

## Fiction Outsell Non-Fiction

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If you speak to a bookseller, he or she will tell you that fiction books outsell non-fiction books by a ratio of three to one. Unless you own a bookstore, such statistics do not mean much, except when considered in conjunction with a recent Gallup Poll, which found that three out of four people believe in some form of superstition.<sup>1</sup> Add that to the statistics that adults spend an average of four hours per day watching television<sup>2</sup> and that their children spend even more time online,<sup>3</sup> and you will start to see a pattern. To say that we spend a portion of our waking life in fantasy may be an understatement.

Fantasy may help us formulate our needs, desires, and wishes. When we are not formulating our needs, we look for social rules and depend on fantasy to survive in the social world. It is very much, as scientist Carl Sagan said, a “demon-haunted world.”<sup>4</sup>

To illustrate this point, consider the following breakdown of the percentages of the American population that believe in superstitious phenomena:<sup>5</sup>

ESP	41%
Haunted Houses	37%
Ghosts	32%

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\* Editor, J. FOR STUDY ANTISEMITISM, *available at* [www.jsantisemitism.org](http://www.jsantisemitism.org).

1. David W. Moore, *Three in Four Americans Believe in Paranormal*, GALLUP NEWS SERVICE (June 16, 2005), <http://www.gallup.com/poll/16915/three-four-americans-believe-paranormal.aspx?version=print>. For religious-based beliefs, see HUMPHREY TAYLOR, HARRIS POLL, WHAT PEOPLE DO AND DO NOT BELIEVE IN 1 (Dec. 15, 2009), *available at* [http://www.harrisinteractive.com/vault/Harris\\_Poll\\_2009\\_12\\_15.pdf](http://www.harrisinteractive.com/vault/Harris_Poll_2009_12_15.pdf) (listing the following statistics: belief in Hell 61%, Virgin Birth 61%, Devil 60%, Ghosts 42%, UFOs 32%, Astrology 26%, Witches 23%, Reincarnation 20%). For more information on what people do and do not believe in, see *id.*

2. Susan Quilty, *Average Amount of Time Americans Spend Watching TV*, HELIUM (Mar. 27, 2008), <http://www.helium.com/items/954928-average-amount-of-time-americans-spend-watching-tv>.

3. News Release, Kaiser Family Foundation, Daily Media Use Among Children and Teens Up Dramatically from Five Years Ago (Jan. 20, 2010), <http://www.kff.org/entmedia/entmedia012010nr.cfm>.

4. CARL SAGAN, THE DEMON-HAUNTED WORLD 113 (1996).

5. Moore, *supra* note 1.

Telepathy	31%
Clairvoyance	26%
Astrology	25%
Communication with the dead	21%
Witches	21%
Channeling	9%

Similarly, we adopt widely held social beliefs of others. We define others as ethnic, religious, gender, and racial group members who are not our own. As an example, an international survey asked respondents to respond to the statement: “Jews have too much power in international financial markets.”<sup>6</sup> Below is a breakdown by country of the percentage of people responding “probably true” to that statement:<sup>7</sup>

Spain	74%
Hungary	59%
Poland	54%
Austria	37%
France	27%
Germany	22%
United Kingdom	15%

This survey is routinely conducted and yields fairly consistent findings. The results are telling—there are more Eastern Europeans and Spaniards who believe that “the Jews” are behind international finances than there are Americans who accept haunted house, ghosts, and other superstitions.

How is it possible that anti-Semitic beliefs are more widely held than many superstitions? The short answer is that people perceive Jews as both real and as a superstition. This phenomenon is based on the mind’s proclivity for natural distortions and the distribution and transmission process that creates social beliefs. In a word—advertising. Quite simply, many of our social ideas are formed by consensus and affirmed by hearing the same things over and over, essentially creating ethnic myths. The same mechanisms that remind us that “things go

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6. Press Release, Anti-Defamation League, ADL Survey in Seven European Countries Finds Anti-Semitic Attitudes Steady; 31 Percent Blame Jews for Financial Crisis (Feb. 10, 2009), [http://www.adl.org/PresRele/ASInt\\_13/5465\\_13.htm](http://www.adl.org/PresRele/ASInt_13/5465_13.htm) [hereinafter ADL Survey]. In previous ADL polls, Belgium and Switzerland average 40% and the Netherlands is consistently the lowest at 14%. ANTI-DEFAMATION LEAGUE, ATTITUDES TOWARD JEWS AND THE MIDDLE EAST IN SIX EUROPEAN COUNTRIES, FIRST INTERNATIONAL RESOURCES, LLC 7 (July 2007), available at [http://www.adl.org/anti\\_semitism/European\\_Attitudes\\_Survey\\_July\\_2007.pdf](http://www.adl.org/anti_semitism/European_Attitudes_Survey_July_2007.pdf).

7. ADL Survey, *supra* note 6.

better with Coke” also remind us that “things don’t go better with Jews” (and Blacks and Hispanics and so on). If enough people say it, our brains are tricked into believing that it must be true. This world of heuristics and their mass distribution forms our social world. In this realm, social consensus determines reality.<sup>8</sup>

For example, there is no scientific evidence to support religious, racial, or ethnic myths, yet most people believe them to be true. Scientists consistently fail to find supporting data between ethnicity/race and personality in studies that investigate the relationship between ethnic myths and personality traits.<sup>9</sup> Even if you tell people that racial science is “junk” and that there is no scientific support, they will continue to believe any number of ethnic myths. This particular notion is called “confirmation bias”—the act of only looking for data that confirms preexisting opinions. It is but one of several heuristics, and scientists are just now beginning to understand how heuristics fit with social beliefs.

#### I. SOCIAL BELIEFS AND HEURISTICS

Heuristics is the science of studying mental short cuts—how the mind renders decisions, creates opinions, and jumps to conclusions and under what conditions. Some heuristics are inaccurate and some are very accurate, e.g. using a rule of thumb or an educated guess to determine our decisions. Introduced by Nobel Laureate Herbert Simon, and further developed by Nobel Prize winners Amos Tversky and Daniel Kahneman, heuristics are cognitive in structure, but social in character, often working outside awareness and logic.

Corporate America knows about heuristics. For instance, there is a scarcity heuristic in that the mind values a commodity based on its availability. The coffee giant Starbucks recently introduced a new brand called “Tribute” coffee. On a recent trip to Starbucks, I saw the slogan “get it while it lasts” written on the blackboard above the display. I asked the barista how long the new coffee has been available, to which she replied that it was in its third day of introduction and will no longer be available next month. I almost bought some because it would soon be gone.

Along similar lines, consumer researchers find that people will rate more expensive products as better than less expensive ones. This

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8. JOSEPH DE RIVERA & THEODORE SARBIN, AMERICAN PSYCHOLOGICAL ASSOCIATION, BELIEVED-IN IMAGININGS 8–9 (1998).

9. Antonio Terracciano, et al., *National Character Does Not Reflect Mean Personality Trait Levels in 49 Cultures*, 310 SCI. 96, 96–97 (2005).

phenomenon holds true even when researchers switch prices and brands and place a high price on an inexpensive brand. In these experiments, people perceive the new higher priced product as superior, even when they witnessed the switch.

A more commonly known heuristic is the “halo effect,” or the tendency for a person’s positive perceptions to spill over into reality. For example, teachers tend to rate attractive students as brighter and assign them better grades than unattractive students. Students follow suit when evaluating teachers. Jurors and judges do the same in a courtroom. But the reverse is also true in a “reverse halo effect.”

Lisa Feldman Barrett, professor of psychology at Northeastern University, is part of a team that studied how gossip affects not only what we know about an unfamiliar person but how we feel about them.<sup>10</sup> The team demonstrated that getting secondhand information about a person can have a powerful effect.<sup>11</sup> But Barrett and her team wanted to answer another question: Once hearsay has predisposed us to see someone in a certain way, is it possible that we literally see them differently? The short answer is yes.<sup>12</sup>

The team brought in volunteers and had them look at faces paired with gossip.<sup>13</sup> Some of these faces were associated with negative gossip, such as “threw a chair at his classmates.”<sup>14</sup> Other faces were associated with more positive actions, such as “helped an elderly woman with her groceries.”<sup>15</sup> The researchers then looked to see how the volunteers’ brains responded to the different kinds of information.<sup>16</sup> They did this by showing very different images to the left and right eyes of each person.<sup>17</sup> One eye might see a face, while the other eye would see a house.<sup>18</sup> The human brain can only handle one of the images at a time, and it tends to linger on the one it considers more important.<sup>19</sup> The volunteers’ brains were most likely to fix on faces associated with negative gossip.<sup>20</sup> This suggests that we are hardwired to pay more

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10. Bruce Bower, *Eyes Take Gossip to Heart*, SCI. NEWS (May 19, 2011), [http://www.sciencenews.org/view/generic/id/74498/title/Eyes\\_take\\_gossip\\_to\\_heart](http://www.sciencenews.org/view/generic/id/74498/title/Eyes_take_gossip_to_heart).

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

attention to a person if someone tells us they are dangerous, dishonest, or unpleasant.

Researchers found similar results in a potato chip study conducted in Poland.<sup>21</sup> Polish school children were handed one of three bags of potato chips: the first was marked Dutch, the next was marked Austrian, and the third was emblazoned with the Star of David.<sup>22</sup> Children ate the chips and were asked which tasted better.<sup>23</sup> Overwhelmingly, they claimed that the Dutch chips tasted the best, followed by the Austrian.<sup>24</sup> The least tasty chips were the bags marked with Jewish labels.<sup>25</sup> The chips in each bag were identical.<sup>26</sup> Others heuristics follow below.

During normal decision-making, *anchoring* occurs when individuals overly rely on a specific piece of information to govern their thought-process.<sup>27</sup> Once the anchor is set, there is a bias toward adjusting or interpreting other information to reflect the “anchored” information. Through this cognitive bias, the first information learned about a subject or, more generally, information learned at an early age, can affect future decision-making. For example, a person purchasing an automobile may focus on the odometer reading and model year of the car, which is the information one is first exposed to, and use those criteria for evaluating the car value, rather than engine or transmission maintenance.

The *availability heuristic*<sup>28</sup> functions along the lines of “it must be important if I am thinking about it.” Media coverage often helps fuel this type of bias with its widespread and extensive coverage of some events, and less coverage of more routine, less sensational events. For example, when asked to rate the probability of a variety of causes of death, people rate more newsworthy events as more likely because individuals can more readily recall them.

The *representativeness heuristic* is a psychological term where people judge the frequency of a hypothesis by considering how closely

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21. A. Czyzewska, *Koncepcja Natury Ludzkiej a Gotowosc do Zachowaii Antysemickich* [The Concept of the Human Nature and the Readiness for anti-Semitic Behavior] (1994) (unpublished MA thesis, University of Wroclaw).

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. See SUSAN T. FISKE & SHELLY E. TAYLOR, *SOCIAL COGNITION* 173 (2008) (stating that people reduce ambiguity by starting with a reference point, or anchor, and making adjustments to reach a conclusion).

28. *Id.* at 167–169.

the hypothesis resembles available data.<sup>29</sup> This can result in neglecting relevant base rates. Along similar lines is the *recognition heuristic*, where one of two identified objects has a higher value.<sup>30</sup> In causal reasoning, these heuristics lead to a bias toward the belief that causes and effects will resemble one another.

*Naïve diversification* occurs with consumer decisions.<sup>31</sup> Researchers showed that when people have to make simultaneous choices, they tend to seek more variety than when they make sequential choices. That is, when asked to make several choices at once, people tend to diversify more than when making the same type of decision sequentially.<sup>32</sup>

*Commitment escalation* is used to describe poor decision-making due to a previous investment,<sup>33</sup> e.g. the decision to invade Iraq, where dollars spent and lives lost justify continued involvement. Alternatively, a situation in which people can make irrational decisions based upon rational decisions in the past and justify actions already taken may illustrate the *irrational heuristic*.<sup>34</sup>

Emotions that influence decisions are called an *affect heuristic*.<sup>35</sup> Simply put, it is a rule of thumb that causes people to act contrary to logic or self-interest. For example, the words “Jews” or “Blacks” trigger a negative effect, while the word “love” generates an effect of affection and comfort. Good or bad effects bias our decisions.

*Social proof* is another phenomenon where people assume the actions of others reflect correct behavior.<sup>36</sup> This heuristic is more obvious in ambiguous social situations where people are unable to determine the appropriate mode of behavior. It is driven by the assumption that surrounding people possess more knowledge about the situation. One can see the effects within large groups where people conform to choices

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29. *Id.*

30. See HANDBOOK OF SOCIAL PSYCHOLOGY 253 (Susan T. Fiske et al. eds., 5th ed. 2009) (stating that a person will confer a higher value on the option he or she recognizes the most).

31. See Shlomo Benartzi & Richard H. Thaler, *Naïve Diversification Strategies in Defined Contribution Saving Plans*, 91 AM. ECON. REV. 79, 79 (2001) (discussing how individuals make decisions based on confused notions of diversification).

32. Itamar Simonson, *The Effect of Purchase Quantity Timing in Variety-Seeking Behavior*, 27 J. MARKETING RES. 150, 150–51 (1990).

33. See DOMINIK STEINKÜHLER, DELAYED PROJECT TERMINATION IN THE VENTURE CAPITAL CONTEXT: AN ESCALATION OF COMMITMENT PERSPECTIVE 52 (2010) (defining commitment escalation as “an increase in resources committed to a project in the face of negative feedback”).

34. See JOHN ROBERT ANDERSON, THE ADAPTIVE CHARACTER OF THOUGHT 33 (1990) (“[T]here is no reason why normatively irrational heuristics cannot be adaptive.”).

35. HANDBOOK OF SOCIAL PSYCHOLOGY, *supra* note 30, at 554.

36. *Id.* at 41.

that may be right or wrong. This is sometimes known as the “bandwagon effect” or “herding.” Social proof can cause people to converge too quickly on a choice, as they look to others for cues concerning the socially correct behavior.

The *simulation heuristic* occurs when people determine the likelihood of an event based on how easy it is to recall the event.<sup>37</sup> As a result, people have greater regret over missing outcomes that are easier to imagine. Specifically, the simulation heuristic is defined by substituting normal antecedent events for exceptional ones.<sup>38</sup>

The *contagion* or *contamination heuristic* leads people to avoid contact with people or objects viewed as “contaminated” by previous contact with someone or something viewed as bad—or, less often, to seek contact with objects that have been in contact with people or things considered good.<sup>39</sup> For example, we view a person who has touched a diseased person as likely to carry the disease (like the childhood fear of “cooties”). As a result, individuals take preventative measures, such as crossing fingers or presenting lucky charms, to avoid contact and block the imaginary negative spells or enhance God or good forces.

The key to understanding the psychology of hate beliefs is threat. As social animals, we are built to determine friend or foe status and react naturally with a fight or flight response. Hate speech simply reinforces our readiness to act. All the social fears lay dormant, keeping vigil for the pending attack that we organize by tribe. One merely needs to ask oneself the following questions:

Who is the group that causes all the crime?

Who is the group who transmits AIDS/HIV?

Who is the group that steals your money?

There are well-established social answers to these questions. These social answers are so widespread that what started as ethnic rumors are now considered established facts. Soon, social saturation, or a tipping point, occurs where *everyone knows* that so and so is from *that group*, and this association explains his or her behavior or what he or she is truly thinking inside.

## II. SOCIAL BELIEF TRANSMISSION AND DISTRIBUTION

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37. FISKE & TAYLOR, *supra* note 27, at 170.

38. *Id.*

39. THOMAS GILOVICH, DALE W. GRIFFIN & DANIEL KAHNEMAN, *HEURISTICS AND BIASES: THE PSYCHOLOGY OF INTUITIVE JUDGMENT* 201–203 (2002).

There is a second, more pragmatic part to understanding hate beliefs. After these beliefs form, individuals have to advertise and distribute them to the consumer or audience. At present, an average U.S. consumer is exposed to about 1000 commercials per day.<sup>40</sup> To further assess if something is real, we verify it through others. Other commercials validate or invalidate our experience. The tendency to believe everything, and only later decide what to keep, reject, or live with as fantasy, is part of our natural make-up.<sup>41</sup> Once a belief becomes socially represented, the excitement level it causes determines its popularity. For the most part, the same less-than-rigorous standard as rumors determines our social beliefs. The process is simple. Someone—a sender of the message—says it once. The message is “hot” in that it emotionally threatens or disturbs the sender. Then, an audience or member of an out-group receives the message and repeats it over and over. Past a certain point, there is a tipping point, or social saturation, and the message—whether real or not—achieves social truth status. It is a closed loop system of distribution unaffected by reality:



40. BOB M. FENNIS & WOLFGANG STROEBE, *THE PSYCHOLOGY OF ADVERTISING* 2 (2010).

41. STEVEN K. BAUM, *ANTISEMITISM EXPLAINED* (2011).

Like rumors, we spread popular social beliefs and accept them “not because they are true, but because they are popular.”<sup>42</sup> Reality does not determine the popularity of rumors, but rather the repetition of rumors and the number of people who believe them to be true. Perhaps the most frightening words ever written are the truest, in that people “engage in action on the basis of imaginations to which they assign the same degree of credibility as they do to perceptions of the ‘real’ world.”<sup>43</sup> This means that socially there is very little objective reality—only agreed-upon beliefs that we more or less accept. We take a social belief and assign it a high or low credibility value generally attained through social consensus and later culturally reinforced. Western culture may rank UFOs and Loch Ness monsters low, but in general, we also rank the thought of Jews taking over the planet low. Muslim and Arab nations rank Western superstitions like UFOs and Loch Ness monsters low, while anti-Semitic beliefs are double to triple the rates present in the West.<sup>44</sup>

Does the truth eventually prevail? Well, maybe—at least some truths do. Given that some people and cultures are more gullible than others, what separates the fit from the unfit social belief for the average person? “It is somewhat perplexing,” one researcher notes, “to see how, once planted, despite official denials, false information circulates and gains such high a degree of popular acceptance.”<sup>45</sup>

Kimberlee Weaver and her colleagues at Virginia Polytechnic Institute have also observed this phenomenon and concluded that hearing the same thing from one source can have the same effect as hearing that thing from many different people—the brain gets tricked into thinking it has heard a piece of information from multiple, independent sources, even when it has not.<sup>46</sup> So we are prone toward those beliefs that we think have social consensus. These are the same principles scientists use to determine truth via the scientific method, viz., reliability (repetition) and validity (different circumstances yielding the same results).

Publicists argue with their clients, insisting that bad news is better than no news at all. However, this sentiment may not be true. Denials

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42. JEAN-NOËL KAPFERER, *RUMORS* 4 (1990).

43. DE RIVERA & SARBIN, *supra* note 8, at xi.

44. Steven K. Baum & Jeffrey M. Rudski, *Anti-semitism and Superstition*, 23 J. CONTEMP. RELIGION 77, 83 (2008).

45. J. N. Kapferer, *A Mass Poisoning Rumor In Europe*, 53 PUB. OPINION Q. 467, 481 (1989).

46. Kimberlee Weaver et al., *Inferring the Popularity of an Opinion from its Familiarity: A Repetitive Voice Can Sound Like a Chorus*, 92 J. PERSONALITY AND SOC. PSYCHOL. 821, 821–22 (2007).

inherently require repeating the bad information, which may be one reason they can, paradoxically, reinforce it. Repeating denials makes the information more accessible to memory. For a substantial number of people, the negation tag of a denial falls off with time; however, the absence of denial still leads to belief.<sup>47</sup> Even if you feel it is not true, the connection still occurs. Even when public accusations are met with silence, individuals more likely perceive them as true.<sup>48</sup>

Age also factors into the believe-it-or-not question. For instance, in one experiment at University of Michigan, researchers issued a health flier from the Centers for Disease Control and Prevention (“CDC”) regarding flu vaccine myths.<sup>49</sup> It recited various commonly held views and labeled them either “true” or “false.”<sup>50</sup> Among those identified as false were statements such as, “[t]he side effects are worse than the flu” and “[o]nly older people need the flu vaccine.”<sup>51</sup> When University of Michigan social psychologist Norbert Schwarz and his colleagues had volunteers read the CDC flier, they found that within thirty minutes, older people distorted twenty-eight percent of the false statements and recalled them as true.<sup>52</sup> Three days later, they recalled forty percent of the myths as factual.<sup>53</sup> Younger people fared better at first but after three days made as many errors as older people. Most troubling was that people of all ages now felt that the source of their false beliefs was the CDC.<sup>54</sup>

If more than one source repeats a belief, it is soon stamped in. Nazi propagandist Joseph Goebbels observed that a source “must confine itself to a few points and repeat them over and over.” Whether Nazi propaganda or public opinion, social truth is an agreed-upon idea repeated by multiple sources. With repetition, the social belief achieves sedimentation in our social mind.<sup>55</sup> Factors associated with belief credibility include source credibility, repetition, and other factors, for

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47. NICHOLAS DIFONZO, *THE WATERCOOLER EFFECT* 143 (2008).

48. Donald L. Ferrin et al., *Silence Speaks Volumes: The Effectiveness of Reticence in Comparison to Apology and Denial for Responding to Integrity- and Competence-Based Trust Violations*, 92 *J. APPLIED PSYCHOL.* 893, 894–95 (2007).

49. Norbert Schwarz et al., *Metacognitive Experiences and the Intricacies of Setting People Straight: Implications for Debiasing and Public Information Campaigns*, 39 *ADVANCES IN EXPERIMENTAL SOC. PSYCHOL.* 127, 147 (2005).

50. *Id.*

51. *Id.* at 148.

52. *Id.* at 150.

53. *Id.*

54. *Id.* at 151.

55. JAMES ALFRED AHO, *THIS THING OF DARKNESS: A SOCIOLOGY OF THE ENEMY* 27 (1994).

example, rumor importance, education, and lack of rebuttal. But source credibility may not be so important if the message is emotionally exciting or “hot.” For messages to be “hot,” three common denominators must be present: *conciseness*, *consistency* with what is socially known or expected, and the quality of being *crazy* or anxiety-inducing.

### III. ADVANCED SOCIAL WEAPONRY: THE INTERNET

The Internet can be used in many ways, including as a social weapon. For example, Internet bullying has been directly responsible for some suicides.<sup>56</sup> On a social level, we are still assessing the damage, but recruitment of extremists and tens of thousands of web pages dedicated to hate are part of the new legacy. The Internet is particularly problematic because we have created twenty-first century technology that transmits medieval messages of ethnic hate.

Hitler once observed that propaganda was a “truly terrible weapon in the hands of an expert.” But it causes plenty of negative consequences in the hands of amateurs as well. The following is an example of what transpires in the distribution of hate messages:

An anti-Semitic Islamic website, which police say is operated by a Toronto student on the run, is back on the Internet after a Canadian web-hosting provider shut it down earlier this year. Salman An-Noor Hossain, 25, of Mississauga, operated a website called Filthy Jewish Terrorists and he and the site were the subject of a five-month investigation by the Ontario Provincial Police [“OPP”]. The site was shut down in March, and Hossain was suspended from York University as the OPP investigated him. But Hossain relaunched the anti-Semitic site, this time using a host in Switzerland. On [December 21, 2010], Hossain posted a blog identifying himself as the operator of the relaunched site, and [sic] using the same design as the old one. He registered the new website with generic information, making it impossible to locate him. Last July [2010], the OPP said in a statement that Hossain “willfully promoted hatred and advocated genocide of the Jewish community.” His website called for direct terrorist attacks.<sup>57</sup>

Recall that the formula for ethnic hate is quite simple: repeat the idea enough and people will believe it. Soon the idea becomes socially

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56. See SHAHEEN SHARIFF, *CYBER BULLYING: ISSUES AND SOLUTIONS FOR THE SCHOOL* 9 (2008) (“[C]yber-bullying ... has tragically taken the lives of many young people through suicide.”).

57. *Anti-Semitic Website Back Online*, CANADIAN PRESS (Dec. 21, 2010), <http://www.thestar.com/news/canada/article/910660--anti-semitic-website-back-online>.

saturated and reaches a tipping point where *everyone knows* the fabrication to be “true.” Discriminatory laws may follow and calls for genocide can be in the offing. The fact that none of it is true does not seem to matter. The Internet’s dark side globally propels Dark Age beliefs to millions at the click of a mouse. By one estimate, there are over 11,000 hate-based websites, social network pages, chat forums, and microbloggers.<sup>58</sup> The technology is all too accessible and the formula all too easy to follow—repeat the belief enough and surround yourself with like-minded listeners and people will accept it. The results of this can be deadly, as social beliefs and political words can pave a path to murder.

The Rwandan courts understand that words can kill. And now we know that cartoons can kill. Recall the global Muslim protests between September 30, 2005 and March 30, 2006 . . . The immediate payback for humiliating Islam was 5,000 Muslim immigrants taking to the streets in protest. Within hours, the ambassadors of eleven Muslims countries . . . complained about the cartoon in a letter to Prime Minister Anders Fogh Rasmussen. Labor strikes began in Pakistan and by January 2006, a boycott of Danish products began. In Damascus, protesters torched the Norwegian embassy and buildings that housed the Danish, Swedish and Chilean embassies, along with the Danish General Consulate in Beirut. . . . Protests globally escalated for six months, culminating in 139 deaths.<sup>59</sup>

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58. *Online Hate Sites Grow with Social Networks*, N.Y. TIMES BLOG (Mar. 16, 2010, 9:28 AM), <http://bits.blogs.nytimes.com/2010/03/16/online-hate-sites-grow-with-social-networks/>.

59. STEVEN K. BAUM, *THE PSYCHOLOGY OF GENOCIDE* 230–31 (2008).

## IV. SHOUTING FIRE ON A CROWDED WEBSITE

The principles of free speech appear not to apply to the Internet. On the Internet, rational dialogue and academic debates are rare, and hate material is softened to entice and win the war of words, ideas, and ideology. Confirmation bias—the heuristic that reaffirms what is already known—dominates the Internet. One may try to replace “bad” web pages with “good” web pages, but research suggests that people will choose to seek the bad websites out and that few are interested in obtaining a balanced view. Hateful social beliefs will endure because as a species, we remain hopelessly more fascinated by the salacious than by the salubrious.<sup>60</sup>

Should there be limits to free speech? Some First Amendment scholars have begun suggesting that some limits should be put into place.<sup>61</sup> But as First Amendment scholars are quick to point out, if criminalization is the magic pill, it comes with serious side effects.

Recently, European hate laws have been used to embolden Islamist ideology. A case in point includes the trial of Dutch parliamentarian Geert Wilders.<sup>62</sup> A Dutch court is prosecuting Wilders for incitement to hatred and discrimination for stating that the Koran should be banned. During this same period, there has been prosecution for promoting hate in the Danish cartoon controversy as well. Presently, the nation of Jordan has indicted Danish cartoon artist Kurt Westergaard and is trying him *in absentia*.<sup>63</sup> Lars Hedegaard, president and founder of the *Danish and International Free Press Societies*, was convicted under Article 266b of the Danish penal code and fined approximately \$1000 for “hate speech,” even though a month earlier, he was acquitted of the same charges.<sup>64</sup> During this period, an Austrian, Elisabeth Sabaditsch-Wolff, was fined approximately \$660 (480 Euros),

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60. See CHIP HEATH & DAN HEATH, *MADE TO STICK: WHY SOME IDEAS SURVIVE AND OTHERS DIE* 5 (2007) (explaining why it is natural to easily remember a story about a stolen kidney while almost impossible to remember a story about a nonprofit’s financial strategy).

61. See, e.g., ANTHONY LEWIS, *FREEDOM FOR THE THOUGHT THAT WE HATE* 167 (2008) (suggesting that it might be appropriate to punish speech that encourages terrorist violence to an audience with people who are ready to act).

62. *Dutch MP Geert Wilders Back in Court Over ‘Hate Speech,’* BBC NEWS EUR. (Feb. 7, 2011), <http://www.bbc.co.uk/news/world-europe-12380167>.

63. *Jordan Begins Trial of Danish Mohammed Cartoonist*, STRAITS TIMES (Apr. 25, 2011), [http://www.straitstimes.com/BreakingNews/World/Story/STIStory\\_661044.html](http://www.straitstimes.com/BreakingNews/World/Story/STIStory_661044.html).

64. *Shame On Denmark! Lars Hedegaard Found Guilty of Hate Speech*, INT’L FREE PRESS SOCIETY (May 3, 2011), <http://www.internationalfreepressociety.org/2011/05/president-of-the-free-press-society-lars-hedegaard-declared-guilty-of-racist-statements/>.

but could have received three years imprisonment for creating a series of seminars warning of the perils of Sharia law.<sup>65</sup>

Universities are also grappling with where to draw the line on free speech versus hate speech. Michigan State University shut down one fraternity after pledges wore T-shirts bearing anti-gay remarks, while Pennsylvania State University allowed a Palestinian student organization website to post anti-Semitic cartoons.<sup>66</sup> At Auburn University, students are fighting suspension for wearing blackface and Ku Klux Klan-style robes to fraternity parties.<sup>67</sup>

Is it free speech or unfettered advertising of hate speech? Do universities have the obligation to punish hateful speech if intolerance threatens students and their ability to learn? To that end, former University of California at Berkeley student Jessica Felber filed a lawsuit contending the university violated her civil rights when it did not protect her against attacks from a pro-Palestinian student.<sup>68</sup> The suit contends that the University of California financially supported Students for Justice in Palestine and an affiliate group, The Muslim Student Association, and tolerated its attacks on Jewish students expressing support for Israel.<sup>69</sup>

Schools, at times, punish students or groups for certain speech, using anti-harassment policies or federal laws stating that students are entitled to a hostility-free learning environment. Almost all schools ban statements that threaten or encourage violence or attacks on individuals. They also outlaw statements that damage property, such as graffiti or vandalism. Many groups, including the American Civil Liberties Union and the American Association of University Professors, agree that education is the best solution to hate speech on college campuses. "The real danger is to students who are victimized by attacks."<sup>70</sup> There are of course more questions than answers. Is the right to display a Confederate flag a matter of free speech? Or should anything related to

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65. *Law in Austria: Guilty for Questioning Islam*, INT'L FREE PRESS SOC'Y (Mar. 9, 2011), <http://www.internationalfreepressociety.org/2011/03/law-in-austria-guilty-for-questioning-islam/>.

66. Sharon Terlep, *Campuses Must Walk a Fine Line on Free Speech*, LANSING ST. J., Apr. 21, 2002, at A.1.

67. *Id.*

68. Frances Dinkelspiel, *Jewish Student Sues UC Berkeley Over Assault by Palestine Supporter*, BERKELEYSIDE (Mar. 7, 2011, 12:19 PM), <http://www.berkeleyside.com/2011/03/07/jewish-student-sues-uc-berkeley-over-assault-by-palestine-supporter/>.

69. *Id.*

70. *Universities Struggle with Free Speech, Hate Speech*, FREEDOM FORUM (Apr. 28, 2002), <http://www.freedomforum.org/templates/document.asp?documentID=16143> (quoting David Warden, a supporter of Michigan State University's lesbian and gay student group).

a government function, whether it is a building or an instrument of law, remain unfettered by symbols that are offensive to millions?

#### V. LESSONS NOT LEARNED

In India, it is now illegal to spread a rumor that causes widespread panic. Although First Amendment scholars debate the pros and cons of hate speech criminalization, speech that causes widespread anxiety may one day be illegal. State prosecutions, beginning with Julius Streicher and ending with Rwanda's Radio Télévision Libre des Mille Collines radio managers and Hutu newspapers, remind us that words can kill and that the offenses are indictable.

There is legal precedent set via the prosecution of propagandists during wartime, but not during times of peace. But peace or war does not make any difference in terms of psychological processes. Legal scholars now have to grapple with the problem of limiting free speech against the backdrop of the aggrieved and defamed groups—Islamists and extremist groups.

“Hatred is part of our lives.”<sup>71</sup> It is here to stay. Scholars are up against the psychology of communication, social cognition, and social beliefs. It is a numbers game and perception supersedes logic. People are built for social distortion. People will continue to believe in superstitions. Hateful beliefs and distorted thinking will remain part of the human condition. Good ideas and good speech will not override bad ideas and bad speech. Truth and that which is good and right will not prevail.

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71. MICHAEL WALTMAN & JOHN HAAS, *THE COMMUNICATION OF HATE* 172 (2011).