

## Freedom of Expression, Hate Speech, and Models of Personhood in Hungarian Political Discourse<sup>1</sup>

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*In this ethnography of communication study I will explore how the cultural concepts “freedom of expression/opinion” (véleménynyilvánítás szabadsága) and “hate speech” (gyűlöletbeszéd) function in a specific cultural discursive system, Hungarian political discourse. I will accomplish this goal through the analysis of situated interaction at a series of parliamentary committee meetings. The ethnographic data under consideration consists of instances in which members of the Hungarian Parliament discussed the implications of a bill proposing changes to the criminal code regarding hate speech. I will show that the freedom of expression as a cultural concept is inextricably linked with the concept of “the violation of human dignity” in situated political discourse. This linkage, however, becomes the site of conflict as it is interpreted in competing ways by those who see human dignity as the possession of persons-as-individuals and those who assign it to persons-as-members-of-communities. These models of personhood give rise to conflicting communal norms, and the norms animate conflicting proposals for sanctioning hate speech. My analysis joins a small but increasing body of field-level studies of the freedom of expression that approach the concept of free expression as a cultural construct.*

An ethnographic, or interpretive, approach to cultural variation in legal systems entails viewing particular systems in particular places as the answers of particular people to the question of how to lead principled lives in practicable ways.<sup>2</sup> Furthermore, this approach maintains that the language of law mediates between socio-cultural imaginations of how life in a given community is and ought to be and legal decision-making in specific cases of dispute. The social power of law derives from the fact that the language of the law renders specific rulings within the context of any legal system sensible to members of the given society, to a greater or lesser extent. My task in this essay is to analyze a particular series of communicative events in which debates over the language of law bring into view versions of imagined social reality. More specifically, I will take a cultural interpretive look at Hungarian lawmakers as they negotiate the nature of “free expression” and “hate speech” while they debate a particular piece of legislation designed to outlaw “provocation to hatred.”

The import of such an approach to the law is that it is able to shed light on how “natives” (including ourselves) make sense of their precarious existence in the world. Paying close attention to the language of the law for indigenous interpretations of what it means to live in a society takes on special significance when we set out to make sense of disagreements regarding specific pieces of legislation. The limits of free expression have been the subject of legal wrangling throughout the Western world for centuries. Interpreters of cultural uses of language

understand that such disputes are rooted, at least in part, in conflicting interpretations, or imaginations, of the world. To better understand these interpretations that feed into the language of Hungarian law regarding free expression I will go to the source: the chambers of the Hungarian parliament, where the law is made.

My study of free expression joins a limited but increasing number of others that base their arguments about the social function of free expression on field-level research. Without sufficient attention to the cultural context of legal disputes surrounding free expression and hate speech, field-based studies often end up advocating one of two seemingly irreconcilable arguments: (a) that the local worldview (including the local moral system) should determine local legal practice, or (b) that local legal practice should determine the local worldview. The theoretical about-face made by free speech scholar Donald Alexander Downs is instructive in this regard. In *Nazis in Skokie*<sup>3</sup> Downs decries the content neutrality rule in free speech adjudication championed in *Brandenburg v. Ohio*<sup>4</sup>. The speech of the National Socialist Party of America (NSPA), he argues, was designed to directly injure the Skokie Holocaust survivors and therefore hindered their right to autonomy and self-governance. Prompted by the moral concern for the survivor victims of Neo-Nazi verbal aggression, Downs calls for tempering the absolute freedom of expression in legal action by the fighting words doctrine (as enshrined in *Chaplinsky v. New Hampshire*<sup>5</sup>) and the concept of group libel (as in *Beauharnais v. Illinois*<sup>6</sup>). In his most recent book, *Restoring Free Speech and Liberty on Campus*<sup>7</sup>, Downs advocates the opposite view on reverse grounds. Based on a review of four cases of speech code debates on U.S. university campuses he concludes that so called “progressives” have abused harassment codes by using them to silence well-meaning professors and students. The solution, Downs contends, is that First Amendment based legal practice outside the university ought to keep the moral cause (the protection of vulnerable groups) in check within the university. Otherwise, morally based arguments for curtailing free speech will harm innocent bystanders and will hinder free inquiry on campus. Whereas his first book is designed to convince the reader to prize the communal interests of the vulnerable over existing legal practice, his second book makes the case for turning upside down this hierarchy of priorities.

I will not take issue with Downs’ analysis in either book or his decision to rebuke his own argument in *Nazis in Skokie*. However, his ‘either-or’ prescriptive representation of a supposedly unidirectional relationship between (moral) worldview and legal practice remains

unconvincing. From the interpretive ethnographic perspective, the social function of law is to bring together the “picture of “what is right” and stories of “what is so””,<sup>8</sup> that is, to create a persuasive link between the infinitely complex world, with particular attention to the moral dimension of that world, and the facts of a given case (evidence). The law enters a mutually constitutive relationship with communal interpretations of appropriate conduct and with legal practice within the community as it mediates between the two. As Downs searches for social justice for two sorts of victims in two vastly different social realms – in a suburban community of Holocaust survivors and on the campuses of four major U.S. research universities – he glosses over something that is a commonsensical fact for the ethnographer: different communities observe different norms of conduct depending on their experiences in the world. The same law (in this case, the First Amendment) may err on the side of morality from the vantage point of one community, and on the side of legal practice from that of another. Downs’ conversion, it appears to me, is as much a conversion from communitarian to libertarian thinking about free expression as a conversion from one community’s worldview to another’s.

Other prescriptive studies of the significance of free expression in specific communities also tend either to advocate looking to the moral system to inform legal practice or vice versa. Nielsen’s study of street harassment in urban United States calls for reconsidering First Amendment absolutism from a moral perspective.<sup>9</sup> According to her, the current legal stance toward free expression fails to shield women and minorities from street harassment and therefore must be rethought. In their analysis of free expression in Morocco, Smith and Loudiy proceed in the opposite direction.<sup>10</sup> In agreement with local activists, they fault the king of Morocco for blocking the adoption of Western legal practice regarding free speech on local moral and religious grounds. The king taps into the local worldview as he places himself and his household outside the realm of public criticism. Once again, I do not dispute the authors’ call for greater social justice in the U.S. and Morocco. What I argue is that their arguments could be even stronger had they included interpretive analyses of the cultural logic of the existing legal and political-moral systems they are criticizing. They may have asked: What system of cultural assumptions renders the protection of street harassment as free speech plausible to many in the U.S.? And what cultural premises prompt many non-activist Moroccans to accept the status of the person of the king and his household as untouchable by public criticism?

My approach is modeled on interpretive studies of free expression that are sensitive to what ties together morality and legal practice, namely the discourse of law as it is embedded in and informed by everyday life discourse in particular communities.<sup>11</sup> Carbaugh analyzes the communal rules of public presentations of self on the *Donahue* show and argues that the American legal discourse of “right” to free expression is deeply rooted in the local view of the world.<sup>12</sup> Yankah makes a similar argument about free expression in traditional Ghanaian societies.<sup>13</sup> The interpretive approach that these studies enact and that will be put to use in this essay proceeds in two moves. First, the analyst must come to understand what speakers mean *in what contexts* as they use potent symbolic terms such as “free expression,” “hate speech,” “human dignity” and other legal concepts. A heightened attention to context helps the analyst understand the ways in which speech plays into or shapes existing social arrangements.<sup>14</sup> Second, the analyst must account for *cultural premises*, or taken-for-granted communal assumptions about the nature of the world, that render what speakers say intelligible. Cultural discourse analysis posits that these premises about culturally appropriate ways of being, acting, relating, feeling and dwelling lend the use of culturally meaningful (symbolic) terms their meaningfulness.<sup>15</sup>

To illustrate the cultural discourse approach I will use the Hungarian public sphere as the site of my investigation. The primary focus of this paper is the debate surrounding a key issue in Hungarian political discourse, the legitimacy of legal sanctions against “hate speech.” Speakers in the Hungarian public sphere usually either support legal sanctions or oppose them. Interestingly enough, both the supporters and the opponents of legal measures often point to the Hungarian constitution in order to support their arguments. Parliamentary committee sittings in which Member of the Parliament (MPs) discuss hate speech and the possibilities of legal action against it are no exception. The proceedings of such sittings document a number of heated discussions regarding the legal implications of ‘incitement to hatred’ or ‘incitement to violence,’ two legal categories that the MPs often index with the term “hate speech.”

My chief interest in the present analysis is how those MPs who interpret “hate speech” as the “violation of human dignity” see the relationship between “hate speech” and the “freedom of expression/opinion” which is a “right” “protected” by the Hungarian “constitution.” I am also interested in the types of social action the MPs propose as antidotes against “hate speech.”

Finally, I will examine how the espousal of one or the other interpretation of the constitution creates alignments among political groups within the committee sittings.

### Methodology

My research will focus on a body of data obtained from the public archives of the Hungarian Parliament. My primary sources of data are official transcripts of parliamentary committee sittings. Any Hungarian citizen can access these transcripts at the Library of the Hungarian Parliament located in the main building of the Parliament in Budapest. That the transcripts are publicly available warrants the characterization of the sittings as sites of ‘public discourse’. Committee members are well aware that their exchanges within the framework of the official committee sittings are open to potential public scrutiny.

For the purpose of this paper I analyzed discourse in a total of nine committee sittings.<sup>16</sup> The sittings whose proceedings constitute the corpus of my data were distributed among three particular standing committees of the Hungarian Parliament: the Committee on Constitutional and Judicial Affairs (4 sittings), the Committee on Human Rights, Minority and Religious Affairs (3 sittings), and the Committee on Cultural Affairs and the Media/Press (2 sittings). These standing committees were appointed by the Parliament to discuss a bill proposing a modification to the Hungarian Criminal Code in order to render acts of verbal “incitement” punishable by law. Their sittings took place between September and November, 2003. I have also included the original text of the bill and the text of the Constitution of the Republic of Hungary among my data since these texts were the object of MPs’ discussion. Because of length constraints and the depth of ethnographic analysis the Hungarian data require I will only be able to present a small fraction of the data in this paper.

My data analysis relies on an interpretive framework developed by ethnographer of communication Dell Hymes.<sup>17</sup> Hymes’ major contribution to the study of language was the radical and systematic linking of language use, the speech community in which use occurs, and the socio-cultural context in which language use achieves meaning. Hymes identified basic social units pertaining to the act of speaking (speech situation, speech event, speech act, speech community, speech style, and ways of speaking) and components that function as the socio-cultural dimensions of every single meaningful utterance in a speech community. These components are commonly referred to with the mnemonic term SPEAKING (Setting, Participants, Ends, Acts, Key, Instruments, Norms, and Genres). The cultural analysis of

particular language data makes relevant some but not all social units and components. I will treat committee sittings as speech events, that is, as culturally integral sequences of acts with an identifiable beginning and an end. Then, I will focus on the occurrence of certain key symbols in the MPs' discourse as speech acts, or minimal units that attain meaning as they are placed in relation to other symbols in interaction. From the SPEAKING framework, I will use Setting, Participants, Acts, Ends, and Norms to perform my analysis. For the analysis of rules and norms I relied on Carbaugh's distinction between code rules (rules of interpretation) and normative rules (rules of action)<sup>18</sup> and Hall's discussion of the discursive force position regarding norms, or the argument that the real significance of social norms does not rest in their ability to regulate the behavior of individuals but in their capacity to be used by individuals to challenge the actions of others on moral grounds.<sup>19</sup>

### Descriptive Analysis

To appreciate the fullness of the meaning of the acts that are discussed below, it is important to have a sense of familiarity with the setting in which the acts occur and the participants who perform them. The settings of the committee sittings are committee meeting rooms either in the main building of the Parliament or a few blocks away in the Representatives' Office Building, an edifice often referred to as the 'White House' for the color of its façade. (The comical reference to a building in Washington, D.C. of the same name would not be lost on any Hungarian.) Both buildings are accessible only to MPs, staff members, and invited guests. A typical standing committee meeting room contains a rectangular table in the middle of the room with chairs around it for committee members. Guests are seated on another set of chairs along the wall. The chairperson, the deputy chairperson, and a staff member in charge of the minutes and vote counts sit at one end of the table, while MPs occupy the other three sides. All committee members speak into microphones. The microphones serve both a technical and an interactional purpose. Their technical purpose is to create a recording from which the transcripts for a particular sitting can be constructed. In addition, they also structure turn-taking during the sitting since a speaker can only claim the floor 'officially' if they are the only person whose microphone is switched on. (No two microphones can be on at the same time.) The transcripts in the proceedings do indicate interruptions from members whose microphone is not turned on during another member's turn, however interruptions are always considered 'unofficial' in a sense since they are not licensed by the chairperson or, in their absence, their deputy.

The participants of the sittings are current members of the Parliament who were elected into the committees by the General Assembly. All four political parties who have representatives in the Parliament can appoint members to every committee according to the ratio of the party's presence in the General Assembly (i.e. if a given party fills 20 percent of the seats in the Parliament they are entitled to 20 percent of all seats on any standing committee). The actual composition of the parliamentary committees is, however, often the result of negotiation among the political parties. Committee members usually meet on a weekly basis, and are convened by the chairperson or their deputy. Members can ask other MPs to serve as their proxies for a given meeting in case they are unable to attend.

Committee meetings follow a predictable act sequence. The chairperson opens the meeting and presents the agenda for the day. Members can raise questions about items of the agenda at this point. The chairperson then reads the list of proxies and announces whether the committee has a quorum. Afterwards, the chairperson introduces agenda items one by one. In some cases, the representative of the government introduces a new bill which is subsequently discussed. MPs can also introduce modifications to bills that they sponsor. After the discussion, the committee votes on whether to support a given bill, or to pass a resolution or the statement of the committee's standpoint. In case the document receives majority support, it is forwarded to the General Assembly for further debate. At the end of the meeting the chairperson thanks the members for their contributions and work, and usually announces the date of the next meeting.

My data consist of those isolable segments of nine committee sitting during which Bill T/5179 was discussed. In the bill, the Ministry of Justice proposed an amendment to a piece of legislation passed in 1978, further specifying the section of the Hungarian Criminal Code related to incitement against a community. The modified version of the law contains the following new elements: (1) it distinguishes "provocation to hatred" and "calls for committing a forcible act" against national, ethnic, racial, or religious groups, or their individual members, and deems both of these criminal acts; (2) it characterizes the "violation of human dignity" by "disparagement" of others on the basis of their group membership, or by preaching racial, ethnic, national or religious inferiority or superiority as criminal offense. During the series of committee meetings in which this bill was discussed, committee members proposed a number of modifications to the modification. The bill was then forwarded to the General Assembly and was turned into a final

proposal which, in turn, was struck down by the Hungarian Constitutional Court on May 24, 2004 on the grounds that it violates the freedom of expressing one's opinion.

It is useful to set the stage for the focused discussion of the data by underlining three key communicative patterns in the committee members' orientation to hate speech. First, I have not found any instances in which a member of any of the three committees expressed opposition to the following notion voiced by MP László Donáth of the Hungarian Socialist Party (MSZP), a member of the Committee on Human Rights, Minority and Religious Affairs: "...basically all of us agree that we must act against the practice of hate speech, any type of it and any manifestation of it against anyone"<sup>20</sup>.<sup>21</sup> This utterance can be unproblematically interpreted as a normative challenge against hate speech.<sup>22</sup> This highly crystallized, highly intensive norm frames the discussions of hate speech in committee sittings as moral discourses in which a supportive or positive orientation to hate speech is not considered a legitimate moral stance.

Second, "violation of human dignity" emerges as a key symbol in the discourse of committee sittings. The interpretation of hate speech as a "violation of human dignity" (*az emberi méltóság megsértése*) was used by one or more speakers in all three committees. This interpretation remained unchallenged throughout the nine speech events that form the corpus of my data. The observation that this symbol has paramount importance regarding interpretations of hate speech in the light of the Hungarian constitution was further supported by Dr. László Soós, the government representative responsible for introducing the bill to all three committees. In his introductory remarks to the Committee on Constitutional and Judicial Affairs, Soós says that the language of the newly proposed law will run parallel with its previous versions by calling for the penalization of "statements" that "denigrate, humiliate" others via the invocation of racial or religious membership or racial inferiority or superiority. It will, however, diverge from these earlier versions by virtue of penalizing these statements "through the violation of human dignity" (*az emberi méltóság megsértésén keresztül*).<sup>23</sup> These types of statements (along with some other types) are referenced throughout the committee sittings as "hate speech."

The previous utterance implies a code rule or a rule of interpretation shared by the representative and all committee members: statements that violate human dignity are to be regarded hate speech. Human dignity, therefore, is constituted as a decisively important discursive realm in relation to which certain types of statements are transformed into hate speech. Hate speech is, in this interpretation, a mode of speaking that is rendered meaningful by

means of its primary social consequence, the violation of the human dignity of others. Hate speech therefore emerges as a construction collaboratively achieved by the speaker and the target(s) of the statement.

Third, in spite of the widespread consensus regarding the negative evaluation of hate speech and its interpretation as the violation of human dignity, committee members agreed that these basic assumptions lead to contrasting interpretations of the Hungarian constitution. To quote a member of the Committee on Cultural Affairs and Media/Press, Dr. Zoltán Szabó, a member of the Socialist Party: “indeed what we are dealing with is a contradiction between fundamental constitutional rights: the right to the freedom of opinion is placed in contradiction with the right to human dignity and the right of minorities to legal security”<sup>24, 25</sup> It should be pointed out that in the discourse of committee sittings “the right to human dignity” subsumes “the right of minorities to legal security.” The analysis below explores how this contradiction plays out in situated discourse.

Prior to the detailed descriptive analysis of the key symbols of concern it would be appropriate to point out the sections of the Hungarian Constitution that are implicitly indexed in the data segments analyzed below. These three sections are the following:

1.	1
<b>Article 54</b>	2
(1) In the Republic of Hungary everyone has the inherent right to life and to human dignity. No one shall be arbitrarily denied of these rights.	3
	4
	5
2.	6
<b>Article 61</b>	7
(1) In the Republic of Hungary everyone has the right to freely express his opinion, and furthermore to access and distribute information of public interest.	8
	9
	10
3.	11
<b>Article 70/A</b>	12
(1) The Republic of Hungary shall respect the human rights and civil rights of all persons in the country without discrimination on the basis of race, color, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever.	13
	14
	15
	16
(2) The law shall provide for strict punishment of discrimination on the basis of Paragraph (1). <sup>26</sup>	17

The above excerpts show that the Hungarian Constitution (a) considers “human dignity” an “inherent right” (line 3), (b) considers the “free expression of opinion” a “right” (line 8), and (c) proposes the “punishment of discrimination” (line 17) that constitutes a lack of “respect” for

“human rights and civil rights of all persons” (line 13). The analysis of data segments below will take us closer to understanding the two contrasting interpretations of these sections of the Constitution.

In what follows, I will present two instances of communication from the committee sittings and investigate the patterned use of the key symbol “violation of human dignity” in relation to two other symbols, “hate speech” and “constitution.” The first instance is an excerpt from the bill proposed by the Hungarian government. A copy of the bill was available to all participants of the nine committee sittings. The text of the bill constituted the object to which all participants oriented during the committee sittings, either as the representative of the bill – more precisely, as the representative of the Ministry of Justice, the political body that proposed the bill – or as politicians whose task it was to make decisions about how the bill is to be modified before it is forwarded for debate to the General Assembly.

*Segment 1*

*Excerpts from Bill No. T/5179 (transl. by DBH)*

The freedom of opinion and the freedom of expression are fundamental elements of democratic society and communal life. However, the contents of these rights cannot be taken to mean that anyone may curtail the franchise of others by abusing these rights.	1 2 3 4
<i>((lines omitted))</i>	5 6
Within the framework of Article 269 of the Criminal Code, Section (2) of the Bill guarantees the punishment of a perpetrator who in front of the public at large violates human dignity by defaming or humiliating an other person or persons on the basis of their national, ethnic, racial, or religious membership [Section (2) item a)], or who declares that on the basis of their national, ethnic, racial, or religious membership a certain person or group of persons is inferior or superior [Section (2) item b)].	7 8 9 10 11 12
Therefore, according to the Bill a violation against human dignity according to items a) and b) of Section 2 must only be punished if it is perpetrated in front of the public at large.	13 14 15
“Perpetration in front of the public at large” and “violation of human dignity” are objective, external limits that imply that the limitations imposed upon the freedom of opinion (as a fundamental communicative right enjoying heightened constitutional protection) by means included in the criminal code will not exceed the limits of the constitutional framework.	16 17 18 19 20
It should be noted that the freedom of opinion usually entails the freedom of all kinds of statements regardless of the manner, quality, and most often the truth content of the statement.	21 22 23 24
<i>((lines omitted))</i>	25 26
In addition, the “violation of human dignity” is also necessary for the establishment	27

of criminal responsibility. The justification for this is that by means of this violation the	28
perpetrator contests the right of equality that behooves everyone, in other words, that the	29
attacked group or individual should enjoy the fullness of constitutional rights.	30
The right to human dignity is a fundamental constitutional right, and, as such, a	31
value concurrent with the freedom of opinion. Therefore, it can serve as the external limit of	32
the freedom of opinion, specifically since the disturbance of public peace threatens with the	33
violation of a large number of individual rights.	34

The above excerpt places the symbol “violation of human dignity” (8-9, 13, 16, 27) with the key symbols of “freedom of opinion” (1, 17-18, 21, 32) and “constitution” (18, 20, 30) in relationships of co-occurrence (i.e., in relationships where they are neither synonyms, nor antonyms, but are related). “Freedom of opinion” stands in a relationship of substitutability with “freedom of expression” (1), that is, the two can stand in for one another. Obviously, this is not to say that there are no other key symbols associated with “violation of human dignity” – I am highlighting these symbols to point to a communicative pattern. The document’s (and its representatives’) explicitly stated code rule for the interpretation of the “violation of human dignity” can be stated as follows: when (a) a person in front of the public at large defames or humiliates an other person or persons on the basis of their national, ethnic, racial, or religious membership, or declares that on the basis of their national, ethnic, racial, or religious membership a certain person or group of persons is inferior or superior (8-12), and, by implication, when (b) that person contests the right of the attacked group or individual to enjoy the fullness of constitutional rights (28-30), that person counts as a perpetrator of the violation of human dignity.

In this segment, the relationship of co-occurrence between the “violation of human dignity” and “hate speech” symbols is implicit even though the actual term “hate speech” is not mentioned in the document. It is taken-for-granted knowledge at these sittings that the central concern of the bill is hate speech; the next segment will support this argument. “Hate speech” (as a mode of “abusing these rights”) is also in a relationship of contrast with the “freedom of opinion” as suggested on lines 2-3 – hate speech as a mode of speaking stands in opposition to the freedom of expression. This relationship among the key symbols can be summed up in the following cultural proposition: hate speech is a violation of human dignity and is therefore to be seen as a mode of speaking not protected by the constitution which protects all types of expression that do not violate human dignity.

In the second data segment, the speaker speaks on behalf of his political party (the Alliance of Free Democrats, the largest Hungarian Liberal political party), explaining the party's official stance toward the proposed bill. The excerpt was taken from the transcript of a Committee on Human Rights, Minority and Religious Affairs' sitting.

*Segment 2*

*from Parliamentary Committee Meeting Transcript No. EMB/31/2003 (transl. by DBH)*

Dr. Gábor Fodor	By way of an introduction I would like to assert that the standpoint of the Alliance of Free Democrats – in accordance with the party's traditions – is that hate speech must be firmly prosecuted along with all types of conduct that can violate someone's human dignity based on the person's membership in a minority, or their opinion or standpoint. Such prosecution is desirable, and, I will add, prosecution in Hungary so far hasn't been sufficient in our opinion. Regarding the bill in front of us our opinion is that it is an inadequate way of providing help related to this issue and of serving the need for prosecution that I have previously addressed.	1 2 3 4 5 6 7 8 9
	The bill is insufficient because it involves restricting the right to free expression in such a way that is not permissible in the light of the previously referred to decision of the Constitutional Court and of a number of Supreme Court rulings.	10 11 12 13 14
	<i>((lines omitted))</i>	15 16
	In addition, the prosecution of hate speech and all acts directed against minorities or, I will emphasize again, of acts intended to violate any kind of human dignity is currently possible in Hungary. The legal provisions are available.	17 18 19 20 21
	<i>((lines omitted))</i>	22 23
	And I think that for us in this committee, it is our specific obligation not to allow the curtailing of the freedom of opinion and thought under any circumstances, not even in the name of seemingly noble causes.	24 25 26

In the segment above, the relationship of co-occurrence between the key symbols “violation of human dignity” (4, 18-19) and “hate speech” (3, 17) is clear: “hate speech” is an act that violates human dignity. However, “hate speech” does not stand in a relationship of contrast with “free expression” (10-11) and the “freedom of opinion” (25). (“Free expression” and “freedom of opinion” are, once again, in a relationship of substitutability.) Rather, the relationship between “hate speech” and the two mutually substitutable symbols is that of co-occurrence: “hate speech” constitutes a type of “free expression” even though it is to be prosecuted (3, 17). The key symbol of the “constitution” appears in a reference to the Constitutional Court (12), the legal body that,

on the one hand, represents the constitution and, on the other hand, had consistently rejected two previous drafts of the same bill based on the argument that the bill calls for imposing an overly severe limit on the freedom of expression. Thus, we arrive at the following cultural proposition: Hate speech is a mode of free expression and, as such, it is protected by the constitution even though it violates the constitutional right to human dignity.

#### Interpretive Analysis

The two cultural propositions stated in relation to the two data segments above stand in obvious contrast. Since both segments are taken from the same speech event (the committee sitting of October 7, 2003), it is justified to reformulate the two propositions in a way that explicitly relates symbols and symbolic relations that are only implicitly present in either data segment. (For example, even though the second segment does not explicitly discuss the relationship between the constitution and human dignity, a relationship of co-occurrence is implied.) The two propositions can be phrased as follows:

1. Hate speech violates the human dignity of others. Human dignity is protected by the constitution. The freedom of expression is also protected by the constitution. Since the right to human dignity and the right to free expression are both within the constitution, one can serve as the limit to the other (see Segment 1, lines 31-33). Therefore, hate speech is a mode of expression not protected by the constitution.
2. Hate speech violates the human dignity of others. Human dignity is protected by the constitution. The freedom of expression is also protected by the constitution. Since the right to human dignity and the right to free expression are both within the constitution, one cannot be compromised for the sake of the other. Therefore, hate speech is a mode of expression protected by the constitution.

I will argue that the fact that the bill and the speaker reach contrasting conclusions based on the same logical premises can be explained by identifying two mediating terms (higher order symbolic terms that organize lower order symbol systems) in the data. In Segment 1 (lines 1-2), the bill makes a reference to the freedom of opinion and the freedom of expression as fundamental elements of “communal life.” If “community” serves as the basis of the interpretation of the relationship between the constitution and expressive behavior, then the

expressive behavior of one member of the community that violates the dignity of another member of the community will be interpreted as unconstitutional. Because every citizen is a member of the same (national, Hungarian) community, a community partially constituted by the constitution, the freedom of one member will stretch only as far as the freedom of the other.

The argument of the speaker in Segment 2 is organized by a different mediating term, the “individual.” Considering that the speaker is speaking as a representative of the Hungarian Liberal party, SZDSZ, we can safely say that his presentation relies on the key symbols of his party’s rhetoric, one of which is the “individual.”<sup>27</sup> If the constitution is first and foremost a collection of the fundamental rights of the individual, then the individual’s freedom of expression cannot be limited, from the perspective of constitutionality, on the basis of the violation of the human dignity of another. The individual’s human dignity will be violated if a restriction is imposed on the freedom of expression, which is an outcome that, from this vantage point, is unconstitutional.

Two contrasting premises regarding personhood and two code rules emerge from the discussion above. Segment 1 implies a model of personhood in which the person is primarily a member of a national community (code rule 1). Segment 2 implies a model of personhood in which the person is to be seen, first and foremost, as an individual separate from a community (code rule 2). These two models of personhood organize the two opposing interpretations of the constitution of Hungary. One interpretation suggests that the constitution protects the rights of persons as members of a community, whereas the other implies that the constitution protects the rights of persons as individuals.

As I have mentioned above, the discourse of committee sittings regarding the bill can be approached as a normative challenge to hate speech. I have already pointed out that there is a shared agreement in the committees that hate speech is to be acted against, a consensus that functions as a shared End within the Hymesian framework. The analysis presented in this section suggests that participants advocate two divergent normative rules that apply to acting against hate speech by regulating the freedom of expression. These two norms can be phrased as follows:

Proscription: In the context of the public sphere, if one wants to act against hate speech, one ought not to constrain the freedom of expression by law.

Prescription: In the context of the public sphere, if one wants to act against hate speech, one ought to constrain the freedom of expression by law.

These norms, in turn, shape participants' conceptions of appropriate action in the public sphere against hate speech. Those committee members who defend the bill (members from the Hungarian Socialist Party) suggest that the most appropriate action to be taken against hate speech is passing the bill into law. Those who opposed the bill (all other committee members) suggest the following types of action as appropriate sanctions against hate speech:

- a) more rigorous implementation of existing laws within the Criminal Code
- b) increased willingness on the part of the judiciary and the police to implement existing laws
- c) providing a good example to the public
  - i. the judiciary: by prosecuting hate speech related crimes based on existing laws
  - ii. other public speakers such as politicians or media personalities: by making public statements condemning hate speech

An important implication in the discussion of norms is that norms in this socio-cultural context are not norms held by individual persons but norms advocated by representatives of political factions. Representatives of the Hungarian Socialist Party (MSZP) advocated the introduction of the bill and thereby the regulation of free expression in all of the three committees. Representatives of other parties advocated the opposite. Therefore, the espousal of a norm in this context implies aligning oneself with a political faction.

In these committee meetings, this circumstance produces added tensions because through interaction a party on the political left (the Alliance of Free Democrats, SZDSZ) becomes discursively aligned with two parties on the political right (the Alliance of Young Democrats, FIDESZ, and the Hungarian Democratic Forum, MDF). My data provides evidence that some committee members engage in interactional work to clarify the exact nature of these alignments. Consider the following utterance spoken by a member from FIDESZ: "There are those who respect the constitution –we don't belong among the liberals, nor among the racists, we belong among those who respect the constitution and therefore we do not support the bill"<sup>28</sup>.<sup>29</sup> In this

brief segment, the speaker (Dr. Róbert Répássy) discursively distances his party from the liberals (SZDSZ), the political group that opposes the bill along with FIDESZ. (He also dismisses a frequently heard allegation from the left that the reason why right-wing FIDESZ may not be supporting the bill is that they look back on a history of courting Hungarian extreme right-wing voters, and their support for the bill would alienate the party from that constituency. That is, the left argues, FIDESZ will not support an anti-hate speech bill because they are one with the racist extreme right.) The constitution is invoked here as a symbol in relation to which political groups can align themselves with one another without the risk of confusing their affiliation with the political left or political right.

To summarize what has been said above about social organization as a result of discursive adherence to norms, adherence to a given norm can be used to predict a speaker's political affiliation only to a certain extent. In the context of committee sittings, a speaker who supports the bill is likely to be aligned with the Socialists and with left-wing politics. A speaker who rejects the bill is likely to be aligned with any one of the other three parties present, and may support either left or right-wing policies. Only a given speaker's party affiliation can be used to determine their stance on sanctions against hate speech, their stance on hate speech cannot be used to determine their party affiliation.

### Conclusion

Contrary to most field-based studies of the role of hate speech and free expression in society, my study has been descriptive and not prescriptive. Unlike most field-based studies of the communal significance of free expression I have not proposed novel ways of (or reasons for) molding existing legal procedures to communal moral systems or altering those morally infused systems to accommodate universal legal principles. Instead, I have looked at situated communicative practices in the Hungarian political context that had been deployed to create a sensible link, the language of law, between local moral universe and legal practice. First, I examined various meanings-in-use of symbolic "hate speech" and other key symbols such as "violation of human dignity," "freedom of opinion/expression," and "constitution." Next, I distilled a set of conflicting interpretations of the constitution from these relationships, two conflicting models of personhood, and two conflicting norms for sanctioning hate speech. I argued that within political discourse on free expression models of personhood inform communal norms, and these norms inform proposed sanctions against hate speech. Finally, I briefly

discussed options for social organization within the discursive framework of the committee sittings.

The purpose of the above analysis was not to describe an exotic legal system with a quaint mechanism for settling disputes in society. Hungarian reasons for maintaining or curtailing complete freedom of expression probably ring familiar to U.S. American ears accustomed to distinguishing civil libertarian and communitarian arguments surrounding free speech jurisdiction. My point is, rather, that in the Hungarian cultural scene, and in the American scene no less, law-making is intricately tied to cultural conceptions of what it means to be a person, a citizen, and a politician. These meanings are, in turn, mobilized in communication among lawmakers for communicative ends or, more specifically, for creating legal procedures that are in line with their respective worldviews and the moral and political agendas animating those worldviews. Without proper attention to these communicative processes, prescriptive studies of hateful and free expression in society can only further entrench already established arguments for or against First Amendment absolutism. I maintain that the first step toward moving beyond these disagreements is to carefully listen to what communal interpretations of the world advocates of one position or the other rely on to make recommendations regarding legal practice, and how existing legal practice shapes the worldviews of those advocates and their communities. We can look to the language of the law and the communicative process of its construction for these communal interpretations and meanings.

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#### Notes

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<sup>2</sup> Clifford Geertz, "Local knowledge: Fact and law in comparative perspective," *Local Knowledge: Further Essays in Interpretive Anthropology*, New York: Basic Books, 1983, 167-234.

<sup>3</sup> Donald Alexander Downs, *Nazis in Skokie: Freedom, Community, and the First Amendment*, University of Notre Dame Press, 1985.

<sup>4</sup> *Brandenburg*, 395 U.S. 444 (1969).

<sup>5</sup> *Chaplinsky*, 315 U.S. 568 (1942).

<sup>6</sup> *Beauharnais*, 343 U.S. 250 (1952).

<sup>7</sup> Donald Alexander Downs, *Restoring Free Speech and Liberty on Campus*, Cambridge University Press, 2005.

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<sup>8</sup> Geertz, p. 222.

<sup>9</sup> Laura Beth Nielsen, *License to Harass: Law, Hierarchy, and Offensive Public Speech*, Princeton University Press.

<sup>10</sup> Andrew R. Smith and Fadoua Loudiy, "Testing the Red Lines: On the Liberalization of Speech in Morocco," *Human Rights Quarterly* 27, 1069-1119.

<sup>11</sup> I owe this point to Donal Cabaugh (personal communication).

<sup>12</sup> Donal Carbaugh, "Communication Rules in *Donahue* Discourse." In Donal Carbaugh (Ed.), *Cultural Communication and Intercultural Contact*, Hillsdale, NJ: Lawrence Erlbaum Associates, 1990, 119-149.

<sup>13</sup> Kwesi Yankah, *Free Speech in Traditional Society: The Cultural Foundations of Communication in Contemporary Ghana*, Accra: Ghana Universities Press, 1998.

<sup>14</sup> See Dell Hymes, "Models of the Interaction of Language and Social Life." In John J. Gumperz and Dell Hymes (Eds.), *Directions in Sociolinguistics: The Ethnography of Communication*, New York: Holt, Rinehart and Winston, 1972, 35-71. See also Dell Hymes, *Foundations in sociolinguistics: An ethnographic approach*, University of Pennsylvania Press, 1974. See also Dell Hymes, "Ways of Speaking." In Richard Bauman and Joel Sherzer (Eds.), *Explorations in the Ethnography of Speaking*, Cambridge University Press, 1974, 433-451

<sup>15</sup> See Donal Carbaugh, *Cultures in conversation*, Lawrence Erlbaum Associates, 2005. See also Donal Carbaugh, Timothy A. Gibson and Trudy Milburn, "A View of Communication and Culture: Scenes in an Ethnic Cultural Center and a Private College," In Branislav Kovačić (Ed.), *Emerging Theories of Human Communication*, Albany: State University of New York Press, 1997, 1-24.

<sup>16</sup> The transcripts of the sittings are available to the general public through the Library of the Hungarian Parliament.

<sup>17</sup> See Hymes, "Models."

<sup>18</sup> See Carbaugh, "Communication Rules."

<sup>19</sup> See Brad 'J' Hall, "Norms, Action, and Alignment: A Discursive Perspective," *Research on Language and Social Interaction*, 22 (1988/89): 23-44.

<sup>20</sup> "...alapvetően mindenki egyetért abban, hogy tenni kell a gyűlöletbeszéd bármilyenfajta és bárki ellen megnyilvánuló gyakorlata ellen."

<sup>21</sup> Parliamentary Committee Meeting Transcript No. EMB/35/2003.

<sup>22</sup> See Hall, "Norms."

<sup>23</sup> Parliamentary Committee Meeting Transcript No. AIB 38/2003.

<sup>24</sup> "...valóban alkotmányos alapjogok szembe kerüléséről van szó, a véleménynyilvánítás szabadságához való jog kerül szembe az emberi méltósághoz, illetve a kisebbségek jogbiztonságához való való joggal"

<sup>25</sup> Parliamentary Committee Meeting Transcript No. KSB/16/2003

<sup>26</sup> Constitution of the Republic of Hungary. Retrieved on December 30, 2006 from [http://www.oefre.unibe.ch/law/icl/hu000000\\_.html](http://www.oefre.unibe.ch/law/icl/hu000000_.html).

<sup>27</sup> See, for instance, the SZDSZ's mission statement: "...our rights are rooted in our human nature, we do not receive them as a reward for serving the interest of the "community" in proportion to the amount of service we perform. [...] We are fighting for the political rights of the individual." ["...jogaink ember mivoltunkban gyökereznek, s nem a "közösség" javára végzett szolgálat jutalmaként nyerjük el őket a szolgálat arányában. [...] Harcolunk az egyén politikai jogaiért."] (Elvi nyilatkozat [Declaration of principles], 2003)

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<sup>28</sup> “Vannak az alkotmánytisztelők – mi sem a liberálisok közé, sem a rasszisták közé nem tartozunk, mi az alkotmánytisztelők közé tartozunk, ezért nem támogatjuk a javaslatot.”

<sup>29</sup> Parliamentary Committee Meeting Transcript No. AIB 38/2003

Appendix  
The Original Text of Data Segments

*Segment 1*  
*Excerpts from Bill No. T/5179*

A véleménynyilvánítás szabadsága és a szólásszabadság a demokratikus társadalom, a közösségi együttélés alapvető eleme, ugyanakkor e jogok tartalma nem jelentheti azt, hogy e jogokkal visszaélve a szabadságjogokat bárki csorbíthatja.	1 2 3 4
<i>((lines omitted))</i>	5 6
A Javaslat szerinti (2) bekezdés a Btk. 269. §-ának keretein belül biztosítja azon elkövető megbüntetését, aki nagy nyilvánosság előtt az emberi méltóságot azáltal sérti, hogy mást vagy másokat a nemzeti, etnikai, faji, vagy vallási hovatartozás miatt becsmérel vagy megaláz [(2) bekezdés a) pont], illetőleg aki azt állítja, hogy a nemzeti, etnikai, faji vagy vallási hovatartozás alapján valamely személy vagy a személyek egy csoportja alsóbb- vagy felsőbbrendű [(2) bekezdés b) pont].	7 8 9 10 11 12
A Javaslat szerint tehát az emberi méltóságnak a (2) bekezdés a) és b) pontja szerinti megsértése csak akkor büntetendő, ha azt nagy nyilvánosság előtt követik el.	13 14
A „nagy nyilvánosság előtti elkövetés”, illetve az „emberi méltóság megsértése” olyan objektív, külső korlátok, amelyekből adódóan a véleménynyilvánítás szabadságának - mint kiemelt alkotmányjogi védelmet élvező kommunikációs anyajognak - a büntetőjogi eszközökkel történő korlátozása alkotmányos keretek között maradhat.	15 16 17 18
Nem hagyható figyelmen kívül továbbá az sem, hogy a véleménynyilvánítás szabadsága általában mindenféle közlés szabadságát magában foglalja, függetlenül a közlés módjától és értékétől, és többnyire annak valóságtartalmától is.	19 20 21 22
<i>((lines omitted))</i>	23 24
E mellett a büntetőjogi felelősséghez szükséges "az emberi méltóság megsértése" is, amelynek indoka, hogy az elkövető ezzel elvitatja a mindenkit megillető egyenlőség jogát, azt, hogy az alkotmányos jogok teljességét élvezze a támadott csoport vagy személy.	25 26 27
Az emberi méltósághoz való jog alkotmányos alapjog, ezáltal pedig a vélemény szabadsággal konkuráló érték, tehát ennek külső korlátja lehet, különösen azért, mert a köznyugalom megzavarása nagyszámú egyéni jog megsértésének veszélyével fenyeget.	28 29 30

*Segment 2*  
*EMB/31/2003*

Dr. Gábor Fodor (SZDSZ)	Előljáróban szeretném leszögezni, a Szabad Demokraták Szövetségének az az álláspontja - és a hagyományai is arra kötelezik -, hogy a leghatározottabban fel kell lépni a gyűlöletbeszéd és minden olyan magatartás ellen, amely embereket sérthet emberi méltóságukban kisebbséghez való tartozásuk, illetve bármilyen véleményük vagy álláspontjuk miatt. Ez a fellépés kívánatos, sőt véleményünk szerint nem volt elegendő az a fellépés, ami idáig	1 2 3 4 5 6
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Magyarországon történt. Az előttünk fekvő törvényjavaslatról viszont az a	7
véleményünk, alkalmatlan arra, hogy ebben az ügyben segítséget nyújtson és	8
szolgálja azt a fellépési kívánalmat, amit az előbb megfogalmaztam.	9
Azért alkalmatlan erre ez a javaslat, mert itt a véleménynyilvánítás olyan típusú	10
korlátozásáról van szó, ami az előbb hivatkozott alkotmánybíróági döntés és a	11
legfelsőbb bírósági állásfoglalások fényében nem megengedhető.	12
	13
<i>((lines omitted))</i>	14
	15
Egyébiránt pedig jelen pillanatban is fel lehet lépni Magyarországon a	16
gyűlöletbeszéd és minden olyan típusú magatartás ellen, ami a kisebbségek	17
ellen vagy - még egyszer hangsúlyozom - bármiféle emberi méltóság	18
megsértésére irányul. Ehhez a jogi eszközök rendelkezésre állnak.	19
	20
<i>((lines omitted))</i>	21
	22
Az pedig – azt gondolom – nekünk ebben a bizottságban, nekünk megint csak	23
különösen kötelezettségünk, hogy az alapvető véleménynyilvánítás és a	24
gondolat szabadságát semmilyen körülmények között ne engedjük korlátozni,	25
még oly nemesnek tetsző célok érdekében sem.	26

*Excerpts from the Constitution of the Republic of Hungary*

1.

**54. § (1)** A Magyar Köztársaságban minden embernek veleszületett joga van az élethez és az emberi méltósághoz, amelyektől senkit nem lehet önkényesen megfosztani.

2.

**61. § (1)** A Magyar Köztársaságban mindenkinek joga van a szabad véleménynyilvánításra, továbbá arra, hogy a közérdekű adatokat megismerje, illetőleg terjessze.

3.

**70/A. § (1)** A Magyar Köztársaság biztosítja a területén tartózkodó minden személy számára az emberi, illetve az állampolgári jogokat, bármely megkülönböztetés, nevezetesen faj, szín, nem, nyelv, vallás, politikai vagy más vélemény, nemzeti vagy társadalmi származás, vagyoni, születési vagy egyéb helyzet szerinti különbségtétel nélkül.

(2) Az embereknek az (1) bekezdés szerinti bármilyen hátrányos megkülönböztetését a törvény szigorúan bünteti. (A Magyar Köztársaság Alkotmánya, n.d.)