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## Free Speech, Higher Education, and the PC Narrative

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## Article

# Free Speech, Higher Education, and the PC Narrative

Heidi Kitrosser<sup>†</sup>

I.	The First Amendment's Political and Cultural Roles	1993
II.	Campus PC Debates, Then and Now	1998
	A. Methodology in Selecting Press Reports To Review	1998
	B. Campus PC Debates: 1989–1995	2000
	1. Defining PC and Sounding the Alarm	2000
	2. And Yet . . . A Relative Consensus on Formal Speech Restrictions	2003
	3. The Arguments Against Formal Speech Sanctions	2007
	4. Disputes over Informal Pressures	2008
	C. Campus PC Debates: 2014–2016	2013
	1. Major PC Practices, Policies, and Events Cited in the Reports	2014
	2. The Nature of Anti-PC Criticisms	2023
	3. Arguments Made in PC's Defense	2030
	4. Anti-PC Backlash	2034
III.	Reflections on the Campus PC Debate Reports	2036
	A. Putting My Cards on the Table: An Overview of My Own Normative Leanings	2036
	B. Interpreting and Advancing the Discourse	2041
	1. Imprecision, (Dis)agreement, and Political Identity	2041
	2. Advancing the Dialogue in Universities and Beyond	2045

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C. Anti-PC Backlash and Its Implications .....	2052
1. Anti-PC Backlash and Free Speech Theory ...	2052
2. Anti-PC Backlash and Threats to Academic Freedom .....	2053
Conclusion .....	2056
Appendix 1 .....	2058
Appendix 2 .....	2060

The alarms are being sounded. “Political correctness,” warns a recent op-ed in the student newspaper of Western Connecticut State University, “is the censorship by which an increasingly corrupt, authoritarian, and large government seeks to control society and the individual.”<sup>1</sup> That same month, the newspaper of Georgia Southern University quoted the president of the campus branch of Young Americans for Liberty: “I definitely think free speech is being threatened by political correctness. It’s a form of cultural totalitarianism.”<sup>2</sup> These concerns are echoed in campus newspapers around the country.<sup>3</sup> Many baby boomers and gen-Xers, too, are convinced that the kids (and their teachers) are not alright. There is no shortage of recent books, articles, and speeches depicting political correctness as a hostage-taker, and campus free speech its hostage.<sup>4</sup>

1. Victoria Arbour, *Trigger Warning*, ECHO (Apr. 29, 2016), <https://wcsuecho.org/2016/04/29/trigger-warning>.

2. Devin Conway, *#TheChalkening Comes to Georgia Southern*, GEORGE-ANNE (Apr. 21, 2016), [http://www.thegeorgeanne.com/news/article\\_b2176f3b-d910-56ff-930f-2ea9e7350690.html](http://www.thegeorgeanne.com/news/article_b2176f3b-d910-56ff-930f-2ea9e7350690.html).

3. See, e.g., Michael Beato, Opinion, *Political Correctness Limits Free Speech*, INDEP. FLA. ALLIGATOR, Jan. 15, 2015, at 6 (Report A45); David Bordelon, Opinion, *Recent Protests Threaten Free Speech on Campuses*, DAILY TEXAN, Nov. 25, 2015, at 4 (Report A27); John Faulconer, Opinion, *PC Movement Restricts Free Speech*, EAST CAROLINIAN, Dec. 3, 2015, at A7; Andrew Server, Opinion, *This Is: The Triggering*, BRANDING IRON, May 4, 2016, at 4 (Report A53); Peter Wright, *Problematic: The Battle for Free Speech*, HARV. POL. REV. (Dec. 6, 2015), <http://harvardpolitics.com/harvard/problematic-battle-free-speech> (Report A12).

4. See, e.g., GREG LUKIANOFF, UNLEARNING LIBERTY: CAMPUS CENSORSHIP AND THE END OF AMERICAN DEBATE 6 (2014) (“Political correctness has become part of the nervous system of the modern university and it accounts for a large number of the rights violations I have seen over the years.”); Jonathan R. Cole, *The Chilling Effect of Fear at America’s Colleges*, THE ATLANTIC (June 9, 2016), <https://www.theatlantic.com/education/archive/2016/06/the-chilling-effect-of-fear/486338> (“Courage at universities is . . . rare among leaders of institutions pressured by students to act in a politically correct way.”); George Yancey, *Education Dogma*, HETERODOX ACAD. (Sept. 19, 2015), <http://heterodoxacademy.org/2015/09/19/education-dogma> (arguing that colleges that

The concept of political correctness also is quite salient beyond the university context. Many observers attribute Donald Trump's political rise<sup>5</sup> to widespread anger over "the culture of political correctness."<sup>6</sup> Trump has forcefully criticized political correctness on many occasions, including famously in the first Republican primary debate. There, Trump responded to a moderator's question about his past comments disparaging women by suggesting that the question reflected a debilitating hypersensitivity: "I think the big problem this country has is being politically correct . . . I've been challenged by so many people, and I don't frankly have time for political correctness. And to be honest with you, this country doesn't have time either."<sup>7</sup> Nor is frustration with political correctness limited to Trump supporters or Republicans, as reflected in an October 2015 poll by Fairleigh Dickinson University.<sup>8</sup> Sixty-eight percent of the poll's respondents agreed with the statement that "[a] big problem this country has is being politically correct."<sup>9</sup> The sentiment was felt "by 62 percent of Democrats, 68 percent of independents and 81

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fail to challenge a student's ideas reduce him or her "to being a sounding board that regurgitated the latest expression of political correctness").

5. This Article was written predominantly during the summer and early fall of 2016, during the U.S. presidential election campaign but before the election took place. By the time of the election, the Article was in its final editing stages. Suffice it to note that much post-election commentary has echoed this Article's observations to the effect that Donald Trump's supporters were motivated partly by resentment over perceived political correctness. *See, e.g.,* Robby Soave, *Trump Won Because Leftist Political Correctness Inspired a Terrifying Backlash*, REASON.COM (Nov. 9, 2016), <http://reason.com/blog/2016/11/09/trump-won-because-leftist-political-corr>; James Taranto, *Trump vs. Political Correctness*, WALL ST. J. (Nov. 15, 2016), <https://www.wsj.com/articles/trump-vs-political-correctness-1479233123>.

6. Glenn Harlan Reynolds, *Donald Trump Is the Response to a Bullying Culture*, USA TODAY (May 31, 2016), <http://www.usatoday.com/story/opinion/2016/05/31/donald-trump-politically-correct-speech-codes-column/85163810>; *see also* Philip Clark, *Donald Trump: Aided & Abetted by Campus Liberals*, STAN. REV. (May 17, 2016), <https://stanfordreview.org/donald-trump-aided-abetted-by-campus-liberals-6d96ecbdb97c#>; Karen Tumulty & Jenna Johnson, *Why Trump May Be Winning the War on 'Political Correctness'*, WASH. POST (Jan. 4, 2016), [https://www.washingtonpost.com/politics/why-trump-may-be-winning-the-war-on-political-correctness/2016/01/04/098cf832-afda-11e5-b711-1998289ffcea\\_story.html](https://www.washingtonpost.com/politics/why-trump-may-be-winning-the-war-on-political-correctness/2016/01/04/098cf832-afda-11e5-b711-1998289ffcea_story.html).

7. Tumulty & Johnson, *supra* note 6.

8. Fairleigh Dickinson Univ., *Trump Taints America's Views on Political Correctness*, PUBLICMIND POLL (Oct. 30, 2015), <http://view2.fdu.edu/publicmind/2015/151030>.

9. *Id.*

percent of Republicans. Among whites, 72 percent said they felt that way, but so did 61 percent of nonwhites.”<sup>10</sup>

But what exactly does it mean to be “politically correct?” At minimum, the term tends to denote a devotion to recognizing and alleviating the burdens of historically marginalized groups.<sup>11</sup> Yet the term’s disparaging nature—and the sense of anger and frustration that it reflects—stem from something more. Specifically, they derive from the sense that the politically correct are determined to force their agenda on others and that, worse still, they refuse to countenance expressions of dissent.<sup>12</sup> This is why political correctness so often is equated with “censorship,” even “totalitarianism.”<sup>13</sup>

What I call the “PC narrative”—that is, the drumbeat of concerns to the effect that PC stifles speech—frames political correctness as a threat to First Amendment ideals. There have been a handful of (mostly successful) First Amendment cases brought over the years against municipal and campus speech codes targeting hateful speech.<sup>14</sup> Critics deem such codes to

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10. Tumulty & Johnson, *supra* note 6.

11. As noted throughout this Article, there is little consensus as to the meaning of the term. As Smolla and Nimmer put it in their April 2015 update for *Smolla and Nimmer on Freedom of Speech*: “The phrase has come to be a grab bag of sorts to describe what are really clusters of separate issues on modern university campuses . . . .” 2 RODNEY A. SMOLLA, SMOLLA & NIMMER ON FREEDOM OF SPEECH § 17.37 (2015). Nonetheless, as reflected in the four issues that Smolla and Nimmer identify and as illustrated by examples cited throughout this Article, the common denominator among competing definitions seems to be a devotion to recognizing and alleviating the burdens of marginalized groups. *Id.*

12. See, e.g., examples cited *infra* Parts III.B, III.C.

13. See *supra* notes 1 and 2.

14. Most notably, the Supreme Court in *R.A.V. v. City of St. Paul* struck down a municipal anti-hate speech ordinance. 505 U.S. 377 (1992). For more about *R.A.V.*, see *infra* note 71. As for campus speech codes, virtually all codes challenged in courts have been struck down. See Azhar Majeed, *Defying the Constitution: The Rise, Persistence, and Prevalence of Campus Speech Codes*, 7 GEO. J.L. & PUB. POL’Y 481, 484 (2009) (reporting, in 2009, that “every single legal challenge to a speech code to date has been successful”); *id.* at 488–94 (summarizing cases). An arguable exception is a California State University regulation upheld by the Ninth Circuit in April 2016. *O’Brien v. Welty*, 818 F.3d 920, 929–32 (9th Cir. 2016). I call the exception arguable because the regulation purported to be a “conduct” code targeting “physical abuse, threats, intimidation, harassment, or sexual misconduct.” *Id.* at 929. More so, unlike many of the speech codes struck down in previous years, it did not draw viewpoint or subject matter distinctions. *Id.* at 931. Nonetheless, the student challenging the law argued that the regulatory terms were broad enough to cover expression “that is ‘offensive’ but protected under the First Amendment.” *Id.* at 930; see also Will Creeley, *Disappointing Student Speech Ruling from Ninth*

epitomize political correctness. Far more common than litigation, however, is the invoking of the First Amendment or its underlying free speech ideals in public discourse to challenge PC-fueled silencing. Anti-PC rhetoric, more so, frequently is directed against private actors. It also is directed against attitudes and statements deemed hostile to opposing views.<sup>15</sup> Anti-PC critics also target voluntary student or faculty activities—ranging from student protests,<sup>16</sup> to the creation of student “safe spaces,”<sup>17</sup> to professorial uses of “trigger warnings”<sup>18</sup>—that they consider politically correct.

Public appeals to First Amendment ideals—a phenomenon that I call “free speech politics”—are not remotely unusual nor intrinsically wrongheaded, even in settings where no First Amendment litigation could plausibly succeed. At its core, the First Amendment is a set of ideas. These ideas have been developed and conveyed over time in judicial opinions and elsewhere, often through powerful and widely cited prose. More so, many of the ideas—that is, much of the underlying theory of constitutional free speech protections—apply logically in private and public spheres alike. That “one man’s vulgarity is another’s lyric,”<sup>19</sup> for example, can be as compelling a statement against private intolerance as against public punishment for offensive speech. The ideas of the First Amendment and of free speech—even independent of their legal force—thus exert a formidable hold on the American imagination.

This Article takes a close look at one example of free speech politics. Specifically, it examines debates over free speech on college campuses, focusing especially on the use of and pushback against the PC narrative in those debates. These

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*Circuit Threatens Student Journalism*, FOUND. FOR INDIVIDUAL RTS. EDUC. (Apr. 18, 2016), <https://www.thefire.org/disappointing-student-speech-ruling-from-ninth-circuit-threatens-student-journalism> (criticizing the *O’Brien* decision as insufficiently speech-protective).

15. See, e.g., sources cited *infra* notes 99–106 (discussing social pressures against speakers with dissenting views).

16. See sources cited *infra* notes 326–36 (discussing reactions to student protests at the University of Missouri).

17. See sources cited *infra* note 142 (discussing the meaning of and response to safe spaces).

18. See sources cited *infra* notes 297–307 (documenting responses to the University of Chicago’s position regarding trigger warnings).

19. *Cohen v. California*, 403 U.S. 15, 25 (1971) (“[I]t is nevertheless often true that one man’s vulgarity is another’s lyric. . . . [I]t is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.”).

examples are fertile ground on which to dig into the phenomenon of free speech politics. First, the concepts of political correctness and PC silencing on college campuses are discrete enough to enable a focused review. Indeed, the term “political correctness” does not appear to have come into common use until the late 1980s and early 1990s.<sup>20</sup> At the same time, the concepts are hardly isolated or insignificant. To the contrary, they are intertwined with broader cultural phenomena, including the PC narrative in U.S. politics and concerns over academic liberalism dating back to the early twentieth century.<sup>21</sup> Furthermore, the topic of free speech in higher education is particularly layered and complex. It encompasses competing claims of institutional academic freedom, professorial academic freedom, and student free speech rights.

This Article reviews discussions in the press about campus political correctness and free speech during two periods of intense interest in the same. The first is the period from 1989–1995, when the term political correctness first came into popular use and as campus communities, politicians, and the public at large grappled with issues ranging from campus hate-speech codes to social taboos regarding race and gender.<sup>22</sup> The second is the period from 2014–2016, when campus protests, and so-called PC concepts such as “trigger warnings” and “safe spaces” captured public attention.<sup>23</sup> For each of these periods, I examine a sample of fifty to sixty press reports about campus free speech and political correctness. The reports include newspaper and magazine articles as well as television and radio transcripts. The reports from 2014–2016 also include blog posts and campus newspaper articles.

From my review of these reports I conclude, among other things, that there is tremendous imprecision throughout the public discourse. This is especially, though not exclusively, true in statements by anti-PC critics. Many commentators decry political correctness as a threat to free speech but leave unclear whether, by political correctness, they mean campus speech codes, informal social pressures, or something else. Similarly, in the 2014–2016 reports, PC critics refer in mocking but uni-

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20. See sources cited *infra* notes 47–57 (discussing the rise of PC discourse).

21. See sources cited *infra* notes 34–40 (citing longstanding concerns over liberalism on college and university campuses).

22. See *infra* Part II.B.

23. See *infra* Part II.C.

formly vague terms to such phenomena as trigger warnings, safe spaces, and microaggressions. Such imprecision impacts the quality of the debate considerably. Constitutional law professors are fond of saying that the answer to most constitutional law questions is “it depends,” because factual details often matter a great deal in constitutional cases. Substantially different free speech implications are raised, for example, by speech codes imposed by campus administrations than by trigger warnings that a professor voluntarily adopts in class. The tendency to elide these distinctions in public debate can have tangible consequences. For example, public anger over PC—particularly where PC is conflated with pervasive liberalism—can take the form of disgust with the very fact of student protests. In channeling such reactions and purporting to clamp down on PC in the name of free speech, politicians themselves can threaten academic freedom by interfering in university faculty governance.

Not all is bleak, however, in the public discourse. The reports from both time periods also reveal some discursive depth. On occasion, discussants challenge one another to drill down to specifics, and to interrogate preconceived ideas that speech and equality are necessarily in tension. For example, some commentators draw careful distinctions between forms of so-called political correctness that they consider discourse enhancing, such as criticisms by private individuals of racism and sexism, and forms of PC that they deem speech suppressive, such as campus speech codes. The press reports also do us a great favor simply by shedding light on the depth, breadth, and potential consequences of anti-PC backlash in both of the studied time periods.

Part I of this Article expands on the phenomenon of constitutional politics and of First Amendment politics in particular. Part II details my LexisNexis search for press reports from 1989–1995 and from 2014–2016, and breaks down the search’s findings. Part III draws some lessons from those findings.

## I. THE FIRST AMENDMENT’S POLITICAL AND CULTURAL ROLES

Appeals to free speech and First Amendment ideals reverberate far and wide in the United States. Occasionally, such pleas are made in courtrooms. More frequently, however, they are raised not in litigation, but in the court of public opinion. Complainants in this forum invoke free speech as a cultural



touchstone, even where the purported suppression comes from a private actor or for some other reason does not create a cognizable legal claim. The relief sought in such cases is from fellow citizens, whether through social pressure or by lobbying for legislative or administrative action.

As Frederick Schauer puts it, the “cultural pervasiveness of the First Amendment . . . far transcends the existing contours of First Amendment doctrine.”<sup>24</sup> Schauer illustrates the point with several familiar examples:

Journalists couch not only their claims for access, but also much of their entire mission, in First Amendment terms. Academics even at private universities frame their pleas for academic freedom in the language of the First Amendment, just as students at those universities who feel their speech has been restricted make explicit recourse to the First Amendment in articulating their complaints. Librarians see the First Amendment as informing pretty much their complete *raison d’être*, and artists and writers commonly use the First Amendment to frame their complaints against publishers, galleries, and even private museums. In these and countless other domains, a wide range of demands and platforms take on a First Amendment coloring, and not in any way very much connected at all with existing constitutional doctrine.<sup>25</sup>

To some degree, the First Amendment’s cultural ubiquity is of a piece with the larger phenomenon of constitutional politics, or public and political branch engagement with the U.S. Constitution. Constitutional politics itself is an inevitable, even necessary part of a system in which generations of citizens are expected to respect and embrace the parameters that the Constitution imposes on their representatives’ actions.<sup>26</sup> But the

24. Frederick Schauer, *Hohfeld’s First Amendment*, 76 GEO. WASH. L. REV. 914, 921 (2008).

25. *Id.* (footnote omitted). Michael Kent Curtis recounts an especially memorable and moving example of this phenomenon:

[W]hen antislavery minister and newspaper editor Elijah Lovejoy was killed defending his printing press from an anti-abolition mob, a very common refrain in the press and public meetings was that the mob was attacking the fundamental, national, constitutional right to free speech and press. None of this fits with court doctrine then, or even now, because the Court currently holds that the First and Fourteenth Amendments only protect against government action.

Michael Kent Curtis, *Constitutional Law of Speech and Press: Politics, Rhetoric, and Dialogue*, 103 NW. U. L. REV. 1863, 1894–95 (2009) (reviewing ROBERT L. TSAI, *ELOQUENCE & REASON: CREATING A FIRST AMENDMENT CULTURE* (2008)) (footnote omitted).

26. For enlightening discussions of citizen engagement in constitutional politics and interpretation, past and present, see generally JACK M. BALKIN, *CONSTITUTIONAL REDEMPTION: POLITICAL FAITH IN AN UNJUST WORLD* (2011);

First Amendment's cultural influence runs especially wide and deep.

The First Amendment's heightened cultural prominence can be attributed to a number of factors, including the relative accessibility of the Supreme Court's reasoning in major free speech cases<sup>27</sup> and judicial and historical narratives romanticizing free speech.<sup>28</sup> More so, the major judicial and academic rationales for free speech—including the notions that truth has the best chance of prevailing in the metaphorical marketplace of ideas,<sup>29</sup> that free speech is essential to individual autonomy and self-realization,<sup>30</sup> and that free speech cultivates the qualities necessary for democratic citizenship<sup>31</sup>—logically apply even

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BARRY FRIEDMAN, *THE WILL OF THE PEOPLE* (2009) (tracing the relationship between the Supreme Court and the popular will); LARRY D. KRAMER, *THE PEOPLE THEMSELVES* (2004) (discussing founding era engagement with constitutional meaning); PAULINE MAIER, *RATIFICATION* (2010) (discussing the debate and conversations that the public had about the Constitution during the drafting and ratification processes).

27. See, e.g., ROBERT L. TSAI, *ELOQUENCE AND REASON: CREATING A FIRST AMENDMENT CULTURE* 23, 29–40 (2008) (observing that “[e]vocative metaphors abound in First Amendment thought” and that their use in judicial opinions performs a leveling function, making the opinions accessible and engaging for ordinary citizens); cf. LEE C. BOLLINGER, *THE TOLERANT SOCIETY* 134–37 (1986) (suggesting that free speech protections cultivate a popular capacity for tolerance and that judges perform a teaching function through free speech opinions).

28. See, e.g., STEVEN H. SHIFFRIN, *THE FIRST AMENDMENT, DEMOCRACY, AND ROMANCE* 5 (1990) (“America has had a romance with the [F]irst [A]mendment. It regards the [F]irst [A]mendment as an important symbol of what the country means.”); TSAI, *supra* note 27, at 2 (“While the people today adore the First Amendment, their faith was not always so robust. . . . As the Judiciary awakened to its own role, provocative but isolated dissents were converted into soaring declarations of liberty.”); Frederick Schauer, *The Boundaries of the First Amendment: A Preliminary Exploration of Constitutional Salience*, 117 HARV. L. REV. 1765, 1789 (2004) (“Any account of the political, cultural, and economic dynamics of the First Amendment must start with what we can call the First Amendment’s *magnetism*.”).

29. See, e.g., FREDERICK SCHAUER, *FREE SPEECH: A PHILOSOPHICAL ENQUIRY* 15 (1982) (calling the marketplace of ideas theory, or the “argument from truth,” “the predominant and most persevering” of the arguments made to justify free speech); Joseph Blocher, *Institutions in the Marketplace of Ideas*, 57 DUKE L.J. 821, 821 (2008) (“If any area of constitutional law has been defined by a metaphor, the First Amendment is the area, and the ‘marketplace of ideas’ is the metaphor.”).

30. See, e.g., SCHAUER, *supra* note 29, at 67–72 (discussing the “argument from autonomy” for free speech); Martin H. Redish, *The Value of Free Speech*, 130 U. PA. L. REV. 591, 593 (1982) (deeming “self-realization” the “one true value” served by the First Amendment’s free speech guarantee).

31. See, e.g., HARRY KALVEN, JR., *A WORTHY TRADITION: FREEDOM OF SPEECH IN AMERICA* 67 (1988) (arguing that the Supreme Court in a landmark

in settings where the First Amendment does not formally control, such as in private colleges and businesses.<sup>32</sup>

Free speech politics is especially thorny, both analytically and culturally, in the context of higher education. Analytically, colleges and universities house multiple actors with potentially competing free speech claims. Administrations themselves can legitimately claim some degree of institutional academic freedom. Yet where that freedom takes the form of restrictions on professorial speech, it can conflict with credible academic freedom claims by professors. Similarly, plausible student free speech claims may conflict with institutional or faculty pedagogical judgments and such judgments may themselves be grounded in credible appeals to academic freedom.<sup>33</sup>

Academia's maze of potentially competing free speech claims is complicated further by cultural and historical context. For much of the past century, universities have been among the major targets in culture wars between so-called liberal elites and conservatives invoking populist rhetoric.<sup>34</sup> Indeed, much of the American public long has considered academia a hotbed of

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libel case "almost literally incorporated Alexander Meiklejohn's thesis that in a democracy the citizen as ruler is our most important public official"); SCHAUER, *supra* note 29, at 35–40 (referencing the "argument from democracy" for free speech). See generally ALEXANDER MEIKLEJOHN, *FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT* (Lawbook Exch., Ltd 2014) (1948) (developing a democracy-based argument for free speech).

32. It is true that commentators sometimes invoke the First Amendment against private restrictions seemingly by mistake. Yet it is by no means intrinsically mistaken or illogical to criticize private restrictions as inconsistent with the free speech commitments and theories underlying the First Amendment, even while acknowledging that the First Amendment does not technically govern those restrictions.

33. For elaboration on the multiple potential academic freedom and free speech claimants at a university, see, for example, PAUL HORWITZ, *FIRST AMENDMENT INSTITUTIONS* 112–21 (2013); Judith Areen, *Government as Educator: A New Understanding of First Amendment Protection of Academic Freedom and Governance*, 97 GEO. L.J. 945, 947–49, 988–90 (2009); J. Peter Byrne, *Academic Freedom: A "Special Concern of the First Amendment,"* 99 YALE L.J. 251, 254–55, 257–58, 298, 301–12 (1989); Alan K. Chen, *Bureaucracy and Distrust: Germaneness and the Paradoxes of the Academic Freedom Doctrine*, 77 U. COLO. L. REV. 955, 959–63, 969–73 (2006); David M. Rabban, *A Functional Analysis of "Individual" and "Institutional" Academic Freedom Under the First Amendment*, 53 L. & CONTEMP. PROBS. 227, 229–32 (1990).

34. See, e.g., NEIL GROSS, *WHY ARE PROFESSORS LIBERAL AND WHY DO CONSERVATIVES CARE?* 15–16, 223–24, 230–34, 282–85, 292, 296 (2013); ANDREW HARTMAN, *A WAR FOR THE SOUL OF AMERICA: A HISTORY OF THE CULTURE WARS* 222, 249 (2015).

left-wing radicalism.<sup>35</sup> Teachers and administrations have been accused in multiple forums over the years—from the congressional hearings of the 1950s<sup>36</sup> to the online watchdog groups of today<sup>37</sup>—of threatening free speech and free thought by indoctrinating students. Yet such concerns themselves can lead to actions—from the loyalty oath requirements of the mid-twentieth century<sup>38</sup> to present-day state legislative responses to campus protests<sup>39</sup>—that threaten academic freedom.<sup>40</sup>

Today, this chaotic brew of cultural and legal tensions manifests itself in debates over free speech and political correctness on campus. Part II takes a close look at these debates as they played out in popular press reports during two periods of heightened attention to campus political correctness. The

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35. See, e.g., GROSS, *supra* note 34, at 12, 27, 116–17, 134–40, 235–37; HARTMAN, *supra* note 34, at 222.

36. See, e.g., GROSS, *supra* note 34, at 25 (“Historian Ellen Schrecker estimates that ‘almost 20 percent of the witnesses called before congressional and state investigating committees [during the McCarthy era] were college teachers or graduate students.’”).

37. See, e.g., *Keep Us Informed*, CAMPUS WATCH, <http://www.campus-watch.org/incident.php> (last visited Apr. 3, 2017) (inviting reports about Middle Eastern studies classes and scholarship from “students and faculty on North American campuses”); *Mission*, CAMPUS REFORM, <http://www.campusreform.org/about> (last visited Apr. 3, 2017) (calling itself a “watchdog to the nation’s higher education system” that “exposes bias and abuse on . . . college campuses”). Today’s efforts were preceded by William F. Buckley’s mid-1950s call to *National Review* readers to “send him ‘evidence of such nature as will clarify the question whether teachers are engaged in indoctrinating their students.’” Buckley promised that “*National Review* would ‘act as a repository.’” GROSS, *supra* note 34, at 223.

38. See, e.g., *Keyishian v. Bd. of Regents*, 385 U.S. 589, 591–93 (1967) (describing anti-communist pledges and loyalty oaths that State University of New York faculty members were required to take as conditions of employment); *THE FREE SPEECH MOVEMENT: REFLECTIONS ON BERKELEY IN THE 1960S*, at 10 (Robert Cohen & Reginald E. Zelnik eds., 2002) (referring to “an anti-Communist loyalty oath that in 1949 and the early 1950s drove away prominent faculty members and inhibited student activism” at the University of California).

39. See *infra* text accompanying notes 326–37.

40. Indeed, the famed Berkeley Free Speech Movement (FSM) of the 1960s was partly a response to state and university measures against perceived left wing radicalism. The FSM also sparked an anti-radicalism backlash of its own. See, e.g., GROSS, *supra* note 34, at 269–70, 286; *THE FREE SPEECH MOVEMENT*, *supra* note 38, at 10–15. For example, Ronald Reagan “made the restoration of campus order a key component of his campaign” for governor of California. GROSS, *supra* note 34, at 269. Reagan asked: “What in heaven’s name . . . does ‘academic freedom’ have to do with rioting, with anarchy, with attempts to destroy the primary purpose of the university which is to educate our young people?” *Id.* at 270.

first period—1989–1995—marked PC’s debut as a topic of public discourse. The second period—2014–2016—saw renewed attention to PC as unrest over equality and speech spread across college campuses, and as the concept of political correctness played a surprisingly central role in the 2016 presidential election campaign.<sup>41</sup>

## II. CAMPUS PC DEBATES, THEN AND NOW

### A. METHODOLOGY IN SELECTING PRESS REPORTS TO REVIEW

Sections B and C detail my findings from reviewing press reports about campus free speech and political correctness. Section B discusses reports from 1989–1995, and Section C summarizes reports from 2014–2016. I use the term “press reports” or “reports” to refer to both written articles and to transcripts of television and radio programs.<sup>42</sup>

For both time periods, I searched the LexisNexis news database, restricting the search to United States news sources. I used the following Boolean search parameters: (“political correctness” or “politically correct”) & (“free speech” or “first amendment”) & (college or university or campus). For the earlier batch, I did not restrict the search by date. However, the first relevant reports surfaced in 1989.<sup>43</sup> I pulled articles from 1989 through 1995 because—based on pre-existing knowledge from articles, books, and personal memories of the time,<sup>44</sup> as well as from my initial review of the LexisNexis results—that six-year span covers a period of robust and evolving debate over political correctness and free speech on college campuses. For the later batch, I restricted the search time frame to 2014–2016. I chose this time frame in light of the many high-profile

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41. See *supra* note 5 (noting that the election was held as this Article was in its final editing stages and commenting briefly on the outcome).

42. Appendix 1 of this Article lists all reports yielded in the 1989–1995 search. Appendix 2 lists all reports yielded in the 2014–2016 search. In footnotes throughout this Article, I refer to individual reports by the numbers that they are assigned in their respective appendices.

43. By “first relevant reports,” I mean the first reports that met the search criteria and that used the term “political correctness” or “politically correct” in the sense in which it is used today and used throughout this Article. The very first such report was a *New York Times* article from May 5, 1989, entitled: “At Stanford, Leftists Become Censors.” Lee Dembart, *At Stanford, Leftists Become Censors*, N.Y. TIMES, May 5, 1989, at A35 (Report 1).

44. I was, myself, a student, in college (UCLA) and then in law school (Yale), in the early to mid-1990s.

protests and related debates about campus free speech and political correctness that took place within it.

The search with no date restriction was conducted on July 21, 2016, and yielded 8603 results.<sup>45</sup> The date-restricted search—that is, the search using all three parameters but seeking only 2014–2016 articles—was conducted on July 25, 2016. It yielded 3124 reports. In pulling results from both the earlier and later time frames, I sought to balance two goals: compiling relatively random samples and finding highly relevant results. I began by including all four reports from 1989, as they were small in number, and I thought it useful to have all relevant reports from the first year in which campus PC was mentioned in the press. For the remainder of the 1989–1995 batch, I chose LexisNexis’s option to order the results by relevance.<sup>46</sup> I pulled thirty-four reports for 1990–1995 in this manner, not counting duplicates, which I discarded. After this point, however, LexisNexis appeared to revert to chronological ordering, despite remaining on the relevance setting. Because I wished to review a total of fifty-four reports from 1989 to 1995 (that is, fifty reports from 1990 to 1995 plus the four reports yielded for 1989), I pulled the remaining twelve reports by choosing the first two that appeared chronologically for each year from 1990–1995, bypassing duplicates.

For the 2014–2016 batch, I decided to review a total of sixty articles. I reviewed more articles for this batch than for the earlier one for three reasons. First, given technological changes between 1995 and 2014, many more sources were available in the LexisNexis database—including blogs and campus newspapers—for the later dates than for the earlier ones. Second, while the later batch covers fewer years than the earlier batch, the issues raised are more multifaceted and complex in the later batch than in the earlier one. Third, the later batch extends to roughly the present time. As such, I assume that it is of

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45. I was curious to see what a search that left out the parameters (“political correctness” or “politically correct”) would yield. I thus conducted an additional search for reports bounded only by the other two parameters. That search, also conducted on July 21, 2016, yielded 23,809 results. While there is obviously a large difference between the two yields, I find it striking that more than one-third of all articles containing the non-PC search parameters also contained the PC parameters. This suggests the salience of the concept of PC in discussions of campus free speech.

46. For this batch, I drew from the non-date-restricted results but pulled results only through the year 1995.

somewhat greater interest and relevance to readers than the earlier batch.

As with the earlier batch, I discarded those articles from the later batch that were duplicates. Furthermore, given the already mentioned technological changes between 1995 and 2014, many more unhelpful results were yielded in the later batch than in the earlier batch. By “unhelpful,” I mean that the results were either irrelevant to the topic, took the form of bullet-point summaries rather than stories or discussions, were press releases, or were scattershot posts that mentioned the relevant topic only in passing. I discarded all results that I found unhelpful in any of these ways.

Not counting the discarded results, I came up with seventeen reports using LexisNexis’ option to order the documents by relevance. After yielding those seventeen results, LexisNexis again appeared to default to chronological ordering, despite remaining on the relevance setting. I thus switched to another method to come up with the remaining forty-three articles: I chose the thirty-two that were chronologically latest in the year from 2015, and the chronologically latest eleven from 2016, again sifting out duplicate or otherwise unhelpful results. I chose to pull those forty-three articles mostly from 2015, with a smaller amount from 2016 and none from 2014, because 2015 was a particularly active time for campus protests and debates over political correctness, with spillover into 2016.

This Article’s two appendices list all of the reports from the final yields for both time periods. Appendix 1 lists the fifty-four reports yielded for the period from 1989–1995. Appendix 2 lists the sixty reports yielded for the period from 2014–2016. Throughout the remainder of this Article, the reports are referenced in footnotes by the numbers that they are assigned in their respective appendices.

## B. CAMPUS PC DEBATES: 1989–1995

### 1. Defining PC and Sounding the Alarm

From the outset, the discussions reflected the malleability of the terms political correctness, politically correct, and PC. Some reports used them as synecdoche to reference some concrete manifestation of PC, such as speech codes.<sup>47</sup> Others used

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47. See, e.g., Myriam Marquez, Editorial, *Extremism, “Politically Correct” or Not, Is Dividing Americans*, ORLANDO SENTINEL, Oct. 25, 1991, at A16 (Re-

them more amorphously, to signify any number of practices or attitudes ranging from speech codes to multicultural programs to left-wing views.<sup>48</sup>

Despite this ambiguity, two aspects of the terms' uses were consistent. First, they were overwhelmingly wielded and understood as terms of disparagement. Certainly, political correctness had its defenders. But they, too, understood that the phrase typically was employed mockingly. Second, PC's detractors—whether characterizing PC as a force that operated through formal sanctions, through informal pressures, or in the form of pervasive liberalism—depicted PC as a threat to free speech. These attributes of the discourse are reflected in a transcript from a 1991 broadcast of the ABC News program *This Week*.<sup>49</sup> Preceding a roundtable discussion on campus political correctness, a reporter references “a new sort of political fundamentalism emerging on campus. For lack of a better phrase, it's called ‘political correctness,’ intellectual conformity sometimes enforced by intimidation.”<sup>50</sup> The voiceover itself follows footage of President George H.W. Bush's commencement speech earlier that week to undergraduates at the University of

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port 18) (equating “the political correctness movement” with the rise of campus speech codes); John Peter Pham, Editorial, *Double Standard on Campus Speech*, ST. LOUIS POST-DISPATCH, Sept. 12, 1989, at 3B (Report 3) (citing formal administrative sanctions, which ration “free speech . . . according to political correctness”); Katharine Shaver, *Congress Examines Appropriateness of Universities' Hate Speech Codes*, STS. NEWS SERV., Sept. 10, 1992 (Report 26) (referencing political correctness solely in terms of campus speech codes).

48. See, e.g., Katharine T. Bartlett, *Counterpoint: Some Factual Correctness About Political Correctness*, WALL ST. J., June 6, 1991, at A19 (Report 16) (defending political correctness and noting that its critics' targets include left-wing views, social pressure, and multicultural course offerings); Dinesh D'Souza, *Cap and Goon; Facing up to the New Intolerance on Campus*, WASH. POST, Apr. 7, 1991, at D1 (Report 9) (referring to the enforcement of “politically correct orthodoxies, either through regulations or through social pressure”); Bill Marvel & Barbara Kessler, *Political Correctness: Cultural War over Speech, Symbols*, BUFF. NEWS, May 8, 1994, at F7 (Report 45) (“[C]ritics of political correctness say campus speech codes, affirmative action programs and multicultural requirements are being used to stifle discussion and dissent . . .”). Some commentators refer explicitly to the terms' malleability. See, e.g., Paul Levy, *The ABCs of PC*, STAR TRIB., July 25, 1993, at 1E (Report 35) (citing shifting understandings of the terms); Jefferson Morley, *A P.C. Guide to Political Correctness*, WASH. POST, Jan. 15, 1995, at C1 (Report 50) (explaining various definitions of political correctness).

49. *This Week with David Brinkley* (ABC News television broadcast May 5, 1991) (Report 11) (transcript available on LexisNexis).

50. *Id.*



Michigan.<sup>51</sup> In his speech, President Bush declared that “the notion of political correctness has ignited controversy across the land. . . . What began as a crusade for civility has soured into a cause of conflict and even censorship.”<sup>52</sup>

Others echoed the theme that political correctness trades free thought for mindless indoctrination. They cautioned that this state of affairs undermines the mission of higher education. For example, in a “model commencement address” commissioned by the Heritage Foundation in 1990, the president of the Intercollegiate Studies Institute told graduates that “you, your parents, and the American taxpayer have just financed a four-year collegiate assault on everything you thought American society stood for. . . . More and more, students are under pressure from administrators and faculty to adopt politically correct opinions, language, and behavior.”<sup>53</sup> The following year, author Dinesh D’Souza, whose anti-political correctness tome, *Illiberal Education*, spent fifteen weeks on the *New York Times* bestseller list in 1991,<sup>54</sup> wrote in the *Washington Post* that “university leaders have created a sham community where serious and honest discussion is frequently drowned out by a combination of sloganeering, posturing and intimidation.”<sup>55</sup>

Critics of political correctness also blamed it for causing a backlash against social justice efforts. In 1994, Robert Brustein, a Harvard English professor and the artistic director of the American Repertory Theatre, wrote in the *Chicago Tribune* that a “silent majority . . . is either suffering compassion fatigue or preparing a violent backlash. (The white supremacist plot for a race war in Los Angeles may be a harbinger.)”<sup>56</sup> Adding a slightly hopeful, if still chilling note, Brustein observed that “[t]he growing library of books on PC suggest that liberals

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51. *Id.*

52. George H.W. Bush, 43rd President of the U.S., Remarks at the University of Michigan Commencement Ceremony (May 4, 1991), <http://www.presidency.ucsb.edu/ws/?pid=19546>.

53. T. Kenneth Cribb, *A Patrimony Recovered: A Model Commencement Address*, EDUC. UPDATE, Spring 1990, at 1 (Report 5).

54. See Dinesh D’Souza, *My Biography*, D’SOUZA, <http://www.dineshdsouza.com/about> (last visited Apr. 3, 2017). See generally DINESH D’SOUZA, *ILLIBERAL EDUCATION: THE POLITICS OF RACE AND SEX ON CAMPUS* (1991) (discussing political correctness in colleges and universities).

55. D’Souza, *supra* note 48.

56. Robert Brustein, *What Price Correctness?*, CHI. TRIB. (Jan. 16, 1994), [http://articles.chicagotribune.com/1994-01-16/features/9401160423\\_1\\_political-correctness-cultural-illiberal-education](http://articles.chicagotribune.com/1994-01-16/features/9401160423_1_political-correctness-cultural-illiberal-education) (Report 40).

may at last be awakening from their long slumber. It is incumbent on us now to spur the liberal imagination further before the darker forces in our society initiate a reaction that none of us wants.”<sup>57</sup>

Bolstering Brustein’s warning of backlash, some commentators attributed the growing prominence of Holocaust denialism in the 1990s partly to political correctness. As one author wrote in the *New York Times* in 1993, “Holocaust deniers exploit the backlash against political correctness, using arguments about free speech and First Amendment rights to have their material aired [in college newspapers]. . . . [T]hey petition for equal time under the guise of promoting free inquiry,” depicting Holocaust denialism as just another viewpoint that deserves to be debated on campus.<sup>58</sup>

## 2. And Yet . . . A Relative Consensus on Formal Speech Restrictions

One of the most striking aspects of the reports is the relative consensus that they reflect over formal speech restrictions. By formal restrictions, I refer to speech restrictions imposed by a college administration or some other centralized administrative or state authority, and backed up by the possibility of sanctions. In this early batch of articles, formal restrictions most often mean centrally imposed speech codes or their enforcement.

Of twenty-five articles in which the author or co-authors express a view of formal restrictions, zero express support for them.<sup>59</sup> A somewhat broader range of positions is represented

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57. *Id.*

58. Michiko Kakutani, *Critics Notebook: When History Is a Casualty*, N.Y. TIMES, Apr. 30, 1993, at C1 (Report 31). More precisely, commentators argued that the backlash against PC restrictions, combined with another feature linked to political correctness—a tendency to question the reliability of objective truth claims—created an environment in which Holocaust revisionism could flourish. *Id.*; see also Julia Neuberger, *A Brief History of the Wickedest Lie of All*, TIMES, May 4, 1995 (Report 52). One critic explained, for example, that some campus newspapers defended publishing a Holocaust denial ad by arguing that it was not their place to censor opinions with which they disagree. In this, says the critic, “[i]t appeared that students could not tell the difference between opinion and fact. The lesson of deconstructionism in academic life, half understood by so many, was that all opinions were valid.” *Id.* To prevent an opinion from being debated would be to give in to political correctness.

59. See Jonathan Chait, *Backfire on Campus*, AM. PROSPECT, Summer 1995, at 44 (Report 53); Cribb, *supra* note 53; Patrick M. Garry, *Censorship by the Free-Speech Generation*, NAT’L F., Spring 1995, at 29 (Report 51); Brustein, *supra* note 56; L. Gordon Crovitz, *Henry Hyde and the ACLU Propose a Fate*

in articles that deliberately report on multiple views and in transcripts of television programs featuring panel discussions. Even in these cases, however, expressed differences between “pro-PC” and “anti-PC” voices are surprisingly small when it comes to formal speech restrictions. Indeed, the two sides nearly converge in these discussions, with both suggesting that formal restrictions might be appropriate in very extreme cases of targeted racial harassment. They disagree mostly about the extent to which such extreme cases actually happen and constitute problems to which resources should be devoted.

For instance, a 1991 episode of the CNN program *Crossfire* featured panelists including Dinesh D’Souza and Barbara Ransby, then a PhD student at the University of Michigan and the co-founder of the United Coalition Against Racism.<sup>60</sup> According to Ransby, “[S]tudent activists . . . are not saying that people shouldn’t say what’s on their minds. What we are saying

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*Worse than PCness*, WALL ST. J., May 1, 1991, at A15 (Report 10); Dembart, *supra* note 43; Lyle Denniston, *Speaking of Suppression, a Few Words About Unorthodox Thought*, BALT. SUN, Jan. 2, 1994, at 6E (Report 38); D’Souza, *supra* note 48; Editorial, *Victories in the Campus Wars*, WALL ST. J., Jan. 3, 1992, at A6 (Report 19); Rowland Evans & Robert Novak, *Shalala Belies Clinton Centrist Image*, CHI. SUN-TIMES, Jan. 8, 1993, at 35 (Report 28); Suzanne Fields, *Pendulum of Political Correctness Swinging Back To Favor First Amendment*, SUN-SENTINEL (Jan. 7, 1994), [http://articles.sun-sentinel.com/1994-01-07/news/9401060258\\_1\\_free-speech-first-amendment-fraternity](http://articles.sun-sentinel.com/1994-01-07/news/9401060258_1_free-speech-first-amendment-fraternity) (Report 39); Paul Greenberg, Editorial, *Campuses Don’t Need a Separate “First Amendment,”* SEATTLE POST-INTELLIGENCER, May 10, 1991, at A11 (Report 12); Daniel Harris, *Whose Culture Is It Anyway?*, L.A. TIMES, Mar. 1, 1992, at 3 (Report 23) (reviewing PAUL BERMAN, *DEBATING P.C.: THE CONTROVERSY OVER POLITICAL CORRECTNESS ON COLLEGE CAMPUSES* (1992)); Nat Hentoff, *Free Speech and Farrakhan*, WASH. POST, Jan. 5, 1991, at A23 (Report 7); Nat Hentoff, *Sombrero Scrap*, WASH. POST, Jan. 1, 1994, at A23 (Report 37); Don Horine, *UF Student: It’s Incorrect To Be ‘Politically Correct’ on Campus*, PALM BEACH POST, Jan. 24, 1994, at 1A (Report 41); Russell Jacoby, *Away with Words! Why the Language Police Flourish in Our Violent Society*, WASH. POST, Feb. 27, 1994, at C5 (Report 44); Frank Kermode, *Whose History Is Bunk?*, N.Y. TIMES, Feb. 23, 1992, at A3 (Report 22); John Leo, *The Class That Deserves Cutting*, U.S. NEWS & WORLD REP., May 29, 1989, at 58 (Report 2); Marvel & Kessler, *supra* note 48; Morley, *supra* note 48; Pham, *supra* note 47; Barry Siegel, *Fighting Words: It Seemed Like a Noble Idea—Regulating Hateful Language. But When the University of Wisconsin Tried, Its Good Intentions Collided with the First Amendment*, L.A. TIMES (Mar. 28, 1993), [http://articles.latimes.com/1993-03-28/magazine/tm-15949\\_1\\_fighting-word](http://articles.latimes.com/1993-03-28/magazine/tm-15949_1_fighting-word) (Report 29); S. Frederick Starr, *The Right To Hear and Be Heard*, WASH. POST EDUC. REV., Nov. 19, 1989, at R1 (Report 4); *CNN News: Free Speech Movement Anniversary Hailed in Berkeley* (CNN television broadcast Dec. 3, 1994) (Report 48) (transcript available on LexisNexis).

60. *CNN Crossfire* (CNN television broadcast May 22, 1991) (Report 14) (transcript available on LexisNexis).

is that harassment, intimidation, threats toward particular oppressed racial groups should not be tolerated.”<sup>61</sup> D’Souza responds that he is “not a First Amendment absolutist” who would “say that one should be able to say anything anywhere anytime.”<sup>62</sup> Referencing the example of a student who was expelled from Brown University for yelling epithets in a quad in the middle of the night, D’Souza explained that, while he would not have expelled the student, he “would have imposed some sanction.”<sup>63</sup> D’Souza’s main dispute, however, was with the notion that the Brown episode signified some broader problem. “There is no epidemic on American campuses of hundreds of thousands of students yelling, ‘Nigger’ at each other. The real problem is that there are a whole set of double standards [about speech] that have become institutionalized.”<sup>64</sup> Former Reagan administration Education Secretary William Bennett similarly suggested on a 1991 episode of ABC’s *This Week* that it might be reasonable to punish a student for an extreme “ethnic insult,” but “that’s not really the point.”<sup>65</sup> Bennett proceeded to agree with George Will, who intervened to suggest that “the real problem in universities now [is] that an insult comes in the form of a deviation from a political agenda.”<sup>66</sup>

Apart from conveying writers’ and panelists’ own views, several reports cited widespread skepticism toward formal speech restrictions by the public, the media, and by college students, faculty, and staff. Reporters credited this skepticism, along with mounting judicial defeats, for the repeal of many codes over time. For example, a 1993 *Los Angeles Times* article chronicled the long and winding history of the University of Wisconsin’s hate speech code.<sup>67</sup> In 1991, a federal district court invalidated the first version of the code for violating the First Amendment.<sup>68</sup> The university itself repealed the second version in 1992.<sup>69</sup> The university’s repeal was partly in response to the U.S. Supreme Court’s decision that same year in *R.A.V. v. St.*

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61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *This Week with David Brinkley*, *supra* note 49.

66. *Id.*

67. Siegel, *supra* note 59.

68. *Id.*

69. *Id.*

*Paul*.<sup>70</sup> *R.A.V.* imposed significant limits on authorities' discretion to punish speech for conveying racist, sexist, or otherwise discriminatory or hateful viewpoints.<sup>71</sup> Yet the university also was reacting to political factors. The *Los Angeles Times* article reports that the code had few friends left by the time of its repeal, even among its initial supporters and architects.<sup>72</sup>

Also in 1993, a *Washington Post* article reported that the University of Pennsylvania had repealed its own speech code after the code became "a lightning rod . . . for a national debate over political correctness and free speech on college campuses."<sup>73</sup> Similarly, a 1992 column in the *Wall Street Journal* cited new anti-PC measures at several schools, including academic freedom guidelines at Drake University "opposing any university regulation that would prohibit any form of speech or communication in the classroom, however offensive."<sup>74</sup> The column attributed such developments to the public's increasing opposition to political correctness. "For more than a year now Americans have received a higher education in the pathology known as Political Correctness. Books and press accounts gave tutorials on how PCness taints citadels of free thought with political indoctrination masquerading as education."<sup>75</sup> A 1994 report on *National Public Radio* sums up public response to formal sanctions as follows: "PC backfired" when it "made the leap from pure ideology to policy with enforcement teeth."<sup>76</sup> At that point, "powerful critics on the right and the left assailed the movement as a threat to First Amendment rights."<sup>77</sup>

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70. *R.A.V. v. St. Paul*, 505 U.S. 377 (1992).

71. *Id.* at 386–87 (holding that laws could not single out only hateful or otherwise undesirable viewpoints for punishment, even where the laws only punished "unprotected" categories of speech, such as threats or fighting words). For example, although the city of St. Paul would have been free to pass an ordinance banning all fighting words, it could not pass an ordinance banning only those fighting words "arous[ing] anger, alarm or resentment in others . . . on the basis of race, color, creed, religion or gender." *Id.* at 391; see also Heidi Kitrosser, *Containing Unprotected Speech*, 57 FLA. L. REV. 843, 845–46 (2005) (summarizing the Court's approach in *R.A.V.*).

72. Siegel, *supra* note 59. For more on the code's loss of popularity and the reasons therefor, see *infra* text accompanying notes 87–95.

73. Dale Russakoff, *Penn Is Abandoning Speech Code*, WASH. POST, Nov. 17, 1993, at A1 (Report 36).

74. *Victories in the Campus Wars*, *supra* note 59.

75. *Id.*

76. *American Culture Wars—Part 5* (NPR: All Things Considered, May 11, 1994) (Report 46) (transcript available on LexisNexis).

77. *Id.*

### 3. The Arguments Against Formal Speech Sanctions

Among the many objections to formal speech sanctions, a few key points emerge. Most fundamentally, critics warned that it is dangerous to empower administrators to punish speech.<sup>78</sup> This is especially so in the context of higher education, because campuses ought to be “bastion[s] of free inquiry and exchange.”<sup>79</sup> Critics also argued that speech codes at best are useless<sup>80</sup> and at worst generate a backlash.<sup>81</sup>

Jonathan Chait developed the backlash thesis at length in a 1995 article in the *American Prospect*.<sup>82</sup> He argued that campus speech codes and related controversies “ended up energizing a new generation of conservatives.”<sup>83</sup> Chait used the University of Michigan, from which he had graduated the previous year, as a case study.<sup>84</sup> Referencing the *Michigan Review*, “a conservative monthly founded in 1982 with money from right-leaning foundations,”<sup>85</sup> he observed that:

The *Review* in the late '80s and early '90s alternated between thoughtful arguments opposing the new censorship and hard right, in-your-face, Rush Limbaugh-style mockery that sometimes was, in fact, racist and sexist. But when campus leftists criticized the *Review* for its dalliances with bigotry, conservatives shrugged. . . . Most students believed that racism existed, but they came to see it primarily as a political label rather than as a social malady.<sup>86</sup>

The 1993 *Los Angeles Times* article chronicling the fate of the University of Wisconsin's speech code offered another sobering tale, this one of tortured drafting and implementation as

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78. See, e.g., Dembart, *supra* note 59; Garry, *supra* note 59; Greenberg, *supra* note 59; Pham, *supra* note 47.

79. Pham, *supra* note 47; see also Garry, *supra* note 59; Greenberg, *supra* note 59.

80. See, e.g., Denniston, *supra* note 59 (“[S]tate-enforced orthodoxy always has been doomed.”); Harris, *supra* note 59 (“Draconian measures have ensured the introversion, rather than the control and eventual elimination, of ethnic tension.”).

81. See, e.g., Chait, *supra* note 59 (explaining that the University of Michigan's speech code and underlying movement generated a backlash against liberalism and racial justice activism); Kermodé, *supra* note 59 (“Forbidden language may be dangerously attractive simply because it is forbidden.”); Marquez, *supra* note 47 (“[M]andating a PC code . . . puts people on the defensive.”).

82. Chait, *supra* note 59.

83. *Id.*

84. *Id.*

85. *Id.* at 47.

86. *Id.*

well as backlash.<sup>87</sup> Reporter Barry Siegel spoke with several administrators, students, and other insiders from the roughly four years, 1988–1992, between early stirrings of support for the code and its repeal. Siegel found that “a majority of the UW community now agrees that the hate-speech code just didn’t work.”<sup>88</sup> The main problem cited throughout the piece was the difficulty that administrators faced in implementing the code.<sup>89</sup> Associate Dean Roger Howard, initially a strong supporter of the code, lamented that “[p]eople expected the law to cover a much broader range of life’s ordinary insults than it did. . . . People instinctively felt they knew what ‘hate speech’ was. That the law had high hurdles was missed.”<sup>90</sup> While Howard, who worked on the Madison campus, dismissed all of the complaints that he investigated, similar complaints led to sanctions on other campuses.<sup>91</sup> Indeed, a law professor who had helped to draft the code acknowledged that the ACLU was on solid ground when they sued the university over it. “In terms of the code’s application, they had a hell of a case . . . . Any court reading those applications would conclude that the law was no good.”<sup>92</sup> The article also identified another, ironic consequence of drafting difficulties: “The UW hate-speech code would never have prohibited or punished any of the racist incidents that led to its creation.”<sup>93</sup>

Siegel also cited problems of backlash and resource diversion. The code, he observed, “had made First Amendment martyrs out of drunken yahoos.”<sup>94</sup> He added that, even among initial supporters of the code, “many . . . in Madison have come to believe that focusing on a symbol served mainly to distract attention from the more important remedies contained in the Madison Plan and Design for Diversity.”<sup>95</sup>

#### 4. Disputes over Informal Pressures

Despite broad agreement on formal speech sanctions, passionate disputes about political correctness remained. One can

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87. Siegel, *supra* note 59.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

be forgiven for wondering what all of the fuss was about, if not formal restrictions. Some of the debates were fairly abstract ones about vaguely articulated notions of political correctness. This is unsurprising in light of the term's malleability. Indeed, linguistics professor Robin Lakeoff noted in 1994 that "PC is really a proxy fight over the whole issue of racial and cultural pluralism in America."<sup>96</sup> Still other disputes focused on specific university practices and proposals apart from speech restrictions, including multicultural programs.<sup>97</sup>

Most disagreements over political correctness, however, appeared to come down to differences over whether politically correct attitudes chilled speech through informal social pressures, and if so, whether this was a bad thing. Critics argued that political correctness stifled discussion about important social issues involving race and gender, leading students and faculty to walk on eggshells. They pointed to examples of professors who were "pilloried" for using racial epithets in class for pedagogical purposes,<sup>98</sup> or who were too afraid to cast votes on university speech code or multiculturalism proposals.<sup>99</sup> A 1989 article in *U.S. News and World Report* stated that at both the University of Michigan and the University of California, Berkeley, "[a]bout three quarters of the faculty . . . failed to vote" on curricular proposals involving race. "[S]ome of [the faculty,] at

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96. *American Culture Wars—Part 5*, *supra* note 76.

97. See, e.g., Bartlett, *supra* note 48 (arguing that all curricular choices have political content, and therefore it is disingenuous to "pretend that only feminist and minority-studies courses have political content"); Brustein, *supra* note 56 (criticizing "increased demands for new departments . . . extending to virtually every 'oppressed' minority in the land" and "multiculturalism" for leading to "isolated enclaves and polarized constituencies"); Horine, *supra* note 59 (citing University of Florida (UF) graduate student's criticism of UF and Florida State University course requirements for favoring non-Western cultures); Leo, *supra* note 59 (criticizing proposals for mandatory courses "on the evils of racism"); *CNN Crossfire*, *supra* note 60 (statement of Barbara Ransby, professor at the University of Michigan) (arguing that curricular changes do not "necessarily replace one thing with another but . . . correct some of the biases of the past"); *This Week with David Brinkley*, *supra* note 49 (statement of Dinesh D'Souza, author of "Illiberal Education") (lamenting that academic disciplines are "splintering . . . along race and gender lines"); *id.* (Chang-Lin Tien, C. at University of California at Berkeley) (defending new "American Culture" requirement as a means to "broaden" and "enrich" existing requirements).

98. Leo, *supra* note 59; *cf.* *This Week with David Brinkley*, *supra* note 49 (citing an example of a Harvard professor who "was hounded and dropped his standard undergraduate course after campus radicals accused him of racism for using the word 'Indian'").

99. Leo, *supra* note 59.



least, [were] unwilling to be shouted down as racists for voting no.”<sup>100</sup>

Critics also pointed to bullying and self-censorship among students. For example, a 1995 NPR report about the University of Massachusetts at Amherst cited a graduate student’s view that “an unwritten code of political correctness on campus has led to a climate of self-censorship on many subjects, including race.”<sup>101</sup> The student explained that “nobody wants to be labeled as—as something, you know? Somebody suggests that, for example, that there’s a higher rate of poverty among blacks in the inner cities and that person’s immediately called a racist.”<sup>102</sup> A 1993 article in the Minneapolis *Star Tribune* reported similar observations from several local professors and administrators.<sup>103</sup> For example, Macalester College’s treasurer expressed concern that conservative students may “feel very intimidated” in classes dominated by liberal students.<sup>104</sup> He added that “where colleges once encouraged debate, now we hear too many frightening stories about political correctness.”<sup>105</sup>

More alarming were reports of speech suppression tactics that were not formally imposed, but that went well beyond social pressure. These included efforts to shout down or physically intimidate campus speakers.<sup>106</sup> They also included the trashing of campus newspapers by students upset over coverage of race and other politically charged topics.<sup>107</sup>

PC’s defenders responded that such extreme occurrences—such as speaker shout-downs, campus newspaper trashings, or aggressive bullying—were few and far between and did not represent most people or groups associated with political correctness. As a *New York Times* columnist put it in 1991, “The enemies of PC . . . recycl[e] a handful of supposedly shocking anecdotes about alleged close-mindedness on a few purportedly radicalized campuses.”<sup>108</sup> The columnist added that “[t]he anec-

100. *Id.*

101. *University of Massachusetts Installs Stiff Speech Code* (NPR: Morning Edition, Dec. 5, 1995) (Report 54) (transcript available on LexisNexis).

102. *Id.*

103. Levy, *supra* note 48.

104. *Id.*

105. *Id.* at 3E.

106. See, e.g., D’Souza, *supra* note 48; *Victories in the Campus Wars*, *supra* note 59.

107. See, e.g., Horine, *supra* note 59; Levy, *supra* note 48; Marvel & Kessler, *supra* note 48.

108. Joel Conarroe, *How I’m PC*, N.Y. TIMES, July 12, 1991, at A29 (Report

dots on the other side of this issue . . . are more numerous and more troubling.”<sup>109</sup> Even those writers who cited speaker shout-downs acknowledged counter-examples, including the writers’ own successful campus speaking engagements and calls from students, campus press, and school administrations to enable invited speakers to speak.<sup>110</sup>

PC’s defenders argued that so-called PC types in fact are trying to expand, rather than to contract campus dialogue about difficult issues. As a Duke University law professor put it in a 1991 *Wall Street Journal* column, “Most of us who have been labeled ‘PC’ are not seeking special favors. We are not trying to stifle debate. We are trying to begin one—a difficult one that challenges perspectives that are taken for granted in the university and in society.”<sup>111</sup> Another columnist, writing that same year in the *Atlanta Journal and Constitution*, situated debates about PC within a grand intellectual tradition. He wrote that “[f]rom the days of Rousseau and Locke down to the present, Western social thinkers have been preoccupied with the tension between liberty and community.”<sup>112</sup> He then asked, rhetorically, “Are our colleges forcing students to sell their free-speech birthright for a mess of cultural pottage? Don’t be fooled. They’re just engaged in one of the great old debates of the Western intellectual tradition.”<sup>113</sup>

In fact, several commentators argued that anti-PC criticism itself is a tactic used to silence opponents. For example, Guggenheim Foundation President Joel Conarroe wrote in a 1991 *New York Times* column that “[t]he phrase ‘politically correct,’ at least when used as an epithet, has become a lethal weapon for silencing anyone whose ideas you don’t like. To end an argument before it has even begun, one need only cry ‘PC!’”<sup>114</sup> Author Ismael Reed made the same point on National

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17); see also Marvel & Kessler, *supra* note 48 (quoting Southern Methodist University professor’s view that PC’s “aberrations are getting coverage”).

109. Conarroe, *supra* note 108.

110. See D’Souza, *supra* note 48, at D1, D4; Hentoff, *supra* note 59; *Victories in the Campus Wars*, *supra* note 59.

111. Bartlett, *supra* note 48.

112. Mark Silk, *PC Scare Revives an Old Debate*, ATLANTA J. & CONST., Jan. 10, 1991, at A15 (Report 8).

113. *Id.*; see also CNN *Crossfire*, *supra* note 60 (statement of Barbara Ransby, professor at the University of Michigan) (“[S]tudent anti racist activists have escalated the dialogue in contrast to what’s being alleged, you know, that we have suppressed the dialogue.”).

114. Conarroe, *supra* note 108.

Public Radio in 1994, saying that the term “[p]olitical correctness . . . has been used . . . to cut off debate” and to “dispos[e] of the question without ever examining the merits of the issue.”<sup>115</sup>

Indeed, PC’s defenders argued that their opponents attempt not only to inoculate racism and sexism from criticism, but to celebrate them as brave displays of freedom. For example, Conarroe remarked in his 1991 *New York Times* column: “Educated individuals used to feel a bit uneasy about racist, sexist and homophobic remarks, but now such comments are apparently beyond reproach and are even tolerated . . . as a matter of high principle: civil liberties for the politically dominant.”<sup>116</sup>

Finally, some commentators explicitly drew a line between the dialogue and civility that political correctness at its best can foster, and the censorship of ideas, which they agreed should be verboten. First Lady Hillary Clinton emphasized this distinction in a 1993 commencement speech at the University of Pennsylvania. Like President George H.W. Bush’s commencement speech two years earlier,<sup>117</sup> Clinton’s speech was widely reported as sounding a cautionary note against excessive political correctness.<sup>118</sup> Unlike Bush, however, Clinton focused not only on the evils of speech restraints, but also on the benefits of productive criticism and dialogue. She acknowledged “distress [over] any acts of hate, hateful acts, hateful words, hateful incidents that occur too frequently today in our com-

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115. *American Culture Wars—Part 5*, *supra* note 76 (statement of William Drummond, reporter); *see also* Levy, *supra* note 48, at 3E (quoting Peter Bell, chairman of the American Experiment, as stating, “So often, if you label somebody as being PC, it is a box they cannot escape. It’s like labeling a racist. . . . Those labels don’t facilitate discussion, they often stop it”).

116. Conarroe, *supra* note 108; *see also* *CNN News: Free Speech Movement Anniversary Hailed in Berkeley*, *supra* note 59 (statement of Jackie Goldberg) (“When they say that you’re speaking politically correct, it’s usually done – in my context – of the right wing trying to say that it’s OK to be racist, it’s OK to be sexist, it’s OK to be homophobic.”).

117. *See* Bush, *supra* note 52.

118. *See, e.g.*, Jill Lawrence, *Hillary Clinton in Healing Address*, PITT. POST-GAZETTE, May 18, 1993, at B-7 (Report 33); *First Lady Addresses University of Pennsylvania Grads* (NPR: Morning Edition, May 18, 1993) (Report 32) (transcript available on LexisNexis). Unlike Bush’s commencement speech, however, Hillary Clinton’s speech did not explicitly name “political correctness.” Hillary Rodham Clinton, First Lady of the U.S., Remarks at the University of Pennsylvania Commencement (May 17, 1993), [https://clinton5.nara.gov/WH/EOP/First\\_Lady/other/1993-05-17-first-lady-remarks-at-the-university-of-pennsylvania-commencement.html](https://clinton5.nara.gov/WH/EOP/First_Lady/other/1993-05-17-first-lady-remarks-at-the-university-of-pennsylvania-commencement.html).

munities and even on our college campuses.”<sup>119</sup> Yet she cautioned that “[w]e must be careful not to cross the line between censoring behavior that we consider unacceptable and censoring, that’s u and o. . . . [W]e have to believe that in the free exchange of ideas justice will prevail over injustice, tolerance over intolerance and progress over reaction.”<sup>120</sup>

Some columnists similarly weighed in to reject censorship while observing that political correctness has enriched public discourse. In a 1995 column, for example, the *Washington Post* editor Jefferson Morley agreed that “[t]he willingness of people concerned about expressions of sexism and racism, to enforce their view of proper civic etiquette with speech codes or book banning—with anything but persuasive words—should be . . . condemned.”<sup>121</sup> He observed, more so, that it *is* “routinely condemned in the press and by the courts.” Yet Morley added that “the political correctness phenomenon must . . . be credited with instilling a self-conscious civility into public language as well as giving the complacent a deeper appreciation of the First Amendment.”<sup>122</sup> David Haupe, the executive editor of the *Louisville Courier Journal*, struck a similar note in 1994 remarks to an NPR reporter. Haupe agreed that PC as “group reinforced orthodoxy . . . does exist in our newsrooms and I think it has the potential to warp our journalism.”<sup>123</sup> He hastened to add, however, “I do believe that racism stalks America.”<sup>124</sup> The NPR reporter also cited comments that Haupe had made at a meeting of the American Society of Newspaper Editors. There, Haupe had “chided his colleagues for trivializing the issue. [He] said some of the extreme of PCness, should not cause an editor to lose sight of a much more basic fact, that harsh names cause pain.”<sup>125</sup>

### C. CAMPUS PC DEBATES: 2014–2016

In the 1989–1995 reports, two main categories of campus PC practices were at issue: formal restrictions, usually meaning written speech codes and their enforcement, and informal pressures, including self-censorship. Of course, many articles

119. Clinton, *supra* note 118.

120. *Id.* Compare *id.*, with Bush, *supra* note 52.

121. Morley, *supra* note 48.

122. *Id.*

123. *American Culture Wars—Part 5*, *supra* note 76.

124. *Id.*

125. *Id.*

did not neatly distinguish between the two categories. A number of commentators referenced PC in vague or abstract ways. Others conflated formal sanctions and private pressures. Nonetheless, the identifiable policies and practices raised could be grouped into these two rough categories.

Unpacking the PC concepts, policies, practices and events at issue in the 2014–2016 articles is considerably trickier. This batch covers a much wider variety of topics. More so, many of the practices or policies identified themselves have multiple potential manifestations ranging from voluntary faculty or student practices with no administrative intervention, to administratively encouraged or assisted efforts, to administratively mandated policies. More often than not, the reports do not specify where on this spectrum referenced practices fall. Beyond this murkiness, the 2014–2016 reports share the same opacities as the 1989–1995 batch. That is, a number of commentators in these more recent reports, as in the earlier ones, reference political correctness in terms that are abstract or that conflate a variety of practices.

For clarity's sake, Subsection 1 provides an overview of major<sup>126</sup> PC practices, concepts, and incidents referenced in the 2014–2016 reports. For each example, it cites the number of reports that mention it, defines the example where it is not self-explanatory, and cites the number of reports reflecting positive or negative views of the example. Subsection 2 summarizes major criticisms of PC that surface in the reports. Subsection 3 provides an overview of PC's major defenses as reflected in the reports. Finally, Subsection 4 discusses the substantial backlash against PC evidenced throughout the 2014–2016 reports. The latter warrants its own subsection given the scope of the backlash that the reports reflect.

#### 1. Major PC Practices, Policies, and Events Cited in the Reports

##### *a. Melissa Click (Eight References, All Negative)*

Melissa Click is the former University of Missouri communications professor who was famously caught on camera asking for “some muscle” to keep student journalists away from campus protestors. Eight reports (all of them articles, none from

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126. By “major,” I mean those practices, policies, or events referenced in at least three separate reports.

campus publications) referenced Click and this infamous event, and all of the references were negative.<sup>127</sup> In the wake of this much-discussed incident, Click was fired from her position at the University of Missouri.<sup>128</sup>

*b. Trigger Warnings (Eight References, All Negative)*

I counted eight reports (all articles, three from campus papers) that made direct reference to trigger warnings<sup>129</sup> or the concept of “triggering.”<sup>130</sup> Each reference was negative in tone.

127. See Michael Anderson, *Micro-Aggressions and Safe Spaces and Triggering Events, Oh My!*, W. FREE PRESS (Jan. 3, 2016), <http://www.westernfreepress.com/2016/01/02/micro-aggressions-and-safe-spaces-and-triggering-events-oh-my> (Report A59); Lucia Arno-Bernsen, *Politically Correct Used To Be More Correct*, BELMONT CITIZEN-HERALD (Nov. 27, 2015), <http://belmont.wickedlocal.com/article/20151127/news/151126684> (Report A23); Dave Bangert, *Of Snowflakes and Purdue Protests*, J. & COURIER, Nov. 27, 2015, at A1 (Report A22); Callum Borchers, *The Danger of Political Correctness—In the Words of an FCC Commissioner*, WASH. POST (Feb. 17, 2016), [https://www.washingtonpost.com/news/the-fix/wp/2016/02/17/the-danger-of-political-correctness-in-the-words-of-an-fcc-commissioner/?utm\\_term=.fdaf92f531e8](https://www.washingtonpost.com/news/the-fix/wp/2016/02/17/the-danger-of-political-correctness-in-the-words-of-an-fcc-commissioner/?utm_term=.fdaf92f531e8) (Report A58); Suzanne Fields, *Closing of the American Mouth*, WASH. TIMES (Nov. 11, 2015), <http://www.washingtontimes.com/news/2015/nov/11/suzanne-fields-colleges-teaching-students-what-to-#.VkP27tdpol4> (Report A31); Jonathan V. Last, *It's All About 'Muscle'*, WKLY. STANDARD (Dec. 14, 2015), <http://www.weeklystandard.com/its-all-about-muscle/article/2000074> (Report A9); Randy Tucker, *Answers Usually Found in the Middle*, DAILY RANGER (Dec. 6, 2015), [https://www.dailyranger.com/story.php?story\\_id=20860&headline=answers-usually-found-in-the-middle](https://www.dailyranger.com/story.php?story_id=20860&headline=answers-usually-found-in-the-middle) (Report A13); George F. Will, *Give Thanks for Free Speech, However Inane*, SAN JOSE MERCURY NEWS (Nov. 24, 2015), <http://www.mercurynews.com/2015/11/24/george-f-will-give-thanks-for-free-speech-however-inane> (Report A24).

128. See Colleen Flaherty, *A Firing with Consequences*, INSIDE HIGHER ED (May 19, 2016), <https://www.insidehighered.com/news/2016/05/19/aaup-finds-mizzou-compromised-academic-freedom-terminating-melissa-click>. For more on the aftermath of the Click incident, see *infra* text accompanying notes 326–36.

129. Beato, *supra* note 3; Steven Hayward, *A Campus Backlash?*, POWERLINE (Nov. 20, 2015), [http://www.powerlineblog.com/archives/2015/11/a-campus-backlash.php?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+powerlineblog%2Flivefeed+%28Power+Line%29](http://www.powerlineblog.com/archives/2015/11/a-campus-backlash.php?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+powerlineblog%2Flivefeed+%28Power+Line%29), reprinted in W. FREE PRESS (Nov. 20, 2015), <http://www.westernfreepress.com/2015/11/20/a-campus-backlash> (Report A30); Last, *supra* note 127; William R. Toler, *Some Americans Want 'Freedom from Speech'*, RICH. COUNTY DAILY J., Sept. 8, 2014, reprinted in FOUND. FOR INDIVIDUAL RTS. EDUC. (Sept. 8, 2014), <https://www.thefire.org/media-coverage/americans-want-freedom-speech> (Report A2); Will, *supra* note 127.

130. Anderson, *supra* note 127; John Faulconer, *From Around the World—Political Correctness Silences Free Speech While Pacifying Emotions*, E. CAROLINIAN (Dec. 3, 2015), [http://www.theeastcarolinian.com/opinion/article\\_](http://www.theeastcarolinian.com/opinion/article_)

None of the articles provide a detailed definition of or background on trigger warnings, but one can easily find such expositions elsewhere. For example, a 2015 article in the *Chronicle of Higher Education* explains that:

[Trigger] warnings, which emerged from the clinical treatment of post-traumatic stress disorder in soldiers, were first popularized in the media a decade ago, on feminist blogs and message boards that alerted readers when content might evoke traumatic memories of sexual assault or domestic violence. In recent years, college instructors—generally at the behest of students—have been issuing the warnings in relation to subjects such as racism, abortion, and suicide.<sup>131</sup>

Most of the authors referencing trigger warnings did not indicate whether they had in mind warnings provided voluntarily by faculty or those mandated by administrations. Three of the articles simply mentioned trigger warnings in passing as examples of politically correct practices,<sup>132</sup> and three others recounted anecdotes of individuals requesting or suggesting particular trigger warnings.<sup>133</sup> A seventh article referred to trigger warnings suggested by an advisory board at Columbia University.<sup>134</sup> The eighth article mentioned trigger warnings “put in place by Oberlin College” to “inform students that reading a certain book could offend some people.”<sup>135</sup>

*c. Campus Speakers Who Were Disinvited, Shouted down, or Who Withdrew After Criticisms (Six References, All Negative)*

Six reports (all articles, one from a campus paper) referred to one or more cases of invited college speakers either having

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4699f6b4-9958-11e5-8947-db68a646bc81.html (Report A17); Server, *supra* note 3.

131. Peter Schmidt, *A Faculty's Stand on Trigger Warnings Stirs Fear Among Students*, CHRON. HIGHER EDUC. (Oct. 6, 2015), <http://www.chronicle.com/article/A-Faculty-s-Stand-on-Trigger/233656>.

132. See Hayward, *supra* note 129; Last, *supra* note 127; Server, *supra* note 3.

133. See Faulconer, *supra* note 130 (describing how “at Harvard Law School the phrase, ‘does this conduct violate the law’ was questioned because the word violate ‘might trigger distress’”); Toler, *supra* note 129 (positively reviewing FIRE President Greg Lukianoff’s book, *Freedom from Speech*, and noting that Lukianoff “referenced a New York Times article . . . that mentioned a Rutgers student requesting a trigger warning” for *The Great Gatsby*); Will, *supra* note 127 (“[A] feminist blog warned that the phrase ‘trigger warning’ itself needs a warning attached to it because it might remind people of guns.”).

134. See Will, *supra* note 127.

135. Beato, *supra* note 3.

their invitations withdrawn, themselves withdrawing as speakers after protests, or being shouted down or otherwise prevented from making their remarks by student protestors.<sup>136</sup> All six of the articles expressed a negative view of disinvitation efforts.<sup>137</sup>

The Foundation for Individual Rights in Education (FIRE) refers to the phenomenon of multiple disinvitation efforts as “disinvitation season,” and two of the articles invoked that term as well.<sup>138</sup> In his 2014 book, *Freedom from Speech*, FIRE President Greg Lukianoff said that FIRE’s research by that point had uncovered:

257 incidents since 2000 in which students or faculty have pushed for speakers who were invited to campus (for both commencement and other speaking engagements) to be disinvited. Of those incidents, 111 were “successful,” in that the speaker ultimately did not give a speech. Those 111 successful disinvitations took three main forms: 75 occurred via the revocation of the speaker’s invitation to campus; 20 were from speakers withdrawing in the face of protest; and 16 were “heckler’s vetoes,” in which speakers were shouted down, chased off stage, or otherwise prevented from delivering their remarks by student hecklers.<sup>139</sup>

Lukianoff also cited an upward trend in disinvitation efforts between 2000 and 2014, saying that “more than half (137)” of the 257 disinvitation efforts had “happened since 2009.”<sup>140</sup> And “of the 111 ‘successful’ disinvitation attempts, 59 occurred during or after 2009.”<sup>141</sup>

136. See Beato, *supra* note 3; Nina Burleigh, *The Battle Against “Hate Speech” on College Campuses Gives Rise to a Generation That Hates Speech*, NEWSWEEK, June 3, 2016, at 24 (Report A52); Richard T. Kaplar, *Free Speech Week*, CALEDONIAN-RECORD, Oct. 20, 2015, at A4 (Report A38); Last, *supra* note 127; Larry Shapiro, *Freedom of Expression Dinged on Campuses*, DESERT SUN, May 4, 2016, at A15 (Report A54); Toler, *supra* note 129. An additional article criticized UC Irvine for punishing the College Republicans club after it reinvited a controversial speaker to campus. Doktor Zoom, *University of California-Irvine Does Free Speech Bad, Should Feel Bad*, WONKETTE (June 26, 2015), <http://wonkette.com/603385/university-of-california-irvine-does-free-speech-bad-should-feel-bad> (Report A50). UC Irvine claimed that it punished the club for violating a procedural rule, but the article’s author calls this a “transparently flimsy pretext.” *Id.*

137. See Beato, *supra* note 3; Burleigh, *supra* note 136, at 27–28; Last, *supra* note 127; Shapiro, *supra* note 136; Toler, *supra* note 129; Arthur Wang, Opinion, *Free Speech Still Alive at UCLA*, DAILY BRUIN, Oct. 19, 2015, at 5 (Report A39).

138. Burleigh, *supra* note 136, at 27; Toler, *supra* note 129.

139. GREG LUKIANOFF, FREEDOM FROM SPEECH 30–31 (2014).

140. *Id.* at 31.

141. *Id.*



d. *Safe Spaces (Six References, All Negative)*

Six reports (all articles, three of them from campus papers) reference “safe spaces” and all do so negatively.<sup>142</sup> The concept of safe spaces may be the hardest to define of the various PC practices or concepts mentioned throughout the reports. The phrase has a relatively long and evolving history<sup>143</sup> and continues to fluctuate in meaning. It has been used to denote everything from locations where people voluntarily agree to speak openly and without judgment to one another,<sup>144</sup> to places populated by persons who share similar views on social justice issues and are hostile to opposing views,<sup>145</sup> to areas formally or informally designated as meeting spaces for persons from marginalized groups.<sup>146</sup>

The six articles that mention safe spaces in the 2014–2016 batch illustrate the range of meanings attributed to the term. Two of the articles simply reference it in passing, as one of several examples of politically correct practices.<sup>147</sup> A third article refers to an incident at the University of Missouri in which protestors refused to grant a journalist access to their “tent city.” The protestors accused the journalist of “violating their ‘safe space,’” despite the tent city’s siting on public property.<sup>148</sup> A fourth article referenced a Halloween costume controversy, described below, at Yale’s Silliman College.<sup>149</sup> The Silliman students accused the housemaster of “threatening their safe space.” The same article referenced “safe space” stickers placed by many Harvard professors on their office doors. According to the author, the stickers imply, “even before a discussion begins,

142. Faulconer, *supra* note 130; Hayward, *supra* note 129; William Hennessy, *Up from Political Correctness*, HENNESSY’S VIEW (Dec. 5, 2015), <https://hennessysview.com/tag/political-correctness> (Report A16); Server, *supra* note 3; Adam Ulbricht, *Higher Ed Falls Short on Free Speech*, ST. CLOUD TIMES, Dec. 8, 2015, at A8 (Report A11); Wright, *supra* note 3.

143. See, e.g., Vaughan Bell, *The Real History of the “Safe Space,”* MIND HACKS (Nov. 12, 2015), <https://mindhacks.com/2015/11/12/the-real-history-of-the-safe-space/>; Sarah Brown & Katherine Mangan, *What “Safe Spaces” Really Look Like on College Campuses*, CHRON. HIGHER EDUC. (Sept. 8, 2016), <http://www.chronicle.com/article/What-Safe-Spaces-Really/237720>; Malcolm Harris, *What’s a “Safe Space”? A Look at the Phrase’s 50-Year History*, FUSION (Nov. 11, 2015), <http://fusion.net/story/231089/safe-space-history>.

144. See sources cited *supra* note 143.

145. See sources cited *supra* note 143.

146. See sources cited *supra* note 143.

147. See Hayward, *supra* note 129; Server, *supra* note 3.

148. Ulbricht, *supra* note 142.

149. See *infra* text accompanying notes 157–65.

that some stances may be harmful and therefore should be left out.”<sup>150</sup> A fifth article references a “safe space” that was created at Brown University and “populated with Play-Doh and cookies to help calm students” during a discussion on sexual assault.<sup>151</sup> The sixth article equates “safe spaces” with “bubbles of ignorance” in which “no one may say or do anything that might offend anyone else.” The author states that “[r]acial separatists at Mizzou and other universities want to establish” such spaces. He adds that, because people in safe spaces will not identify suspicious behavior or question terrorism, the spaces are “breeding grounds for terror and murder. And the political-correctness police who applaud ‘safe spaces’ must accept the consequences of their actions.”<sup>152</sup>

*e. Speech Codes (Five References, All Negative)*

Three reports (all articles, none from campus publications) directly reference speech codes, two of them in the context of reviewing books that themselves criticize such policies. All three convey negative opinions of speech codes.<sup>153</sup> Two additional reports (both articles, neither from campus publications) do not reference speech codes directly, but mention a controversy at Marquette University involving the university’s efforts to strip a long-time professor of his tenure for a blog post “criticizing a student teacher who opposed opposing views on gay marriage in her philosophy class.”<sup>154</sup> According to FIRE’s 2016 report, *Spotlight on Speech Codes*, Marquette alleges that the professor’s post violated its speech code.<sup>155</sup> Both articles citing

150. Wright, *supra* note 142.

151. Faulconer, *supra* note 130.

152. Hennessy, *supra* note 142.

153. Mark Belling, *Rule Free Speech as Officially Dead on Campus*, MILWAUKEE COUNTY POST, Nov. 27, 2015, at 8 (Report A25); Patrick Everson, *Stocking Stuffers on the Day Before Christmas*, LAS VEGAS REV.-J. (Dec. 23, 2015), <http://www.reviewjournal.com/opinion/columns-blogs/patrick-everson/stocking-stuffers-the-day-christmas> (Report A5); Betsy Newmark, *Cruising the Web*, BETSY’S PAGE (May 12, 2015), [http://betsyspage.blogspot.com/2015/05/cruising-web\\_12.html](http://betsyspage.blogspot.com/2015/05/cruising-web_12.html) (Report A41).

154. M.D. Kittle, *Marquette Professor Becomes Face of National Campus Free Speech Battle*, WATCHDOG.ORG (Feb. 6, 2015), <http://watchdog.org/198154/marquette-professor-free-speech> [hereinafter Kittle, *Free Speech Battle*] (Report A43); *see also* M.D. Kittle, *Marquette Makes List of 10 Worst Colleges for Free Speech*, WATCHDOG.ORG (Feb. 17, 2016), <http://watchdog.org/257085/marquette-free-speech-john-mcadams> [hereinafter Kittle, *10 Worst*] (Report A57) (citing the same controversy).

155. FOUND. FOR INDIVIDUAL RIGHTS IN EDUC., SPOTLIGHT ON SPEECH

the Marquette controversy express a negative view of the university's position.<sup>156</sup>

*f. Halloween Costume Controversy at Yale (Six References, Four Negative, Two Positive)*

In October 2015, Erika Christakis, an associate master of Yale's Silliman College, responded to an e-mail from Yale's Intercultural Affairs Committee. The e-mail had "warned students that it would be insensitive to wear costumes that symbolized cultural appropriation or misrepresentation, or both."<sup>157</sup> In her response, Christakis, an expert on early childhood education and a lecturer at Yale, suggested that it might be healthy for college students to have leeway "to be a little bit obnoxious . . . a little bit inappropriate or provocative or, yes, offensive."<sup>158</sup> Yale students reacted to Christakis' response by "accus[ing] Christakis and her husband," Nicholas Christakis, who was master of Silliman College as well as a physician and sociology professor at Yale, "of failing to create a 'safe space' for Silliman residents. Others demanded that they resign or the university remove them from their positions."<sup>159</sup> A widely seen video showed students angrily confronting Mr. Christakis.<sup>160</sup> Yale University and Yale College publicly reaffirmed their support for the Christakis. Nonetheless, Erika Christakis resigned from her position as a Yale lecturer and both Christakis "resigned from their Silliman College duties to pursue academic work full time."<sup>161</sup>

I counted six reports (all articles, three from campus papers) referencing this controversy.<sup>162</sup> Four of them, including

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CODES 14–15 (2016).

156. Kittle, *Free Speech Battle*, *supra* note 154; Kittle, *10 Worst*, *supra* note 154.

157. Anemona Hartocollis, *Yale Lecturer Resigns After Email on Costumes*, N.Y. TIMES, Dec. 8, 2015, at A21.

158. *Id.*

159. *Yale University: Protesters at Yale Threaten Free Speech, Demand Apologies and Resignations from Faculty Members over Halloween Email*, FOUND. FOR INDIVIDUAL RTS. EDUC., <https://www.thefire.org/cases/protesters-at-yale-threaten-free-speech-demand-apologies-and-resignations-from-faculty-members-over-halloween-email> [hereinafter *Protesters at Yale*] (last visited Apr. 3, 2017); *see also* Hartocollis, *supra* note 157.

160. Hartocollis, *supra* note 157.

161. *Protesters at Yale*, *supra* note 159.

162. *See* Fields, *supra* note 127; Alison Gala, *Older Generations Must Realize Student Movements Are Justified*, DAILY ORANGE (Nov. 17, 2015), <http://dailyorange.com/2015/11/gala-older-generations-must-realize-student>

one of the student articles, expressed negative views of the students' behavior.<sup>163</sup> As for the remaining two articles, one, written by a student at Syracuse University, did not directly mention the events at Yale. The author suggested, however, that it is not a bad thing to make someone feel uncomfortable for wearing an offensive Halloween costume. She wrote that "maybe they will think twice before wearing it next time."<sup>164</sup> The other article, by a student columnist at Cornell, supported protections against "hate speech." As the columnist put it, "Banning racist Halloween costumes (Yale) and questioning the need for buildings named after Ku Klux Klan apologists (Princeton) would be a good place to start."<sup>165</sup>

*g. Campaign To Remove Woodrow Wilson's Name and Images from Princeton University (Five References, Three Negative, Two Positive)*

A group of Princeton University students sought to have Woodrow Wilson's name removed from an undergraduate college and from another school on campus in light of Wilson's racist policies and views.<sup>166</sup> The controversy was referenced in two CNN discussion transcripts and in three articles (one from a campus paper). A guest on one CNN program and a student columnist at Cornell supported the removal,<sup>167</sup> while the guest on the other CNN program and the authors of the other two articles opposed the change.<sup>168</sup>

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-movements-are-justified (Report A35); Emily Hardin, *In Defense of Disruption*, CORNELL DAILY SUN (Nov. 29, 2015), <http://cornellsun.com/2015/11/29/hardin-in-defense-of-disruption> (Report A21); Tom Mannis, *College President Tells Cry-Baby Students To Grow up*, CHI. NEWS BENCH (Dec. 1, 2015), <https://rogersparkbench.blogspot.com/2015/12/college-president-tells-cry-baby.html> (Report A19); Ulbricht, *supra* note 142; Wright, *supra* note 142.

163. See Fields, *supra* note 127; Mannis, *supra* note 162; Ulbricht, *supra* note 142; Wright, *supra* note 142.

164. Gala, *supra* note 162.

165. Hardin, *supra* note 162.

166. See Anna Merriman, *Black Justice League Opposes Princeton U.'s Woodrow Wilson Decision*, NJ.COM (Apr. 5, 2016), [http://www.nj.com/mercer/index.ssf/2016/04/black\\_justice\\_league\\_opposes\\_princeton\\_us\\_woodrow.html](http://www.nj.com/mercer/index.ssf/2016/04/black_justice_league_opposes_princeton_us_woodrow.html); *Princeton University Decides To Keep Woodrow Wilson's Name on School for Public Policy, Despite Racism*, NY DAILY NEWS (Apr. 4, 2016), <http://www.nydailynews.com/news/national/princeton-woodrow-wilson-racist-legacy-article-1.2587949>.

167. See Hardin, *supra* note 162; *CNN Tonight*, CNN (Dec. 21, 2015), <http://edition.cnn.com/TRANSCRIPTS/1512/21/cnnt.01.html> (Report A6).

168. See Hayward, *supra* note 129; *Airbrushing History, Again: If Woodrow Wilson Is at Risk, Can George Washington Be Far Behind?*, ETHICS ALARMS

*h. Microaggressions (Four References, All Negative)*

As defined by the University of California in 2015, microaggressions are “everyday verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional, that communicate hostile, derogatory, or negative messages to target persons based solely upon their marginalized group membership.”<sup>169</sup> I counted four reports (all articles, none from campus publications) referencing attention to microaggressions. All did so negatively. Two of the articles cited such attention in passing, as part of a larger set of politically correct practices.<sup>170</sup> A third article cited examples of terms “listed” or “declared” to be microaggressions by schools or students.<sup>171</sup> The same article also cited two examples of professors warning students on their syllabi against using certain terms in class.<sup>172</sup> The fourth article, from a local newspaper in North Carolina, criticized attention to microaggressions and praised the University of North Carolina-Chapel Hill for thwarting “a move toward instituting microaggression as policy.”<sup>173</sup> UNC had done this by clarifying that a blog post about microaggressions on the school’s Employee Forum was not university policy or guidance and assuring that the Forum had removed the post.<sup>174</sup>

*i. Harvard Placemats (Three References, All Negative)*

One article (not a campus publication) and two separate discussions on CNN reference Harvard University’s creation and use of special placemats in anticipation of the 2015 holiday season.<sup>175</sup> The placemats offered advice to students on how to

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(Nov. 20, 2015), <https://ethicsalarms.com/2015/11/20/airbrushing-history-again-if-woodrow-wilson-is-at-risk-can-george-washington-be-far-behind> [hereinafter *Airbrushing History*] (Report A29); *CNN Smerconish*, CNN (Dec. 5, 2015), <http://www.cnn.com/TRANSCRIPTS/1512/05/smer.01.html> (Report A14).

169. Fred Barbash, *The War on ‘Microaggressions’: Has It Created a ‘Victimhood Culture’ on Campuses?*, WASH. POST (Oct. 28, 2015), <https://www.washingtonpost.com/news/morning-mix/wp/2015/10/28/the-war-over-words-literally-on-some-american-campuses-where-asking-where-are-you-from-is-a-microaggression>.

170. See Hayward, *supra* note 129; Last, *supra* note 127.

171. Will, *supra* note 127.

172. *Id.*

173. *Sanity at UNC-CH*, CARTERET COUNTY NEWS-TIMES (July 1, 2016), [http://www.carolinacoastonline.com/news\\_times/opinions/editorials/article\\_aafc3b42-3f95-11e6-882c-2f7966d0c3a3.html](http://www.carolinacoastonline.com/news_times/opinions/editorials/article_aafc3b42-3f95-11e6-882c-2f7966d0c3a3.html) (Report A49).

174. *Id.*

175. See Everson, *supra* note 153; *CNN Tonight*, *supra* note 167; *CNN Tonight*, CNN (Dec. 17, 2015), <http://transcripts.cnn.com/TRANSCRIPTS/1512/>

discuss social justice issues with conservative-leaning relatives. All three of the references to placemats—both the CNN discussion segments and the article—were negative. In one of the CNN discussions, host Don Lemon noted that two Harvard deans later apologized for the placemats.<sup>176</sup>

*j. Smith College Student Protestors' Refusal of Access to Journalists Who Did Not Join Them in Solidarity (Three References, All Negative)*

Smith College students barred journalists from attending a protest unless the journalists agreed in advance to join the group “in solidarity.”<sup>177</sup> Smith College’s administration supported the students, and later issued a statement that said, in part: “On balance, as strongly as the college prefers to err on the side of a campus open to the media, the students’ opposition to it at their own event—which they had created and were hosting—was honored.”<sup>178</sup> Three reports (all articles, none campus publications) cited the student organizers’ conditions,<sup>179</sup> and two of those also mentioned the colleges’ support of the conditions.<sup>180</sup> All three articles expressed negative views of the students’ conditions,<sup>181</sup> and the two articles that mentioned the college’s response took a negative view of that as well.<sup>182</sup>

## 2. The Nature of Anti-PC Criticisms

This Subsection explores the substance of the anti-PC criticisms in the 2014–2016 reports. The common denominator among critics is their depiction of PC as fostering campus speech suppression or thought control. Additionally, many crit-

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17/cnnt.01.html (Report A8). Both of the CNN discussions reference the Harvard placemats directly. The article references it indirectly, with the author stating: “In recent years, there’s been a proliferation of gibberish about how to handle a crazy Republican uncle at your holiday dinner.” Everson, *supra* note 153.

176. *CNN Tonight*, *supra* note 175.

177. Erik Wemple, *Here’s How a Sit-in at Smith College Approached the Media*, WASH. POST (Nov. 20, 2016), [https://www.washingtonpost.com/blogs/erik-wemple/wp/2015/11/20/heres-how-a-sit-in-at-smith-college-approached-the-media/?utm\\_term=.dc7ab54e6d40](https://www.washingtonpost.com/blogs/erik-wemple/wp/2015/11/20/heres-how-a-sit-in-at-smith-college-approached-the-media/?utm_term=.dc7ab54e6d40).

178. *Id.*

179. *See* Bangert, *supra* note 127; Borchers, *supra* note 127; Last, *supra* note 127.

180. *See* Borchers, *supra* note 127; Last, *supra* note 127.

181. *See* Bangert, *supra* note 127; Borchers, *supra* note 127; Last, *supra* note 127.

182. *See* Borchers, *supra* note 127; Last, *supra* note 127.

ics depict PC students as hungry for power. Some also portray them as whiny and entitled.

Critics vary considerably in the degree to which they specify what they mean by political correctness. Some discuss PC as an abstract concept, without mentioning particular practices or events. Others cite particular practices or occurrences but only in passing, without much description or elaboration. Still others are considerably more precise in describing the objects of their criticism. The examples that follow are grouped mostly by the nature of the criticisms, rather than their objects. The Subsection concludes, however, by exploring two sets of criticisms that target particular practices—respectively, trigger warnings and speaker disinvitations.

A number of articles depict political correctness as a type of brainwashing. For example, one columnist at a Wyoming newspaper wrote that “[t]he left has preached PC to the point that children . . . have no idea what they are saying. They just spew out ‘racist,’ ‘sexist’ or ‘homophobe’ when they encounter any thought or idea outside their carefully isolated sphere of consciousness.”<sup>183</sup> He attributed speaker disinvitation efforts to this mindset.<sup>184</sup> He also blamed PC for enabling the infamous Melissa Click incident.<sup>185</sup>

Another view that arose regularly in the articles is that student protestors are hungry for power, including power over others’ speech. A *Wall Street Journal* column by Peggy Noonan vividly captures this spirit.<sup>186</sup> Though not identifying particular incidents or practices, Noonan refers to “the mad little Marats and Robespierres who are telling students and administrators what they are and are not allowed to say or do.”<sup>187</sup> She adds that “[t]his is not just kids acting up at this point, it’s a real censorship movement backed by an ideology that is hostile to the First Amendment.”<sup>188</sup> Jonathan Last was even more direct in framing campus protests as struggles for power in a December 2015 *Weekly Standard* article.<sup>189</sup> The protests, he wrote, “aren’t about race or privilege or safe spaces. They’re about

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183. Tucker, *supra* note 127.

184. *Id.*

185. *Id.*

186. See Peggy Noonan, *Declarations: The First Amendment Needs Your Prayers*, WALL ST. J., Dec. 5, 2015, at A13 (Report A15).

187. *Id.*

188. *Id.*

189. See Last, *supra* note 127.

power.”<sup>190</sup> The power struggle manifests itself partly as a “wholesale rethinking of free speech.”<sup>191</sup> James Taranto also captures the notion of political correctness as power play in a *Wall Street Journal* column.<sup>192</sup> He writes that “the politically correct mindset . . . not only seeks to censor uncongenial speech but wishes to declare an uncongenial individual ineffable—in effect, to render him an unperson. . . . [P]olitical correctness . . . is the essence of totalitarianism.”<sup>193</sup>

The view that protestors are dangerously hungry for power converges with the notion that recent campus protests are troubling not only for their free speech implications, but for the tone and substance of the complaints to which they give voice. In his December 2015 *Weekly Standard* article, for instance, Jonathan Last accuses campus protestors of fabricating or exaggerating stories of racism and sexism to attain power.<sup>194</sup> He writes that “there is literature detailing that nearly all spectacular racist incidents at the modern university have turned out to be hoaxes,” and that students “have learned . . . that phony outrages are just as good as real ones—or better, because they can be manufactured on demand.”<sup>195</sup> Another columnist juxtaposes lighthearted campus hijinks of yore with today’s more somber college atmospheres:

Once upon a time, panty raids and swallowing goldfish [were] the rite[s] of passage for sophomores, challenging authority on campus with innocence and high spirits. Student rebellion darkened with the free speech movement at the University of California in the 1960s. Today free speech on campus is under attack from the students themselves.<sup>196</sup>

It is striking that this author paints 1960s student rebellion in a negative light, despite describing it as a “free speech movement.”<sup>197</sup> Her critiques of current protests, too, include but extend beyond free speech concerns. She writes, for instance, that

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190. *Id.*

191. *Id.*

192. James Taranto, *Chalk and Awe: The New Free Speech Movement*, WALL ST. J. (Apr. 4, 2016), <http://www.wsj.com/articles/chalk-and-awe-1459790373> (Report A56).

193. *Id.*

194. Last, *supra* note 127.

195. *Id.*

196. Fields, *supra* note 127.

197. *Id.*



“[a]t the University of Missouri, concern over racism became increasingly self-serving and selective.”<sup>198</sup>

Similarly, a November 2015 blog post criticized then-ongoing campus protests both for threatening free speech and for amounting to race-baiting power plays. The blogger wrote that “[n]one of the new outbreaks of victim-mongering, black-dictated apartheid and outrageous demands had any more justification than the Mizzou Meltdown, but they all entered the competition.”<sup>199</sup> In a final example, a 2015 Fox News “year in review” segment criticized campus protestors for threatening free speech, but also linked student unrest to non-university protests involving policing and the Black Lives Matter movement.<sup>200</sup> The Fox panelists criticized the policing protests, calling them “very dangerous” and “based on a lie.”<sup>201</sup>

Another theme that surfaces throughout the 2014–2016 articles is the notion that today’s students are whiny and entitled. In a slight twist, or perhaps a friendly amendment to the depiction of students as drunk with power, some commentators portray them as baby-faced dictators, intent on holding their breath and stomping their feet until they are soothed. For example, a column in a local Wisconsin newspaper reported that “[t]he cancer of political correctness . . . has led to a generation of students so sissified and wussified that mere symbols evidently terrorize them. It’s happening on every campus from Yale to Missouri to Marquette.”<sup>202</sup>

Two other articles—one a post in a Chicago-based blog and the other a column in Arizona’s *Western Free Press*—celebrated the President of Oklahoma Wesleyan University, Dr. Everett Piper, for rebuking a student who complained to him that the student felt “victimized” by a sermon.<sup>203</sup> Piper published an open letter to the student in which he said, among other things:

[I]f you want to be enabled rather than confronted, there are many universities across the land (in Missouri and elsewhere) that will give you exactly what you want, but Oklahoma Wesleyan isn’t one of them.

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198. *Id.*

199. *Airbrushing History*, *supra* note 168.

200. *Fox News Journal: Editorial Report*, FOX NEWS (Dec. 26, 2015), <http://www.foxnews.com/transcript/2015/12/26/global-disorder-becomes-one-2015-biggest-stories> (Report A4).

201. *Id.*

202. Belling, *supra* note 153.

203. Anderson, *supra* note 127; Mannis, *supra* note 162.

. . . We believe the content of your character is more important than the color of your skin. We don't believe that you have been victimized every time you feel guilty and we don't issue "trigger warnings" before altar calls.

Oklahoma Wesleyan is not a "safe place," but rather, a place to learn . . . .

This is not a day care. This is a university!<sup>204</sup>

The Chicago blog post lauding Dr. Piper's letter lamented the "stompy-foot whining from students at Yale and the University of Missouri." It concluded that "[i]f only academia had more men like Everett Piper and fewer effete, spineless politically correct elitists we'd be in better shape as a nation."<sup>205</sup> The other article praising Dr. Piper agreed that "[l]uckily, there are some university leaders out there showing how these oversensitive and immature college students should be handled."<sup>206</sup>

Similar points are made elsewhere, albeit in gentler terms. For example, a 2016 *Newsweek* cover story chronicles political correctness across campuses. The article refers to students' "aggrieved fragility."<sup>207</sup> It also cites FIRE's communications director, Nico Perrino, who explains that "[w]e always said, [s]tudents can handle this, they are not wilting flowers. . . . Well, now we have students saying they are vulnerable."<sup>208</sup> A Massachusetts newspaper column cites to an article in *The Atlantic* to similar effect.<sup>209</sup> The columnist approvingly paraphrases *The Atlantic* piece as "stat[ing] that the politically correct environment on some college campuses has gone into 'overdrive' where students are thought of as 'fragile.' An example is a student who was concerned the word 'rape' was in Greek Mythology books."<sup>210</sup> And a student at East Carolina University similarly decried the "infection of political correctness," which he attributed to "our generation's tendency to prefer security over uncertainty."<sup>211</sup>

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204. Mannis, *supra* note 162.

205. *Id.*

206. Anderson, *supra* note 127.

207. Burleigh, *supra* note 136, at 30.

208. *Id.* at 33.

209. Arno-Bersen, *supra* note 127 (referencing Karen Swallow Prior, 'Empathetically Correct' Is the New Politically Correct, THE ATLANTIC (May 23, 2014), <https://www.theatlantic.com/education/archive/2014/05/empathetically-correct-is-the-new-politically-correct/371442>).

210. *Id.*

211. Faulconer, *supra* note 130.

While the preceding examples are grouped by the nature of their anti-PC criticisms, the final two sets of examples are grouped by their respective objects of derision: trigger warnings and speaker disinvitation efforts.

As previously noted, eight articles directly reference the concept of trigger warnings or triggering.<sup>212</sup> Each reference is negative in tone. Additionally, most of the authors are somewhat vague as to what they mean by triggering or trigger warnings.<sup>213</sup>

All eight articles treat the concept as one of many examples of political correctness run amok on college campuses. This view is apparent in the very title of one article: “Micro-Aggressions and Safe Spaces and Triggering Events, Oh My!”<sup>214</sup> Another article approvingly cites George Packer’s observation in the *New Yorker* that “the vocabulary and logic of ‘safe spaces,’ ‘micro-aggressions’ . . . and ‘trigger warnings’ . . . can be just as insidious as actual speech codes. . . . They inevitably create an atmosphere of self-censorship, intolerance, and group-think—all intensified by social media.”<sup>215</sup> Another commentator makes a similar point, albeit more provocatively: “Safe spaces, unjustified and frivolous use of trigger warnings and movements to ban certain ideas and language are all ways in which so many Millennials are making victims and outright pansies of themselves.”<sup>216</sup>

A few of the articles cite extreme examples of trigger warning requests. In a review of Greg Lukianoff’s book *Freedom from Speech*, the reviewer cites Lukianoff’s reference to a “New York Times article . . . that mentioned a Rutgers student requesting a trigger warning for the F. Scott Fitzgerald classic ‘The Great Gatsby’ because it ‘possesses a variety of scenes that reference gory, abusive and misogynistic violence.’”<sup>217</sup> In his syndicated column, George Will reported that “[s]tudents on Columbia University’s Multicultural Affairs Advisory Board suggested trigger warnings for persons who might be traumatized by reading, say, Ovid’s ‘Metamorphoses,’ wherein some

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212. See *supra* notes 129–35 and accompanying text.

213. See *supra* notes 129–35 and accompanying text.

214. Anderson, *supra* note 127.

215. Hayward, *supra* note 129 (quoting George Packer, *A Hard Rain at Mizzou and Yale*, NEW YORKER: DAILY COMMENT (Nov. 14, 2015), <http://www.newyorker.com/news/daily-comment/the-struggles-at-mizzou-and-yale>).

216. Server, *supra* note 3.

217. Toler, *supra* note 129.

myths portray bad sexual behavior.”<sup>218</sup> He added that “a feminist blog warned that the phrase ‘trigger warning’ itself needs a warning attached to it because it might remind people of guns.”<sup>219</sup> Finally, a student columnist at the University of Florida wrote of a trigger warning used at Oberlin College for Chinua Achebe’s *Things Fall Apart*. The warning was given on the basis that the novel could “‘trigger readers who have experienced racism, colonialism, religious persecution, violence, suicide,’ and much more.”<sup>220</sup>

As for speaker disinvitation efforts, we saw in the previous Section that six articles referenced them, and all of the references were negative.<sup>221</sup> Four of the articles simply mentioned disinvitation efforts, without much elaboration, to exemplify speech suppressive PC practices.<sup>222</sup> Another article, a *Newsweek* cover story mentioned earlier, gave several examples of disinvitations and speaker hecklings.<sup>223</sup> The *Newsweek* author also interviewed Zachary Wood, a Williams College sophomore who led an on-campus lecture series called “Uncomfortable Learning,” for which he invited controversial speakers, usually conservative ones, to campus. Wood, an African American who describes himself as a liberal, expressed his belief that “it is imperative that we confront offensive views and afford college students the opportunity to learn how to engage constructively with people they vehemently disagree with. Shielding students from microaggressions does not improve their ability to argue effectively; it coddles them.”<sup>224</sup>

Wood’s reasoning sounds much like President Obama’s take on the disinvitation issue. The President shared his views with Rutgers University graduates in a 2016 commencement speech.<sup>225</sup> President Obama gently chided Rutgers students for

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218. Will, *supra* note 127.

219. *Id.*

220. Beato, *supra* note 3.

221. See *supra* notes 136–65 and accompanying text.

222. Beato, *supra* note 3; Kaplar, *supra* note 136; Last, *supra* note 127; Toler, *supra* note 129.

223. Burleigh, *supra* note 136, at 26–27.

224. *Id.* at 27.

225. Barack H. Obama, *Remarks by the President at Commencement Address at Rutgers, the State University of New Jersey*, WHITE HOUSE PRESIDENT BARACK OBAMA (May 15, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/05/15/remarks-president-commencement-address-rutgers-state-university-new>. President Obama’s speech was not among the 2015–2016 reports, but it was referenced in one. See Joshua Florence, *Speech, Safe-*

having once objected to inviting Condoleezza Rice to speak at an earlier commencement ceremony.<sup>226</sup> To applause, President Obama implored students:

If you disagree with somebody, bring them in . . . . If somebody has got a bad or offensive idea, prove it wrong. Engage it. Debate it. . . . Don't feel like you got to shut your ears off because you're too fragile and somebody might offend your sensibilities. . . . Use your logic and reason and words. . . . Either way, you win. And more importantly, our democracy wins.<sup>227</sup>

The final disinvitation reference appears in a column in a local newspaper in Palm Springs, California.<sup>228</sup> The columnist criticized campus disinvitations, observing in particular that “[a]lmost every university campus has groups that disrupt and jeer pro-Israel speakers. Universities have cancelled invitations to pro-Israel speakers because they cannot guarantee the safety of the speaker and the crowd.”<sup>229</sup> The author criticizes universities for presenting students with a “cuddly feel good ideology” rather than “help[ing] children think for themselves.”<sup>230</sup> The author also suggests that a double-standard may be at work, with universities more likely to tolerate speech only if it is “anti-Jewish.” “It has been suggested,” he writes, that “tolerating anti-Jewish speech is the result of university administrations accommodating virulent anti-Israel activities. In this regard, Jews should be seen as the canary in the mine.”<sup>231</sup>

### 3. Arguments Made in PC's Defense

Just as we saw little defense of speech codes in the 1989–1995 reports, so the specific PC practices identified in Subsection 1 find few defenders in the 2014–2016 reports.<sup>232</sup> Yet be-

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*ty, and Seinfeld: College Policies on Free Speech*, HARV. POL. REV. (Jan. 1, 2016), <http://harvardpolitics.com/harvard/speech-safety-seinfeld-college-policies-free-speech> (Report A60). It is worth considering the speech in any event, as it reflects the high profile of the disinvitation issue and an influential view on the same. In this, of course, President Obama's words are like those of President George H.W. Bush and First Lady Hillary Rodham Clinton in their earlier speeches on political correctness. *See supra* notes 52, 118, and accompanying text.

226. Obama, *supra* note 225.

227. *Id.*

228. Shapiro, *supra* note 136.

229. *Id.*

230. *Id.*

231. *Id.*

232. The exceptions to this rule are small in number and rather moderate in tone. Two exceptions—one student newspaper columnist who thought it

yond the handful defending specific practices, others supported PC as a set of attitudes or views. Most supporters could be grouped into one or more of three categories. First, some argued that anti-PC criticisms are simply overblown, focusing on a few extreme cases or otherwise exaggerating the danger that PC poses to free speech. Second, several PC defenders made the case that PC itself is a form of counter-speech that adds to, rather than detracts from the marketplace of ideas. Third, some commentators argued that PC critics themselves threaten the speech marketplace, using cries of PC to delegitimize and deflect attention from valid critiques.

As for the charge that anti-PC criticisms are overblown, several commentators accused PC critics of focusing on a few extreme, unrepresentative examples. For example, a Davis, California, online news column quoted approvingly from an article by Cornell law professor Michael Dorf to this effect. Dorf called it “a profound mistake to treat a few incidents of irresponsible behavior as indicative of an entire movement.”<sup>233</sup> Dorf took issue in particular with an article in *The Atlantic*, in which writer Conor Friedersdorf portrayed Melissa Click as “the most

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was appropriate to criticize offensive Halloween costumes and one CNN guest who supported removing Woodrow Wilson’s name and image from Princeton University—are especially measured. The student columnist took the view that free speech and social justice are not antithetical, pointing out that social justice advocates need free speech to advance their causes. Criticizing offensive Halloween costumes, in her view, is just such an exercise of free speech. Gala, *supra* note 162. The CNN panelist who spoke about Woodrow Wilson was Columbia linguistics professor John McWorther, who criticized several other manifestations of political correctness. McWorther especially disliked the concept of microaggressions, which can be “so broad [in meaning] as to condemn almost anything a white person says and does.” *CNN Tonight, supra* note 167. But McWorther did express the belief—for which he said that he has “taken some heat”—that Woodrow Wilson’s “name and face should be suppressed at Princeton.” *Id.* McWorther explained that “Woodrow Wilson on race was a terrible man. . . . He really did destroy a lot of black lives. I get it, that’s a reasonable demand.” *Id.*

Another student columnist, writing for Cornell’s daily newspaper, would have taken things further. She expressed the view that “[u]niversities, above all, should be promoting civil discourse and maintaining student safety.” Hardin, *supra* note 162. She called “[b]anning racist Halloween costumes” and rethinking building names at Princeton “a good place to start.” *Id.* Even this student, however, suggested that her goal was not to force restrictions on speech, but rather to ask “students, faculty and staff members to be conscious of intentional language choices.” *Id.*

233. David Greenwald, *Analysis: Another View of Campus Protest and the Need for Safe Spaces*, DAVIS VANGUARD (Nov. 24, 2015), <http://www.davisvanguard.org/2015/11/analysis-another-view-of-campus-protest-and-the-need-for-safe-spaces> (Report A26).

aggressive ‘weaponizer’ of safe space.”<sup>234</sup> Click’s actions, Dorf explained, did not represent the behavior of most Missouri protestors. Indeed, Dorf pointed out that by the time that he wrote his article in November 2015, Click already had “resigned her courtesy appointment from the University of Missouri’s School of Journalism and apologized for her conduct. Both departments condemned her actions, and the student protestors themselves issued a statement endorsing the First Amendment rights of journalists to cover their protests.”<sup>235</sup> The Davis column also cites approvingly to Dorf’s conclusion that “[a]ny attempt to associate civil rights demonstrators in the U.S. with political correctness, censorship, or segregation must rely on a highly selective and unfair sample of events.”<sup>236</sup>

UCLA student Arthur Wang made similar points in his campus newspaper column, even singling out Conor Friedersdorf for criticism.<sup>237</sup> Wang wrote that, “[c]ontrary to alarmist headlines—most notably, Conor Friedersdorf’s ‘The Anti-Free-Speech Movement at UCLA’ in *The Atlantic*—free speech has gone nowhere, even if some students have displayed or articulated viewpoints that are genuinely harmful toward speech.”<sup>238</sup> Wang cites Friedersdorf’s reference to “one random internet commenter [who] demanded an investigation of [UCLA’s campus newspaper] for publishing” something that the student considered “hate speech.”<sup>239</sup> According to Wang, however, the incident amounted only to this: “The newspaper knowingly published this unpopular submission, and a variety of commentary that followed, without any ensuing action taken by the university.”<sup>240</sup> Wang does acknowledge some troubling incidents on other campuses, but calls them “[r]are and extreme.”<sup>241</sup> He argues that students in fact are engaged in a deeply important debate about free speech, diversity, and dis-

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234. See Michael C. Dorf, *Campus Unrest and the Fisher Affirmative Action Case*, JUSTIA: VERDICT (Nov. 18, 2015), <https://verdict.justia.com/2015/11/18/campus-unrest-and-the-fisher-affirmative-action-case>.

235. *Id.* (referencing Pérez-Peña & Christine Hauser, *University of Missouri Professor Who Confronted Photographer Quits Journalism Post*, N.Y. TIMES (Nov. 10, 2015), <https://www.nytimes.com/2015/11/11/us/university-of-missouri-names-law-professor-to-diversity-post.html>).

236. *Id.*

237. Wang, *supra* note 137.

238. *Id.* at 5.

239. *Id.*

240. *Id.*

241. *Id.*

crimination, and that nothing is “being swept under the rug.”<sup>242</sup> Wang concludes that “political correctness” is “really about . . . cultivating a greater degree of sensibility between peoples and groups of differing backgrounds.”<sup>243</sup> In other words, “[t]he tragically ignored bottom line of all this so-called politically correct culture gone rampant is a net increase in sensitivity to students’ backgrounds and experiences.”<sup>244</sup>

The Wang, Dorf, and Davis columns not only deemed “[r]eports of free speech’s death . . . greatly exaggerated,”<sup>245</sup> but depicted PC as a valuable contribution to the marketplace of ideas. Other commentators took these points one step further, arguing that PC critics themselves threaten the quality and quantity of discourse by attempting to chill PC messages. At minimum, commentators say, PC critics use the PC label to deflect attention from important critiques about discrimination. As a student columnist at Lock Haven University put it, “To dismiss the protests, you are both taking agency away from students, and ignoring important racial and social tensions.”<sup>246</sup> A Columbia University psychology professor was quoted in the *Washington Post* to similar effect. He called the political correctness label “a verbal jiu-jitsu. . . . When you say, ‘I have no time to be politically correct,’ what you are doing is turning the tables on the person raising a legitimate issue. You detract away from the issue that is being presented.”<sup>247</sup> A student columnist at Syracuse University agreed that “‘too politically correct’ [is] a term used to belittle protestors and make minorities seem unjustified in their requests for respect.”<sup>248</sup> Another student columnist, this one from the University of Minnesota, concurred, saying that “[l]abeling a discussion as a debate about political correctness is usually a way to negate that discussion’s worth. . . . When a person’s ideas are labeled as harmful (or po-

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242. *Id.*

243. *Id.*

244. *Id.*

245. *Id.*

246. Joanna Harlow, *Campus Protests and the Bloated Reaction to PC*, EAGLE EYE (Nov. 19, 2015), <https://lhueagleeye.wordpress.com/2015/11/19/campus-protests-and-the-bloated-reaction-to-pc> (Report A33).

247. Colby Itkowitz, *Donald Trump Says We’re All Too Politically Correct. But Is That Also a Way To Limit Speech?*, WASH. POST: INSPIRED LIFE BLOG (Dec. 9, 2015), <https://www.washingtonpost.com/news/inspired-life/wp/2015/12/09/donald-trump-says-were-all-too-politically-correct-but-is-that-also-a-way-to-limit-speech> (Report A46).

248. Gala, *supra* note 162.



litically incorrect), individuals uncomfortable with that fact often brandish the First Amendment, becoming instant warriors for the concept of free speech.”<sup>249</sup> The Minnesota columnist suggested that it is cries of “political correctness [that are] clogging the gears of true debate and communication.”<sup>250</sup>

#### 4. Anti-PC Backlash

Several commentators expressed sympathy for protestors’ messages but felt that some of their tactics and demands were unreasonable and counterproductive, generating a backlash. For example, Columbia linguistics professor John McWorther told CNN that student protestors were right to question Princeton’s use of Woodrow Wilson’s name and image but unreasonable to invoke microaggressions. McWorther lamented that student protestors sometimes “end up shooting themselves in the foot. They start out sensible and then they end up doing something that hurts their cause and doesn’t create anything except endless dissension.”<sup>251</sup> Conor Friedersdorf made a similar point in *The Atlantic Online*, arguing that students’ “wrongheaded choices” to try to punish speech “are distracting them from other, more worthy demands, and weakening their cause.”<sup>252</sup> This is unfortunate, says Friedersdorf, because protestors do call “attention to important injustices,” including “[b]ligotry, racial slurs, and harassment.”<sup>253</sup>

Anti-PC backlash extends well beyond university borders. Both pro-PC and anti-PC commentators identify this backlash as a major force in national politics today. Recall Peggy Noonan’s reference to “what’s going on at the colleges with [their] mad little Marats and Robespierres.”<sup>254</sup> Noonan connected this phenomenon to Donald Trump’s political rise. The latter, she said, “rests on two issues: opposition to illegal immigration to the U.S. and an obvious and visceral rejection of political

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249. Camille Galles, *Political Correctness Connects People*, MINN. DAILY (Feb. 3, 2015), <http://www.mndaily.com/article/2015/02/political-correctness-connects-people> (Report A44).

250. *Id.*

251. *CNN Tonight*, *supra* note 167.

252. Conor Friedersdorf, *The Lessons of Bygone Free-Speech Fights*, THE ATLANTIC (Dec. 10, 2015), <https://www.theatlantic.com/politics/archive/2015/12/what-student-activists-can-learn-from-bygone-free-speech-fights/419178> (Report A10).

253. *Id.*

254. Noonan, *supra* note 186.

correctness and the shaming and silencing it entails.”<sup>255</sup> In a Fox News panel discussion, panelist Dan Henninger also spoke of the political impact of public frustration with what he called “this craziness on campuses.” Henninger observed that “Donald Trump and Ben Carson have spoken constantly about political correctness. . . . [T]he people supporting them feel that the sort of tolerance of this kind of behavior on campuses is a manifestation of a whole range of politically correct attitudes that have led to this kind of breakdown.”<sup>256</sup> And in the *Newsweek* cover story cited earlier, journalist Nina Burleigh relayed a scene from a Long Island Trump rally that vividly demonstrates the connections Trump loyalists draw between their candidate, opposition to political correctness, and free speech. She describes a “giant mobile highway sign” that Trump supporters parked “near the [rally] venue that advertised, in blinking lights, ‘Free speech zone.’” Burleigh also notes that “Trump has made supposedly unfettered speech a part of his campaign’s schtick.” To illustrate, she cites an occasion in which Trump boasted that he has something to say that is “very, very salient, very important and probably not politically correct, but [he doesn’t] care.”<sup>257</sup>

Interviews conducted with fifty Republicans across Iowa in November 2015 similarly reflect voters’ deep discomfort with political correctness. The local newspaper that conducted the interviews reported that “[m]any Iowa Republicans mention the protests that roiled the University of Missouri this month as black students complained about racism on campus. Republicans saw the response to the protests—including the ouster of the college president and chancellor—as over-the-top coddling and an assault on free speech.”<sup>258</sup> One respondent tied the situation at Mizzou to broader social and economic anxieties. She asked, “How can you prevent 35,000 people from saying bad things? . . . Is it going to get to the point where we all have to watch every word that we say for fear of offending someone and losing our jobs?”<sup>259</sup> The same respondent also tied political correctness to immigration, and to her support for Donald Trump’s

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255. *Id.*

256. *Fox News Journal: Editorial Report*, *supra* note 200.

257. Burleigh, *supra* note 136.

258. Lesley Clark, *For GOP, Fear and Anxiety in the Heartland*, STAR-TELEGRAM (Nov. 23, 2015), <http://www.star-telegram.com/news/politics-government/election/article46116660.html> (Report A28).

259. *Id.*

proposed “deportation force.”<sup>260</sup> “They’re afraid of being politically correct, but we need to deport them.”<sup>261</sup>

### III. REFLECTIONS ON THE CAMPUS PC DEBATE REPORTS

#### A. PUTTING MY CARDS ON THE TABLE: AN OVERVIEW OF MY OWN NORMATIVE LEANINGS

Sections B and C reflect on the state of public discourse about political correctness and campus free speech. Before turning to those reflections, this Section briefly outlines my own normative takes on the range of PC practices at issue in the reports. Although this Article’s focus is on the free-speech politics surrounding PC practices rather than the merits of those practices, my views of the two invariably intersect at points. For example, my view of a particular practice may color my reaction to public debates about it. I am critical, for instance, of the public discourse over trigger warnings in part because that discourse elides, through imprecision and caricature, the respects in which trigger warnings sometimes can enhance rather than silence speech, or in which academic freedom may demand that trigger warnings’ uses be left to instructors’ judgments. My view of a practice also may be influenced by the impact that the practice itself has on public discourse. For example, I am critical of content-based speech codes in part because of the backlash and distraction that they tend to engender among the public and campus communities.

Turning first to formal campus speech codes: simply put, I find legislative or administrative codes that draw lines based on speech content—including those that make content-based distinctions within otherwise unprotected speech categories, such as true threats or fighting words—ill-advised. When implemented by public universities, they should be deemed unconstitutional. Indeed, such codes have been struck down by courts as unconstitutional in virtually all cases in which they were challenged.<sup>262</sup> Elsewhere, I have elaborated on the case against content-based speech restrictions in general, including those targeting hateful speech.<sup>263</sup> Three aspects of that case are

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260. *Id.*

261. *Id.*

262. See *supra* note 14 and accompanying text.

263. See Kitrosser, *supra* note 71, at 843, 847–49, 874–86 (2005); Heidi

especially relevant to campus speech codes. First, given human fallibility and the tendency of governments to abuse power, it is dangerous to empower authorities to pick and choose when speech content is sufficiently harmful or lacking in value as to justify its suppression.<sup>264</sup> This reasoning is applicable to university administrations when they, much like legislatures, create rules of speech or conduct for the campus community.<sup>265</sup> Second, potential abuse and incompetence by authorities is more dangerous in the realm of speech suppression than in most other areas of regulation. This is so because of the roles that speech plays as a check on powerful entities and as a vehicle to challenge social consensuses.<sup>266</sup> Third, there is reason to fear that even restrictions on hateful speech will be counterproductive, transforming opportunities for counter-speech and dialogue into referenda on free speech. Worse still, restrictions and their enforcement may turn hateful speakers into First Amendment martyrs whose messages are celebrated accordingly.<sup>267</sup>

These arguments also provide bases to respond to critical theorists' reasoning in favor of hate speech restrictions. Critical theorists make at least two important objections to the classical pro-free speech admonitions that speech suppression is dangerous, and that one should respond to hateful speech not by punishing it, but by countering it with more and better speech. Critical theorists point out, first, that the burdens of hateful speech are not evenly distributed. Classical arguments unfairly

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Kitrosser, *From Marshall McLuhan to Anthropomorphic Cows: Communicative Manner and the First Amendment*, 96 NW. U. L. REV. 1339, 1339–44, 1372–96 (2002).

264. See, e.g., SCHAUER, *supra* note 29, at 33–34, 45–46, 71–72, 86 (discussing free speech arguments premised on government fallibility).

265. Certainly, public universities are different in important ways from legislatures and law enforcement agencies. Indeed, universities themselves should and do possess institutional academic freedom in some contexts. See *supra* note 33 and accompanying text. Nonetheless, where university administrations create generally applicable rules of speech or conduct for the campus community as a whole, and where they enforce such rules through campus authorities, their actions are most analogous to legislatures and to law enforcement agencies, respectively.

266. See SCHAUER, *supra* note 29, at 45 (“We wish to preserve the freedom to criticize the policies of the majority because those policies may be wrong, just as any other judgment may be wrong. Criticism may help the majority or its designates see error, and recognize their fallibility.”); see also Vincent Blasi, *The Checking Value in First Amendment Theory*, 2 AM. BAR FOUND. RES. J. 521 (1977) (discussing the crucial role of speech as a check on government misconduct).

267. See Kitrosser, *supra* note 263, at 1383–86.

place the onus on those most often targeted by hateful speech to withstand its blows and respond to it.<sup>268</sup> Second, they observe that the marketplace of ideas is rife with market failures. Most importantly for our purposes, the marketplace—being society, after all—is filled with biases, often subconscious ones. These biases badly skew the ability of marketplace consumers rationally to process hateful speech and responses to the same.<sup>269</sup> Both of these objections strike me as plainly true and compelling. What is less clear, however, is whether they are reasons to support speech restrictions. The very same societal failings reflected in the marketplace, after all, presumably will inhere in those persons and institutions empowered to restrict speech. This brings us back to the worry that those who create and enforce content-based speech restrictions will do so incompetently or abusively. Even putting aside such failings, the very nature of the social prejudices that critical theorists describe—specifically, their manifold and deeply ingrained ubiquity—makes the task of line-drawing between actionable and permissible speech content intrinsically precarious. Furthermore, fights over speech restrictions themselves are bound to become a part of the discourse consumed in the deeply imperfect speech marketplace. This returns us to the concern that restrictions will prove counterproductive.<sup>270</sup>

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268. See, e.g., Charles R. Lawrence III, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, 1990 DUKE L.J. 431, 435–36, 459–61, 472–76 (1990) (describing disproportionate burdens that hateful speech imposes on marginalized groups, and that such groups are asked to bear in the name of free speech); Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2321–22, 2336–38, 2340–41, 2371–72, 2375–78 (1989) (same).

269. See, e.g., RICHARD DELGADO & JEAN STEFANCIC, *MUST WE DEFEND NAZIS? HATE SPEECH, PORNOGRAPHY, AND THE NEW FIRST AMENDMENT* 43 (1997) (“[W]ith systemic social problems like racism and sexism, the marketplace of ideas is much less effective [than with clearly bounded disputes]. These broad-scale ills are embedded in the reigning paradigm, the set of meanings and conventions by which we construct and interpret reality.”); Lawrence, *supra* note 268, at 467–72 (citing multiple ways in which racism infects the marketplace of ideas).

270. For the same reasons that I find administrative speech codes troubling, I am concerned about federal government actions that create financial incentives for schools to create such codes or to err on the side of investigating public or classroom statements by professors that anger or offend students. I refer to current interpretations of Title IX by the Department of Education's Office of Civil Rights that are quite cavalier in their attention to free speech protections. See, e.g., AM. ASS'N OF UNIV. PROFESSORS, *THE HISTORY, USES, AND ABUSES OF TITLE IX* 75–82 (2016). These interpretations have sparked equally disturbing university investigations of professors for public or class-

My policy concerns about content-based speech codes are applicable to codes in private universities as well as public ones. While the relevant actor in private colleges is not the state,<sup>271</sup> private college administrations play a very similar role vis-à-vis students and faculty members as do public college administrations. Thus, even where the administratively imposed, content-based codes at issue are private college codes and the First Amendment is not formally applicable,<sup>272</sup> my presumption is that such codes remain bad ideas as a matter of policy. I would, however, attach a caveat to this point: the situation might be more complicated in the case of a highly specialized private college—for example, a small, religious college—that sees and openly advertises its mission as including intensive value inculcation to which speech restrictions are integral. In such cases, institutional academic freedom may cut in favor of restrictiveness.<sup>273</sup>

Matters become yet more complicated when we move away from formal, administratively imposed speech codes or government directives, and consider the many other practices, policies, and ideas to which the term PC also refers. While I do not attempt here to cover the full array of topics and potential questions, I offer a few reflections on some major, recurring issues. First, where a discussant simply engages and criticizes the substance of another's purportedly un-PC remarks, such a response is precisely the type that classical free speech theory counsels and embraces. Second, that said, there can be a fine line between substantive engagement and taunting or social os-

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room statements to which one or more students objected. *Id.* at 82–87. Title IX was mentioned in only one of the reports yielded in my 2014–2016 Lexis search. See Burleigh, *supra* note 136. This is not surprising, as both Title IX and the Office of Civil Rights are relatively obscure to most citizens. However, to the extent that Title IX activities lead universities to err on the side of speech restrictiveness, they can result in incidents or policies that do garner public attention and contribute to backlash.

271. Putting aside possible Title IX-related pressures or other state or federal influences.

272. See Paul Horwitz, *Universities as First Amendment Institutions: Some Easy Answers and Hard Questions*, 54 UCLA L. REV. 1497, 1524–30 (2007) (discussing the distinction between the First Amendment's application to private and public universities and actors).

273. I and others have made a somewhat analogous point about government and public employee speech. That is, government may freely restrict speech conveyed in the course of public employment or to implement a subsidy program only where such message control is a transparent part of the public job or program at issue. See Heidi Kitrosser, *The Special Value of Public Employee Speech*, 2015 SUP. CT. REV. 301, 325–28, 332–34.

tracism. The latter responses may well shut down discussion rather than encourage it, and in the longer term cause backlash and alienation. While the line between constructive and counterproductive speech is not one that laws or campus administrations can or should police, students and other campus community members are well-advised to be conscious of the distinction in their own interactions. Third, disrupting campus speakers so that they cannot be heard or cannot continue their speeches plainly crosses the line from protest and counter-speech to naked exercise of force. At the same time, it is very important that campus administrators and legislators respect the rights of students and others peacefully and non-disruptively to protest or speak out against campus speakers. I am concerned, for example, that laws imposing punishments on persons who obstruct access to speaking events could be used against peaceful protestors or even individuals who engage in social pressure.<sup>274</sup>

Fourth and finally, there are important differences between administratively imposed speech restrictions and professorial choices about managing speech in the classroom. The latter may include, for instance, decisions to give trigger warnings, to offer students alternative reading assignments based on their responses to such warnings, or to lecture on microaggressions. The ability of professors to make such pedagogical choices itself is grounded in academic freedom. As courts and commentators long have recognized, substantial democratic and social benefits flow from such freedom.<sup>275</sup> Of course, professorial academic freedom is limited by administrative needs that themselves are grounded in claims of institutional academic freedom. For example, administrations have compelling reasons to establish procedures to ensure that their

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274. Free speech concerns have been raised, for example, about a recently passed Arizona law that would punish protestors who block traffic in order to obstruct access to certain speaking events. See Howard Fischer, *At the Capital-Protesting: Ducey Signs Bill That Allows Bigger Fines, More Jail Time*, CASA GRANDE DISPATCH (May 17, 2016), [http://www.pinalcentral.com/casa\\_grande\\_dispatch/arizona\\_news/at-the-capitol---protesting-ducey-signs-bill-that/article\\_b60d108a-1c43-11e6-a5ab-e39b3d910c05.html](http://www.pinalcentral.com/casa_grande_dispatch/arizona_news/at-the-capitol---protesting-ducey-signs-bill-that/article_b60d108a-1c43-11e6-a5ab-e39b3d910c05.html).

275. See, e.g., Kitrosser, *supra* note 273, at 312–14 (citing discussions to this effect in Supreme Court cases, including the Court’s acknowledgment in *Garcetti v. Ceballos* that “[t]here is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee-speech jurisprudence” (quoting *Garcetti v. Ceballos*, 547 U.S. 410, 425 (2006))).

professors are competent teachers. Yet those procedures themselves should protect the professorial aspect of academic freedom. They should, for instance, minimize the risk that professors will face retaliation for political reasons, unrelated to the quality of their work.<sup>276</sup> Similarly, sweeping administrative rules that categorically require the use of, or remove the option to use, particular pedagogical tools, would seem presumptively to infringe on the academic freedom of professors.

## B. INTERPRETING AND ADVANCING THE DISCOURSE

### 1. Imprecision, (Dis)agreement, and Political Identity

Turning now to the discourse over campus PC as reflected in the Lexis-generated reports, it is striking how rarely the discussants in both time periods meaningfully define their terms. When they reference “political correctness,” it often is unclear whether they mean to reference formal restrictions or informal pressures, let alone the subset of either type that they have in mind. Even when reports single out particular practices, important details frequently are excluded. We saw, for instance, several commentators refer to “trigger warnings” without specifying whether they mean voluntary warnings by faculty, warnings suggested or encouraged by a school’s administration, or administratively mandated warnings. There is even less clarity as to the meaning of “safe spaces.”

It is equally noteworthy that the normative gulf between discussants tended to narrow with the specificity of examples. This is most clearly evidenced by the near uniformity of views expressed with respect to each of the practices, policies, or events identified in the 2014–2016 reports.<sup>277</sup> Even the spots of disagreement on specific issues—namely, Halloween costumes at Yale and Woodrow Wilson’s name and image at Princeton—were relatively minor, with one exception.<sup>278</sup> Similarly, the

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276. Cf. Kitrosser, *supra* note 273, at 338–41 (proposing a similar approach for evaluating public employee First Amendment claims more broadly).

277. See *supra* Part II.C.

278. The one exception is the column by the Cornell student supporting protections against “hate speech.” That student called “[b]anning racist Halloween costumes (Yale) and questioning the need for buildings named after Ku Klux Klan apologists (Princeton) . . . a good place to start.” Hardin, *supra* note 162. The other note of support for removing Woodrow Wilson’s name and image at Princeton came from Columbia linguistics professor John McWorther. McWorther criticized other PC efforts, but argued that Wilson’s racist acts were sufficiently atrocious as to warrant change. *CNN Tonight*, *supra* note



1989–1995 reports reflected a substantial consensus in opposition to formal campus speech codes.<sup>279</sup> Even commentators set against one another on talk show panels approached convergence, when pushed, around the notions that extreme, targeted speech can be formally punished while formal sanctions in other contexts are inappropriate.

The most pervasive and vehement disagreements between commentators in both sets of reports thus seem to be about something other than specific legal or policy ideas. My sense is that there are two main fault lines. The first is a difference between commentators' soft factual assessments. By soft factual assessments, I mean their interpretations—based on some combination of personal experience, anecdotes (including examples reported in the news), and gut feelings—of the relevant facts. Recall, for example, PC defenders' frequent complaints to the effect that PC critics seize on a few extreme and unrepresentative examples that they repeat regularly and portray as emblematic of PC culture.<sup>280</sup> PC defenders themselves view PC mostly as encompassing a set of viewpoints and critiques. From their perspectives, then, to attack PC is to attack free and open debate.<sup>281</sup> PC critics, on the other hand, have a very different conception of PC. They view speech suppression as central to political correctness.<sup>282</sup> PC critics also suggest that it is their opponents, not themselves, who exaggerate problems. Specifically, they accuse PC defenders of overstating the scope and extremity of race and gender discrimination on college campuses.<sup>283</sup>

Of course, divergent factual assessments themselves do not arise in a vacuum. Given the passion with which PC is debated, and given the hot button issues that it encompasses, the divergence most likely stems from confirmation biases<sup>284</sup> that them-

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167. Finally, the other person sounding a favorable note about Halloween costume criticisms was a student who simply wrote that it is not bad to make someone feel uncomfortable for wearing an offensive Halloween costume. *Gala*, *supra* note 162.

279. *See supra* Part II.B.

280. *See supra* notes 234–46.

281. *E.g., supra* notes 246–51.

282. *E.g., supra* notes 49–55.

283. *E.g.,* text accompanying notes 64–66.

284. For a wide-ranging discussion of confirmation bias, see generally, Raymond S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, 2 REV. GEN. PSYCHOL. 175, 175 (1998) (“[T]he term [is used] to represent a generic concept that subsumes several more specific ideas that

selves arise from some more fundamental sources. As critical race and gender theorists have taught us, one such source surely is the fact of widely varying backgrounds and life experiences among members of campus communities.<sup>285</sup> Such differences themselves contribute to, though do not wholly overlap with, another source of divergence: competing political identities. By political identity, I mean one's experience of certain political views and associations as important parts of one's self-conception.<sup>286</sup>

The phenomenon of pro-PC and anti-PC identity categories surely is a complex one, and the underlying political psychology story is beyond this project's scope. Nonetheless, a few preliminary thoughts are in order. First, a self-conception as a free speech fighter does seem to be a prominent part of an anti-PC identity. To be sure, many PC defenders push back against the premise that political correctness entails speech suppression rather than counter-speech. Some commentators even call anti-PC free speech rhetoric disingenuous; they deem it a cynical effort to repackage an anti-diversity agenda as a noble battle for freedom. Nonetheless, as the reports from 1989–1995 and 2014–2016 illustrate, there does appear to be a deeply held belief among many anti-PC commentators that PC truly threatens free speech and that their opposition to it amounts to a fight for free expression.

Second, these same associations—of PC with speech suppression and of anti-PC with speech protection—makes identifying one's self as anti-PC an attractive proposition for many

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connote the inappropriate bolstering of hypotheses or beliefs whose truth is in question.”).

285. See, e.g., Lawrence, *supra* note 268, at 435 (“We see a different world than that which is seen by Americans who do not share this historical experience. We often hear racist speech when our white neighbors are not aware of its presence.”); Matsuda, *supra* note 268, at 2375 (“[The] limitation of imagination is a disability, a blindness, that prevents lawmakers from seeing that racist speech is a serious threat. Legal insiders cannot imagine a life disabled in a significant way by hate propaganda.”).

286. Identity and confirmation bias can work together, with “in-group” members relatively likely to trust information from fellow in-group members and to distance themselves from information or views conveyed by out-group members. See Dominic Abrams et al., *Knowing What To Think By Knowing Who You Are: Self-Categorization and the Nature of Norm Formation, Conformity and Group Polarization*, 29 BRIT. J. SOC. PSYCHOL. 97, 98–99, 104, 109, 116–17 (1990); see, e.g., Leonie Huddy, *From Social to Political Identity: A Critical Examination of Social Identity Theory*, 22 J. INT'L SOC'Y POL. PSYCHOL. 127, 131 (2001) (discussing the application of social identity theory to political identities, such as “conservative, environmentalist, liberal,” etc.).

Americans.<sup>287</sup> As we saw in Part I, a commitment to the First Amendment and to free speech more broadly is highly resonant politically and culturally, evoking soaring judicial prose and celebrated stories of freedom and bravery.<sup>288</sup> Because much media coverage paints PC in broad brushstrokes, it both reflects and lends itself to reactions based more on a gut sense of free speech commitment than on engagement with nuanced questions of free speech law and policy.

Third, PC's defenders seem most overtly to identify with a commitment to diversity and to social justice for marginalized groups. Fourth, while a pro-free speech orientation seems the most attractive and readily invoked identity for anti-PC individuals, some also appear motivated by negative perceptions of diversity or of related social justice actions or rhetoric.<sup>289</sup> Evidence to this effect includes the lumping by many anti-PC commentators of affirmative action, multiculturalism, and other diversity, social justice, or simply "liberal" initiatives into their depictions of political correctness. Another piece of evidence is the push-back by some anti-PC commentators against the premise that race and gender discrimination is a serious problem on college campuses.

Finally, popular associations between PC and speech suppression, and between PC, diversity, and social justice, can

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287. See, e.g., James Boyle, *Universalism, Justice and Identity Politics: From Political Correctness to Constitutional Law* (2000) (unpublished draft), <https://law.duke.edu/boylesite/identity.htm> ("The brilliance of the PC Indictment as a political strategy is that it took the liberal commitment to universalism at its strongest point; the [F]irst [A]mendment refusal to treat different types of speech directed at different groups in different ways.").

288. See *supra* Part I.

289. For a discussion to this effect, beyond indicia in the sources, see, for example, Nancy Baker Jones, *Confronting the PC "Debate": The Politics of Identity and the American Image*, 6 NWSA J. 384, 387 (1994) ("[W]hat passes for a debate [about PC] in the popular literature is really the most highly publicized portion of an ongoing assault on leftist notions of equity and pluralism."); Martin E. Spencer, *Multiculturalism, "Political Correctness," and the Politics of Identity*, 9 SOC. F. 547, 548 (1994) (criticizing political correctness, and describing it as "a product of the dynamics of the collective construction and reconstruction of identity in America"); Joan Wallach Scott, *The Campaign Against Political Correctness: What's Really at Stake?*, CHANGE, Nov.–Dec. 1991, at 30, 36 (observing that university demographics "have changed dramatically since the 1960s, and much of the present controversy has roots in those changes"); Boyle, *supra* note 287, at 6 (arguing that debates over political correctness most fundamentally are about "the tension between universalism and particularism—between formal equality and substantive equality, Western culture and multiculturalism, universal truths and the knowledge of subordinated groups").

combine to create self-fulfilling prophecies. In other words, the two sets of common associations might lead young people for whom diversity and social justice are core parts of their identity to embrace—as an aspect of that same identity—skepticism toward free speech. The converse can be true as well. That is, the same common associations might lead young people who view a free speech commitment as central to their identities to look askance at equality-focused initiatives.<sup>290</sup>

## 2. Advancing the Dialogue in Universities and Beyond

Debating positions about political correctness thus may often say more about participants' gut senses of political identity than about their nuanced policy views. This is by no means to deny that genuine policy differences exist, or that they would disappear were the discourse more elevated. The relative richness of the academic literature on equality-focused speech restrictions suggests quite the opposite. Furthermore, the reports themselves contain some real differences of opinion on law and policy.

The existence of genuine disputes over the fine points of campus speech restrictions is consistent with both doctrine and public opinion on free speech in the United States. Surveys demonstrate that while Americans support free speech in the abstract, they differ as to where to draw lines.<sup>291</sup> For evidence of this phenomenon, one need look no further than current controversies ranging from whether the government should prosecute or pardon Edward Snowden,<sup>292</sup> to the propriety of professional, college or high school athletes “taking a knee” in protest

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290. This phenomenon would be consistent with social psychology research indicating that “in-group” members are inclined to follow the normative and informational leads of other “in-group” members and to distance themselves from views associated with “out-group” members. See Abrams et al., *supra* note 286; cf. Huddy, *supra* note 286, at 144–45 (indicating that political group members look for similarities between themselves and prototypical group members, and for dissimilarities between themselves and members of “enemy” groups).

291. See, e.g., Nicole M. Lindner & Brian A. Nosek, *Alienable Speech: Ideological Variations in the Application of Free-Speech Principles*, 30 POL. PSYCHOL. 67, 68 (2009) (citing surveys showing that Americans strongly support free speech in the abstract but have more mixed views about applying the principle to particular cases).

292. See *No Pardon for Edward Snowden*, WASH. POST (Sept. 17, 2016), [https://www.washingtonpost.com/opinions/edward-snowden-doesnt-deserve-a-pardon/2016/09/17/ec04d448-7c2e-11e6-ac8e-cf8e0dd91dc7\\_story.html](https://www.washingtonpost.com/opinions/edward-snowden-doesnt-deserve-a-pardon/2016/09/17/ec04d448-7c2e-11e6-ac8e-cf8e0dd91dc7_story.html) (describing the controversy and arguing against a pardon).

while the national anthem plays.<sup>293</sup> And courts in the United States have never protected speech absolutely.<sup>294</sup>

The law and policy of academic freedom is especially complex and does not lend itself to absolutes. For one thing, as we have seen, there are at least two potential sets of academic freedom claimants at universities—faculty members and the institutions themselves—as well as potential free speech, press, and association claimants among students. Claims from these respective sources can be in tension with one another.<sup>295</sup> For example, a professor’s claimed right to express her political views in her scholarship may conflict with an institution’s discretion to make academic quality judgments. Similarly, an institution’s claimed right to set the parameters of its student journalism program may conflict with a journalism professor’s pedagogical judgments, or with student press freedoms.

The point, in short, is not that a uniformity of views is a likely or even desirable outcome of a more sophisticated mainstream discourse. It is, rather, that a more elevated debate would challenge participants to acknowledge and then move past their visceral reactions. Ideally, discussants could move on to identify, with some specificity, areas of common ground and points of real dispute.

Framing questions and discussion topics as precisely as possible is one small but essential step toward achieving this goal. The broader the brush strokes with which issues are painted—for instance, the closer that discussions come to centering on “political correctness” writ large or on vague references to unspecified forces that tell students “what they are and are not allowed to say or do”<sup>296</sup>—the more natural it is for commentators and readers to default to gut reactions. Relatively specific questions, on the other hand—for instance, whether professors at public universities can legally be prohibited from issuing trigger warnings by university administrators, whether such a prohibition would constitute good policy, and whether voluntary trigger warnings can be a part of good pedagogy—are

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293. See Scott Jaschik, *East Carolina U Says Band Will Not Permit Taking a Knee During National Anthem*, INSIDE HIGHER ED (Oct. 5, 2016), <https://www.insidehighered.com/news/2016/10/05/east-carolina-u-says-band-will-not-permit-taking-knee-during-national-anthem>.

294. See, e.g., Kitrosser, *supra* note 71, at 845 (citing categories of unprotected speech).

295. See *supra* note 33 and accompanying text.

296. Noonan, *supra* note 186.

less likely to yield reflexive responses uninformed by key definitions. We might call it a best practice, then, for media commentators to err on the side of precision in discussing campus political correctness. The same logic applies to college faculty, administrators, or students who make or facilitate public or intra-campus communications on the topic.

A very recent example demonstrates both how imprecision can shed more heat than light on matters of campus political correctness, and how debates are enriched when participants insist on drilling down to specifics. The example is a letter sent to incoming first-year students at the University of Chicago by Dean of Students John Ellison, and the public debate that the letter sparked. As is now widely known, the letter included the following sentence:

Our commitment to academic freedom means that we do not support so-called “trigger warnings,” we do not cancel invited speakers because their topics might prove controversial, and we do not condone the creation of intellectual “safe spaces” where individuals can retreat from ideas and perspectives at odds with their own.<sup>297</sup>

Another passage was more nuanced, stating that “[c]ivility and mutual respect are vital to all of us, and freedom of expression does not mean the freedom to harass or threaten others.”<sup>298</sup> Nonetheless, the former sentence received the most attention among students and the public.<sup>299</sup> Some applauded it as a bold statement of academic freedom.<sup>300</sup> Others criticized its casual dismissiveness toward trigger warnings and safe spaces.<sup>301</sup> Critics argued that the statement elided complexities, and seemed designed to reach alumni and donors at the level of gut political reaction rather than to generate dialogue.<sup>302</sup>

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297. Letter from John Ellison, Dean, Univ. of Chi., to University of Chicago Class of 2020 (Aug. 24, 2016), <https://www.chicagomaroon.com/2016/08/24/university-to-freshmen-dont-expect-safe-spaces-or-trigger-warnings>.

298. *Id.*

299. See Pete Grieve, *University to Freshmen: Don't Expect Safe Spaces or Trigger Warnings*, CHI. MAROON (Aug. 24, 2016), <https://www.chicagomaroon.com/2016/08/24/university-to-freshmen-dont-expect-safe-spaces-or-trigger-warnings>.

300. See, e.g., *infra* note 307 and accompanying text; see also Alex Morey, *U. Chicago's 'Academic Freedom' Letter a Win for Campus Speech*, FOUND. FOR INDIVIDUAL RTS. EDUC. (Aug. 25, 2016), <https://www.thefire.org/u-chicagos-academic-freedom-letter-a-win-for-campus-speech>; Emma Pettit, *How 3 Professors Use Trigger Warnings in Their Classrooms*, CHRON. HIGHER EDUC. (Sept. 6, 2016), <http://www.chronicle.com/article/How-3-Professors-Use-Trigger/237691>.

301. See *infra* notes 304–06, 311–12, and accompanying text.

302. See, e.g., Jay Michaelson, *University of Chicago's P.C. Crackdown Is*

One critic of the letter—history professor Kevin Gannon of Iowa’s Grand View University—stated: “For every ginned-up hypothetical scenario of spoiled brats having a sit-in to protest too many white guys in the lit course, there are very real cases where trigger warnings or safe spaces aren’t absurdities, but pedagogical imperatives.”<sup>303</sup> Gannon elaborated, drawing on his own classroom experiences:

If I’m teaching historical material that describes war crimes like mass rape, shouldn’t I disclose to my students what awaits them in these texts? If I have a student suffering from trauma due to a prior sexual assault, isn’t a timely caution the empathetic and humane thing for me to do? And what does it cost? A student may choose an alternative text I provide, but this material isn’t savagely ripped out of my course to satiate the PC police.<sup>304</sup>

Wesleyan University President, Michael S. Roth, similarly accused Chicago’s Dean Ellison of falling back on the “bogeyman of political correctness.”<sup>305</sup> Like Gannon, Roth challenged Ellison’s blanket dismissals of trigger warnings, safe spaces, and the like by juxtaposing them with concrete examples:

What if a faculty member wanted to give students a heads up that they would be reading a racist text or a book about rape so as to help them understand the reasons why it was part of the work of the class? Would giving this “trigger warning” not be part of the professor’s academic freedom?

And what if students, as Northwestern University President Morton Schapiro explained in an op-ed last year, sometimes wanted to hang out in the university’s Hillel so as to feel comfortable (safe) in discussions about Israel? . . . Would [this] run afoul of Chicago’s posture of intellectual toughness?<sup>306</sup>

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*Really About Keeping Right-Wing Donors Happy*, DAILY BEAST (Aug. 26, 2016), <http://www.thedailybeast.com/articles/2016/08/26/university-of-chicago-s-p-c-crackdown-is-really-about-keeping-right-wing-donors-happy.html>; Richard Pérez-Peña, Mitch Smith, & Stephanie Saul, *University of Chicago Strikes Back Against Campus Political Correctness*, N.Y. TIMES (Aug. 26, 2016), <https://www.nytimes.com/2016/08/27/us/university-of-chicago-strikes-back-against-campus-political-correctness.html>.

303. Kevin Gannon, *UChicago’s Anti-Safe Spaces Letter Isn’t About Academic Freedom. It’s About Power*, VOX (Aug. 26, 2016), <http://www.vox.com/2016/8/26/12657684/chicago-safe-spaces-trigger-warnings-letter>.

304. *Id.*

305. Valerie Strauss, *So You Like the University of Chicago’s Rejection of ‘Safe Spaces’ for Students? Consider This.*, WASH. POST (Aug. 30, 2016), <https://www.washingtonpost.com/news/answer-sheet/wp/2016/08/30/so-you-like-the-university-of-chicagos-rejection-of-safe-spaces-for-students-consider-this> (quoting Michael S. Roth).

306. *Id.*

Among those applauding the Chicago letter, some wrote in vague yet provocative terms themselves. For example, Roger Pilon, writing on the blog of the Cato Institute, “praised Chicago for ‘bucking the trend at colleges and universities across the country by refusing to pander to the delicate but demanding “snowflakes” and “crybullies” who’ve tyrannized American campuses over the past few years.”<sup>307</sup> Others supporters, however, sought to strengthen Ellison’s case by clarifying details. Alex Morey of FIRE announced that Chicago “has confirmed to FIRE” that its anti-trigger warning statement “is not a ban on that practice.”<sup>308</sup> Morey acknowledged the validity of concerns that a trigger warning ban “would have affected the academic freedom of professors who might choose to use them as a pedagogical tool.”<sup>309</sup> “Fortunately,” he reiterated, Chicago “assured FIRE that professors maintain broad latitude to engage in teaching practices as they see fit or to accommodate student requests.”<sup>310</sup>

The debate generated by the Chicago letter illustrates the dialogic benefits of concreteness. It also demonstrates the risks that dogmatism—ironically, even dogmatism about free speech—may impoverish analysis. As Professor Gannon put it, the Chicago letter seems to tell students: “We’ll be the judge of what you need to know and how you need to know it.”<sup>311</sup> Several University of Chicago faculty members made a similar point in an open letter to students that responded to Dean Ellison’s letter. They wrote, “Those of us who have signed this letter have a variety of opinions about requests for trigger warnings and safe spaces. . . . [But to] start a conversation by declaring that such requests are not worth making is an affront to the basic principles of liberal education . . . .”<sup>312</sup>

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307. Scott Jaschik, *U of Chicago Letter to New Students on Safe Spaces Sets off Intense Debate*, INSIDE HIGHER ED (Aug. 29, 2016), <https://www.insidehighered.com/news/2016/08/29/u-chicago-letter-new-students-safe-spaces-sets-intense-debate> (quoting Roger Pilon, *The University of Chicago Has No Room for Crybullies*, CATO INST. (Aug. 25, 2016), <https://www.cato.org/blog/university-chicago-has-no-room-crybullies>).

308. Morey, *supra* note 300.

309. *Id.*

310. *Id.*

311. Gannon, *supra* note 303.

312. *Faculty Respond to Ellison with a Letter of Their Own*, CHI. MAROON (Sept. 13, 2016), <https://www.chicagomaroon.com/article/2016/9/13/letter-faculty-respond-ellison-letter>.



Indeed, the Chicago letter—like the many reports discussed throughout this Article that speak in vague, but disparaging, terms of political correctness and in generic, yet celebratory, terms of free speech—calls to mind a phenomenon warned against by none other than the great free speech theorist John Stuart Mill. Mill wrote that “[t]he fatal tendency of mankind to leave off thinking about a thing when it is no longer doubtful, is the cause of half their errors. A contemporary author has well spoken of ‘the deep slumber of a decided opinion.’”<sup>313</sup> The Chicago letter, and the many reports that speak in similarly provocative generalities, treat their factual premises and policy conclusions as so self-evident, so beyond debate, that they illustrate the very intellectual slumber against which Mill warned.

In contrast, a reciprocal and nuanced dialogue can lead participants who might typically be called pro-PC to reconsider their positions, just as it can cause anti-PC types to rethink theirs. For example, in his response to the Chicago letter, Wesleyan’s President Roth wrote of the press-protective outcome of a dialogue with and among Wesleyan students.<sup>314</sup> The students had urged the administration to shut down the campus newspaper for criticizing the Black Lives Matter movement.<sup>315</sup> Had Roth ignored or haughtily lectured the students, they might have walked away from the episode even more invested in their identities as skeptics of press protections. Instead, Roth writes:

[W]e had an intense debate about freedom of the press. . . .

Over time, our students realized that censorship in various forms is antithetical to our educational mission, and they also recognized that the school newspaper could do a better job soliciting diverse points of view. Rather than merely affirming abstract principle, they worked through an on the ground commitment to freedom of expression along with the cultivation of diverse points of view.<sup>316</sup>

In a *Los Angeles Times* opinion piece cited in one of the reports that my Lexis search yielded,<sup>317</sup> UC Irvine’s chancellor Howard Gillman and its law school dean Erwin Chemerinsky tell a story that parallels Roth’s tale. The two describe their ex-

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313. John Stuart Mill, *On Liberty*, in THE PHILOSOPHY OF JOHN STUART MILL 185, 234 (Marshall Cohen ed., 1961).

314. Strauss, *supra* note 305.

315. *Id.*

316. *Id.*

317. Howard Gillman & Erwin Chemerinsky, *Don’t Mock or Ignore Students’ Lack of Support for Free Speech. Teach Them*, L.A. TIMES (Mar. 31, 2016), <http://www.latimes.com/opinion/op-ed/la-oe-chemerinsky-gillman-free-speech-on-campus-20160331-story.html>.

perience co-teaching a “freshman seminar on freedom of speech on college campuses.”<sup>318</sup> While they were “surprised,” from early in the course, “by the often unanimous willingness of our students to support efforts to restrict and punish a wide range of expression,”<sup>319</sup> they also came to understand the students’ perspectives. They explained, for example, that “[o]ur students or their friends have experienced the psychological harms of hateful speech or bullying more than they have experienced the social harms of censorship or the punishment of dissent.”<sup>320</sup> Gillman and Chemerinsky recognized that “[s]imply telling students to toughen up isn’t persuasive.”<sup>321</sup> Instead, they introduced the students to stories of the struggle for free speech and against censorship in American history. By the end of the semester, many of the students’ views had changed or become more nuanced. “Rather than mock students or ignore their concerns,” Chemerinsky and Gillman concluded, “we need to make sure they understand the context of the Constitution’s free speech guarantees.”<sup>322</sup>

By the same token, school administrators would be well advised to go several steps beyond lecturing aggrieved students to engage in counter-speech. They ought also to ensure that their school has an infrastructure to support the effective dissemination of counter-speech, and that that infrastructure is well publicized and accessible to all students. Budgets permitting, for instance, schools might allocate funds on an equal and content-neutral basis to all recognized student groups to bring in speakers of the groups’ choosing, or to sponsor debates between different groups’ representatives. Schools ought also to minimize any time, place, and manner restrictions for protests, pamphleteering, and other speech activities, so as to ensure meaningful opportunities for students to exchange ideas and to respond to speakers or statements with which they disagree.<sup>323</sup>

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318. *Id.*

319. *Id.*

320. *Id.*

321. *Id.*

322. *Id.*

323. Indeed, a relatively easy place for pro- and anti-PC types to make common cause may be in opposition to restrictive campus “free speech zones.” Negative references to such zones are found in Burleigh, *supra* note 136; Robert Dunn, *Letter: Free-Speech Zones Diminish Students’ First Amendment Rights*, IOWA ST. DAILY (Nov. 29, 2015), [http://www.iowastatedaily.com/opinion/article\\_b33ad4fa-96bf-11e5-b2b4-bb97d073683a.html](http://www.iowastatedaily.com/opinion/article_b33ad4fa-96bf-11e5-b2b4-bb97d073683a.html) (Report A20); Faulconer, *supra* note 130; Hennessy, *supra* note 142; Newmark, *supra* note

### C. ANTI-PC BACKLASH AND ITS IMPLICATIONS

While important in their own rights, public and intra-campus discourses are more than internal feedback loops, endlessly responding to and generating more discourse. They also embody reactions to, and can themselves lead to, more tangible consequences, including the enactment of administrative or legislative policies or the obstruction of speaking events. This Section considers the impact of discourse on such concrete conditions and vice versa. It focuses on the phenomenon of anti-PC backlash as a medium of this impact. Subsection 1 argues that the instances of anti-PC backlash reflected in the reports reinforce free speech theory based lessons against campus speech codes and speaker-obstructive acts. Subsection 2 cautions that anti-PC backlash can result in legislative or other actions that themselves threaten academic freedom.

#### 1. Anti-PC Backlash and Free Speech Theory

The reports reveal a substantial backlash against political correctness. As Section B suggested and as many of the reports reflect, much of that backlash is poorly justified, either grounded in vague or inaccurate conceptions of political correctness, or itself an effort to stifle unwelcome criticism. Yet it would be a mistake to ignore the backlash, just as it is misguided for anti-PC critics to focus on PC's excesses while dismissing protestors' underlying messages. Backlash, like any criticism, provides occasion for introspection as to whether some manifestations of PC do unduly threaten free speech. More so, while some backlash is inevitable against even benign or speech-expansive aspects of PC, genuine speech suppression adds fuel and legitimacy to the backlash.

Of course, the introspection of which I speak assumes some criteria to distinguish "genuine speech suppression" from acts or proposals that do not fall into that category. In Section A, I sketched my own views on this topic. As I outlined there, I am deeply skeptical of administratively or legislatively imposed restrictions based on speech content. For our purposes, the most obvious such restrictions are campus speech codes. Private acts

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153. I did not include free speech zones among the highlighted topics in Part II.C.1 because it is not so clear that free speech zones manifest "political correctness" as opposed to administrative caution or convenience. As the sources cited in this footnote demonstrate, however, some commentators indeed lump free speech zones in with other purportedly PC practices.

of speech obstruction also are deeply problematic. The latter do not place decisions as to what may or may not be said in the hands of a centralized authority. Nonetheless, similar free speech concerns are raised where private individuals assume that power for themselves. I am far more sanguine, however, about professorial decisions that entail managing classroom speech. Such decisions themselves are grounded in academic expertise and freedom. Furthermore, insofar as those elements facilitate constructive classroom learning and discussion, they may enrich speech exchanges both inside and outside of classrooms.

Assuming some principled basis to distinguish speech suppressive forms of PC from other types of PC, the phenomenon of backlash bolsters the case against the former. This is true not only as a matter of political strategy, but of free speech theory. Recall the argument from Section A that efforts to suppress hateful speech logically may distract from lessons that could otherwise be drawn from that speech. Worse still, suppression may turn hateful speakers and their messages into causes célèbres. A number of the reports from both periods demonstrate that such backlash and distraction effects exist not just in theory, but in reality. Recall, for example, a reporter's observation that the University of Wisconsin's speech code "made First Amendment martyrs out of drunken yahoos."<sup>324</sup> More broadly, a number of commentators accused PC critics of highlighting isolated, speech-suppressive incidents to call into question or deflect attention from legitimate concerns about bias and discrimination.<sup>325</sup>

## 2. Anti-PC Backlash and Threats to Academic Freedom

Anti-PC backlash itself can take forms that threaten academic freedom. Among other things, backlash can manifest itself as direct political pressure on state universities to punish professorial speech or behavior perceived as PC. For example, in the wake of the infamous Melissa Click incident, "100 Republican lawmakers in Missouri released letters demanding Click's immediate dismissal and questioning [the value of] her research . . . ."<sup>326</sup> Missouri's "House higher education appropria-

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324. Siegel, *supra* note 59.

325. See *supra* text accompanying notes 108–09, 114–16, 233–50.

326. Flaherty, *supra* note 128; see also AM. ASS'N OF UNIV. PROFESSORS, ACADEMIC FREEDOM AND TENURE: UNIVERSITY OF MISSOURI (COLUMBIA) 29–30 (2016) ("[T]he letters stated, 'The public spotlight that is now shining on

tions committee also approved a 2 percent budget increase for all state colleges and universities except Mizzou.”<sup>327</sup> The committee chair explained the decision [to withhold a funding increase] as follows:

“Lawmakers and their constituents . . . want Melissa Click, an assistant professor of communications, to be fired for impeding news coverage of the protests, and they want university leadership to stand up to the protestors.” Students “are there to learn, not to protest all day long . . . I thought we learned that lesson in the ’60s. Obviously we haven’t.”<sup>328</sup>

In the wake of these pressures, the University’s Board of Curators—whose members are appointed by the governor with the advice and consent of the state senate<sup>329</sup>—circumvented Missouri’s standard faculty disciplinary procedures and dismissed Click by a vote of four to two.<sup>330</sup> A month prior to the vote, one Board member had “published an op-ed piece in the *Washington Post* calling for Professor Click’s dismissal.”<sup>331</sup> The Board’s vote to dismiss Click “was applauded by state legislators,” and the “house budget committee chair . . . proposed to restore the cut funds that had originated with him.”<sup>332</sup> Regardless of one’s reaction to Click’s behavior, Missouri’s circumvention of standard faculty disciplinary procedures—procedures designed to protect faculty from retaliation for unpopular views or associations—as well as the legislature’s interference in the process, bode poorly for academic freedom.

Missouri legislators were responding not only to Click, but to broader perceptions of out-of-control political correctness, including the very fact of student protests. Recall the complaints by a lawmaker that students are not in school “to protest all day long,” and that the university’s leaders need to “stand up to the protestors.”<sup>333</sup> Indeed, the Missouri state legislature responded to the protests and related events of fall 2015 by creat-

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Click because of her behavior has also revealed some of the “research” she is conducting at the University. Our constituents have expressed outrage at the fact that she is using taxpayer dollars to conduct research on *50 Shades of Grey*, Lady Gaga, and *Twilight*.”).

327. AM. ASS’N OF UNIV. PROFESSORS, *supra* note 326, at 31; Flaherty, *supra* note 128.

328. AM. ASS’N OF UNIV. PROFESSORS, *supra* note 326, at 31.

329. *Id.* at 26.

330. *Id.* at 32.

331. *Id.* at 30.

332. *Id.* at 33.

333. *Id.* at 31.

ing a “University of Missouri System Review Commission”<sup>334</sup>:

The new commission’s task is to review the University of Missouri system’s collected rules and regulations, administrative structure, campus structure, auxiliary enterprise structure, degree programs, research activities, and diversity programs and to present recommendations for needed changes. The system’s adoption, or failure to adopt, the commission’s recommendations will be considered by the general assembly in the next year’s appropriation process.<sup>335</sup>

The eight members of the commission were appointed by two Republican legislators—the Missouri Senate President Pro Tem and the Missouri House Speaker.<sup>336</sup>

The Commission’s sweeping mandate, along with the legislature’s other actions, raise the specter of political interference in faculty and student speech, and even in faculty research. Ironically, however, the responses are framed as battles in a war against freedom-squelching political correctness. Nor is Missouri the only state to face such political pressures in the name of fighting political correctness. Professor Peter Lawler of Georgia’s Berry College recently observed, for example, that proposals by Wisconsin Governor Scott Walker to end state-protected tenure and streamline state university operations, and similar proposals by “many other Republican governors,” are grounded in worries that universities are preoccupied with serving “politically correct” or “‘progressive’ causes.”<sup>337</sup> Weakening or eliminating tenure itself has substantial implications for academic freedom.<sup>338</sup> The same is true of universities’ increasing reliance on part-time, adjunct, or otherwise unprotected and poorly compensated professors. While the latter is a product of many factors, among them are shrinking state budgetary contributions to higher education, including those grounded in outcries against political correctness.<sup>339</sup>

334. *Id.* at 33.

335. *Id.*

336. Rudi Keller, *Jeanne Sinquefield To Lead University of Missouri Review Commission*, COLUM. TRIB. (July 16, 2016), [http://www.columbiatribune.com/news/education/turmoil\\_at\\_mu/jeanne-sinquefield-to-lead-university-of-missouri-review-commission/article\\_f22d3940-a8b1-5d4c-9337-c5a0389da832.html](http://www.columbiatribune.com/news/education/turmoil_at_mu/jeanne-sinquefield-to-lead-university-of-missouri-review-commission/article_f22d3940-a8b1-5d4c-9337-c5a0389da832.html).

337. Peter Lawler, *What Gov. Scott Walker Misses About Higher Education*, FEDERALIST (Feb. 6, 2015), <http://thefederalist.com/2015/02/06/what-gov-scott-walker-misses-about-higher-education>.

338. See, e.g., Alice Dreger, *Without Tenure, Professors Become Terrified Sheep*, AEON (Sept. 27, 2016), <https://aeon.co/ideas/without-tenure-academics-are-becoming-terrified-sheep>.

339. *Id.*

## CONCLUSION

The 2016 U.S. presidential election was held as this Article was in its final editing stages. Just as pre-election commentary attributed Donald Trump's rise partly to resentment over political correctness, so too did observers trace his election partly to the same phenomenon.<sup>340</sup> Election Day—which at the time of this conclusion's writing was two weeks ago—has been followed by a great deal of tension, both on and off college campuses. Many instances of hateful speech and actions—often accompanied by references to Mr. Trump or his campaign—have been reported around the country.<sup>341</sup> At the same time, critics have derided some colleges and universities for responding to the election and its aftermath with messages of support for, and events to comfort students upset over the election results.<sup>342</sup> These critics depict such responses as political correctness run amok.<sup>343</sup>

Recent events thus make clear that fights over political correctness continue, and may intensify in the near future. College campuses surely will continue to be among the most prevalent topics and venues of these disputes. Such disputes can oversimplify and divide, hardening pre-existing biases and locking in assumptions that free speech and equality are incompatible. They can also inspire new channels for speech suppression, with one side seeking to punish hateful speech and the other targeting campus "leftists."

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340. See sources cited *supra* note 5.

341. See, e.g., Melanie Eversley, *Standing up to the Spike in Post-Election Hate Incidents*, USA TODAY (Nov. 23, 2016), <http://www.usatoday.com/story/news/2016/11/22/94257736>; *SPLC Hatewatch*, S. POVERTY L. CTR. (Nov. 18, 2016), <https://www.splcenter.org/hatewatch/2016/11/18/update-incidents-hateful-harassment-election-day-now-number-701>.

342. See, e.g., David Jesse, *Conservative U-M Students Allege University Is Anti-Donald Trump*, DETROIT FREE PRESS (Nov. 15, 2016), <http://www.freep.com/story/news/local/michigan/2016/11/14/conservative-u-m-students-allege-university-anti-donald-trump/93790128>; Melissa Korn & Douglas Belkin, *Colleges Try To Comfort Students Upset by Trump Victory*, WALL ST. J. (Nov. 9, 2016), <http://blogs.wsj.com/washwire/2016/11/09/colleges-try-to-comfort-students-upset-by-trump-victory>; Jacob Russell, *A Harvard Student's Open Letter to the Delicate Flowers of the Ivy League*, FOX NEWS (Nov. 17, 2016), <http://www.foxnews.com/opinion/2016/11/17/harvard-students-open-letter-to-delicate-flowers-ivy-league.html>; Katherine Timpf, *Classes Being Cancelled Because Trump Won Is Why Trump Won*, NAT. REV. (Nov. 10, 2016), <http://www.nationalreview.com/article/442083/donald-trump-school-closing-2016>.

343. See *supra* note 342.

Yet campus political correctness debates need not inevitably devolve into cycles of recrimination and zero-sum battles for political and legal advantage. Campus community members instead can and should sponsor, initiate, participate in, and encourage discourse in which discussants acknowledge and critically examine their own biases and assumptions, listen to and grapple with the concerns of those with whom they disagree, and drill down to specific problems and proposals. Indeed, universities—with their intellectual resources and their commitments to academic freedom and critical thinking—are the ideal forums for such productive dialogue.

Such discourse may also serve as a reminder of the unique contributions of the university to a free and democratic society. Such reminders are particularly important under current conditions, in which the academic freedom of universities, and the material pre-conditions of the same, face threats from state and political forces. These threats are justified partly as a backlash against political correctness, and thus in the name of free speech. This confounding state of affairs itself illustrates the urgency of fresh and probing dialogue about the respective natures and roles of free speech, equality, and the university in modern America.



## APPENDIX 1

LexisNexis Articles, 1989–1995 Batch <sup>344</sup> :	
1.	Lee Dembart, <i>At Stanford, Leftists Become Censors</i> , N.Y. TIMES, May 5, 1989, at A35.
2.	John Leo, <i>The Class That Deserves Cutting</i> , U.S. NEWS & WORLD REP., May 29, 1989, at 58.
3.	John Peter Pham, Editorial, <i>Double Standard on Campus Speech</i> , ST. LOUIS POST-DISPATCH, Sept. 12, 1989, at 3B.
4.	S. Frederick Starr, <i>The Right To Hear and Be Heard</i> , WASH. POST EDUC. REV., Nov. 19, 1989, at R1.
5.	T. Kenneth Cribb, <i>A Patrimony Recovered: A Model Commencement Address</i> , EDUC. UPDATE, Spring 1990, at 1.
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