path of, "Well, we aren't sure if this is the best use of resources, so instead, we will do nothing in that realm and instead come up with a new product feature." Because it was growth at all costs, and safety eventually….When trust and safety is going well, no one thinks about it or talks about it. And when trust and safety is going poorly, it's usually something that leadership wants to blame on policies. Quite frankly, policies are going to be a Band-Aid if your product isn't being designed in a way that actually doesn't encourage abuse."

Ultimately, algorithms and the like create a situation where people share the public square, but some people are given megaphones and loudspeakers that make sure their words are heard loud and clear, while others are given a small cardboard box to stand on fifty feet away from the crowd and no mic or sound system.

Section 230 has exemptions carved out already, with a big one being the anti-human trafficking bill known as FOSTA-SESTA—a bill that promised to protect sex workers from trafficking, yet has only increased the dangers of their profession. I might do a video on the treatment of sex workers at some point because I've learned a lot recently and…hoo boy.

<u>**3**</u>

The third, and potentially most important place to focus our energy on is creating an intelligent, functional law to address stochastic terrorism. I once again want to stress that I am not a lawyer, and I'm not going to pretend that this will be airtight or but I do wish to make some proposals on where we can start. Then, I hope people who know the law better than me can take what I give here and hammer out all the flaws I know will be present and start the important work of actually addressing this massive threat.

We have to consider both how a law needs to be used to actually deal with stochastic terrorism, and how it could be misused by those acting in bad faith. It has to be narrow enough to prevent that misuse, but wide enough that it's still useful. We must also,

naturally, assure that it is constitutional and legally viable, as well as actually enforceable. I will attempt to offer a proposal that fits these guidelines to the best of my ability.

Stochastic terrorism is, by design, hard to trace back beyond the so-called "lone wolf" terrorists who enact the violence, but a good law needs to be able to operate off of a tangible link between those terrorists and the person being charged. However, many of these terrorists have left manifestos or have public records of the time before they pursued this violent action, such as on social media. Through these, we can recognize and track the language and ideologies that led them down this path. We can trace the harassment of the families who lost children at Sandy Hook back to Alex Jones because they cite the conspiracies he has promoted, and because of the size of his platform and influence. We can trace the bomb threats back to Libs of TikTok because the language used mirrors Raichiks, and the places targeted are those she highlights for her followers as she uses that language, and we can trace many shootings back to politicians and pundits who espouse conspiracies cited by those who committed the massacres.

The law against stochastic terrorism, in order to work, must not criminalize the words themselves. It's too easy to misuse, too hard to determine which speech needs stopping when speech is so constantly evolving, and even if neither of those were true it's too hard to get anything meaningful done when we focus on limits to the 1st amendment because of so much history widening what is protected, and on top of that it will be fought tooth and nail by organizations like the ACLU. Hell, it might be anyway–that free speech absolutism is awfully hard to navigate.

We also have to work around the reality of the precedents that do—or don't—exist. There is no federal law against domestic terrorism as there is for international terrorism, let alone a legal definition of stochastic terrorism. There is however a *definition* for domestic terrorism, and laws against many of the specific actions that domestic terrorism tends to include such as hate crimes, murder, and various kinds of assault.

So, to create a law that functions as we desire, I propose a focus on establishing liability for influential figures who have no reason not to be aware of an existing pattern of their rhetoric being cited by domestic terrorists and the like, and yet continue to use that rhetoric. I'm going to be suggesting a criminal law, but if that doesn't work hopefully it can also be used as the base for a civil law so that those creating the environments for stochastic terrorism can at least be sued.

A public figure and/or public officer who recklessly uses inflammatory language without proportionate effort to mitigate the result of that language shall be presumed to have constructive intent to incite if the inflammatory language the defendant uses can be

demonstrated to have a strong correlation with five or more violent acts that, if committed within the jurisdiction of the United States or of any State, are or would be considered as domestic terrorism; hate crimes; aggravated assault; or murder; and may be charged as an accomplice.

The law really is a different language—I had to extensively use a few different legal dictionaries and glossaries to develop wording I believe will work as a solid base for those more experienced in law and legislation to build on, so let me break down these word choices for you dear viewers. Again, this is just a starting point so that when we talk about what to do, we aren't starting from scratch or without clear goals.

A public figure and/or public officer

We don't want to create heightened risks for the average person as that is much more easy to abuse. Instead, we want to focus on those who have the influence and reach to validate potential domestic terrorists, such as Donald Trump, Ron Desantis, Chaya Riachick, Alex Jones or Matt Walsh. These people fall into both or one of two categories:

Public Figure: an individual or entity that has acquired fame or notoriety or has participated in a particular public controversy

Public Officer: a person who has been elected or appointed to a public office

I wanted to make sure elected officials were able to be held accountable alongside celebrities, newscasters and other known figures. This law won't be able to address echo chambers unfortunately, but it can make it harder for the ideas perpetrated in echo chambers to be spread or recognized as ideas with the support of sources trusted by those being radicalized, and combined with changes in algorithms and the pursuit of deplatforming and better moderation, it should have a significant impact.

who recklessly uses inflammatory language

As mentioned earlier, being able to gain support for this law and minimizing potential abuse requires that this law does not target speech itself. Instead, we want to focus on recognizing that these figures have no reason not to understand the impact of what they say.

Reckless: characterized by the creation of a substantial and unjustifiable risk to the lives, safety, or rights of others and by a conscious and sometimes wanton and willful disregard for or indifference to that risk that is a gross deviation from the standard of care a reasonable person would exercise in like circumstances [a state of mind may be inferred from conduct]

Inflammatory: tending to cause anger, animosity, or indignation

without proportionate effort to mitigate the result of that language

I wish to make sure that people can talk about revolution and violence without being charged for it, so I felt it was important to write in a line about mitigation efforts. It's important to be able to talk about political violence with the nuance that that is not the same as directly encouraging or supporting it, let alone causing it. It is equally important to specify that the mitigation must be proportionate—if an hour is spent fueling outrage and a few sentences have a brief disclaimer that you shouldn't go out and kill people that isn't proportionate, so it was important to close that loophole.

Proportionality: a general principle in law that is underpinned by the need for fairness and justice. It is the idea that an action should not be more or less severe than is necessary and that competing interests in this regard should be carefully balanced.

shall be presumed to have constructive intent to incite

If recklessness with inflammatory language can be proven repeatedly as expanded on by the line following this one, a presumption can be made about the intent behind it, putting the burden of proof on the defendant—that is, they must prove they did *not* have that intent.

presumption: a rule of law which permits a court to assume a fact is true until such time as there is a preponderance (greater weight) of evidence which disproves or outweighs (rebuts) the presumption.

constructive intent

: intent that is inferred to exist (as from willfulness or recklessness) in relation to an act

if the inflammatory language the defendant uses can be demonstrated to have a strong correlation with five or more violent acts

It's important to make sure that this law cannot be used frivolously, so I wanted to set a number of tragedies that I felt comfortable saying indicates a consistent pattern. While ideally we would be able to stop domestic terrorism before it occurs, laws that attempt to address something that cannot be proven to have already happened are extremely vulnerable to abuse.

Admittedly I've struggled to find a term I felt comfortable using as the legal basis for the connection between the language and the attacks themselves.

At first I used the term motive, but that left the law too open to abuse, as motive here would mean

something (as a need or desire) that causes a person to act

The motive of a massive attack on a black community rather than the people who told the attacker that diversity and inclusion was code for white genocide could be blamed instead on the diversity and inclusion efforts themselves, so that was too vulnerable to misuse.

Then I experimented with the term purpose, but it didn't quite fit, and would be too hard to prove. Purpose here would mean

objective, effect, or result aimed at or attained

What I settled on was to let prosecutors be able to establish in court the correlations between the use of certain inflammatory language and the heightening of violence. Correlation does not equal causation, but if a pattern can be proved we can then put it on the defendant to prove that their language was *not* the causation.

that if committed within the jurisdiction of the United States or of any State are or would be considered as domestic terrorism, hate crimes, murder or aggravated assault and may be charged as an accomplice.

To finish off, I specify the types of crimes that may be counted under this law and what the charge may be if found guilty.

Because there has been such a pattern of shooters inspiring other shooters, it was important to specify that the awareness that may contribute to reckless includes violent acts that in the US *as well* as in other countries but that here would be considered

Domestic Terrorism: activities that—

(A) involve acts dangerous to human life that are a violation of the criminal laws of the United States or of any State;

(B) appear to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and

(C) occur primarily within the territorial jurisdiction of the United States

hate crime
a crime that violates the victim's civil rights and that is motivated by hostility to the victim's race, religion, creed, national origin, sexual orientation, or gender

aggravated assault

: a criminal assault accompanied by aggravating factors: as

a : a criminal assault that is committed with an intent to cause or that causes serious bodily injury esp. through the use of a dangerous weapon

b : a criminal assault accompanied by the intent to commit or the commission of a felony (as rape)

And/or

murder: Such a crime committed purposely, knowingly, and recklessly with extreme indifference to human life or during the course of a serious felony (as robbery or rape)

I know everything feels impossible, but we can do this. Lawyers, activists, anyone educated in the law and/or in changing legislation, or anyone who knows anyone who does— whether this work has been worth it is up to you.

Conclusion

Putting It Into Action

It's finally done. All that research, all that work, this is what it has all led to. We now know the problems we face, and while our goals may seem ambitious we at least know where to start to address the dangers those problems have introduced.

When it comes to monetary politics, it's worth keeping in mind the words of author Ursula K Le Guin:

"We live in capitalism, its power seems inescapable — but then, so did the divine right of kings. Any human power can be resisted and changed by human beings. Resistance and change often begin in art. Very often in our art, the art of words."

Monetary politics may seem like an insurmountable hurdle, yet even now at time of writing the very concept of social media is changing and evolving with new players like Mastodon, Bluesky and others challenging the oligopoly we got so used to. Things can change, we are not powerless. We just have to be smart, we have to be resilient, and we have to spend our energy wisely.

This essay is not going to solve these problems, I know that and you know that. But, every one of you can take what I've laid out here and do something with it.

Be smart about your social media habits. Find communities that foster healthy debate, where you can talk to people who disagree with you and challenge you but where you are not rejected or made to feel unsafe if you don't agree. If people are just insulting you, block them. You don't owe strangers on the internet your energy. Be aware that these platforms are built in a biased, slanted way to make you upset and reject the invitation to do so. Be thoughtful and respectful, and open your mind to complex and nuanced discussions.

Read news critically, be on the lookout for bias, manipulative wording and ads disguised as news. Never stop at the headline, be wary of headlines that trigger strong emotions and always get the full context. Make sure you're getting your news from vetted sources or that the place you're getting it from cites vetted sources. Try to check sources for any information you are given, especially if it confirms what you already believe.

You're never gonna be perfect, I sure as hell am not, but it's worth trying your best.

I find it helpful to talk with others who recognize these potential biases and who also read up on the topics being discussed so that through discussion we can help each other recognize what we've missed, misinterpreted or simply got wrong. If you don't have people to do that with—join my discord server! We do this there all the time.

Be intentional with where you spend your entertainment budget. Who and what do you want to support? Sail the high seas if need be for entertainment made by the

gatekeepers we discussed earlier, and perhaps spend your money supporting indie projects, enjoying creator-owned endeavors like Nebula, contributing to worthwhile crowdfunding campaigns, supporting small creators via stuff like patreon or ko-fi or whatever they use, and so on and so forth.

Monetary Politics are a hurdle, but not one that we cannot mitigate the effects of.

As for changing algorithms, deplatforming hate and passing laws to address crises like stochastic terrorism? Some of you won't like hearing this but it starts with voting. Voting in elections—national yes but ESPECIALLY local—is vital even if it's not for ideal candidates because it informs where we have to spend our energy. The key factor to making real change is: voting is only one part of a bigger strategy.

Once we have the political figures that actually respect the political process in our various home states and towns, we can organize and apply pressure, through activism tactics like lobbying, protest, calling and emailing our senators and congressional representatives, and more. It is after all much, much harder to change things when constantly on the back foot against a potential overtly fascist government.

I know this is a lot, but we can make the necessary changes to address these harms, I truly believe that. It's why I'm doing this. It's why I've spent months researching all these complex problems and the way they work and the ways they affect us. I didn't just do it to inform. I did it because I truly, genuinely believe we can do something about it.

Outro

Thank you so much to everyone who has made it this far. This was a massive undertaking as you might have gathered. I've been working on it for months, Huge thanks to my friend and editor Bardock, couldn't do this without you. Thanks to everyone in my incredible discord community Adam Plays a Host who have all supported me as i wrote this and helped me fine tune it. Link in the description along with my other socials and Bardock's, as well as my bibliography for this essay as it's always good to learn about and fact check stuff yourself.

If you enjoyed or found this video useful, you can check out my other essays via the links at the end of this video or the playlist in the comments, or if you have the financial capacity you can join the only available tier for my patreon at $1 a month or $3 a month. At $3 you'll get shoutouts at the end of my videos, access to older works of mine no longer listed on my channel, voting on polls and making suggestions for upcoming essays, and access to the Queers and Dears role in my discord community which allows you to engage with and even potentially contribute to all my current works in

progress including my video essays, my twitch streams and my work at the DC Creators Network!

You can also now directly support Bardock by ordering commissions of his awesome art! He's starting small, with only 3 slots open for the month of March, but if you're interested in some amazing art I can't recommend him enough.
The links to his prices & rules will be in the description!

With luck, I'm hoping to put out one video essay like this a month, so if you wanna see the next one make sure to subscribe to catch it when it comes out!
Other than that, leave a like if you like the video, dislike it if you didn't, give your thoughts in the comments, give me feedback or hell just comment some gibberish for the algorithm, and I'll see you all soon!