

The Contemporary State of Free Expression on Canadian University Campuses:  
Responding to the Alleged ‘Crisis’

by

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## **ABSTRACT**

This dissertation (by publication) is a response to the alleged ‘crisis’ of free expression on Canadian university campuses. Although concerns about campus expression have been a routine feature of North American culture war conflagrations since at least the early 1990s, the past half-decade has been marked by a noticeable intensification. A raft of controversies across the Canada and the United States, beginning roughly in 2015, led a variety of commentators to lament a stark decline in support and protections for expression. Following the election of Conservative provincial governments in Ontario (2018) and Alberta (2019), post-secondary institutions in these respective provinces were compelled to create explicit policy statements demonstrating their commitment to free expression. In light of new public and academic debates, in addition to an unprecedented public policy response, this dissertation focuses on understanding the political contours of free expression on campus and how and why free expression has become one of the most noticeable fractures in contemporary campus politics (and in academia more broadly). To do this, the research uses a qualitative, mixed-methods approach that includes: reviews of relevant literature, legal analysis, media analysis, semi-structured personal interviews, and freedom of information (FOI) requests. The analysis is structured around three different publications that address contemporary campus expression from different vantage points: 1) how philosophical conceptualizations of harm serve as justifications for expressive restrictions on campus; 2) the theory, practice, and strategy of expressive restrictions on campus (i.e. ‘deplatforming’); and 3) historical, comparative, and policy-orientated analysis of the campus ‘crisis.’ The publications conclude, respectively, that elastic conceptualizations of harm are untenable in academic environments, that

expressive restrictions on campus are laden with unintended and counterintuitive consequences, and that the idea of a campus ‘crisis’ is both a feature of previously successful conservative political messaging and the basis for poor public policy development and implementation.

## **PREFACE**

This dissertation by publication is the original work of Dax D’Orazio. The research project, of which this is a part, received research ethics approval from the University of Alberta Research Ethics Board on February 25, 2018 (Project Number 78667). The dissertation consists of two journal articles and one book chapter, two of which have been accepted for publication (and been granted permission for reproduction): 1) “Expressive Freedom on Campus and the Conceptual Elasticity of Harm,” accepted for publication by Cambridge University Press; 2) “Deplatforming in Theory and Practice: The Ann Coulter Debacle,” accepted for publication by the University of Toronto Press; and 3) “Free Expression and the ‘Campus Crisis Feedback Loop.’ How the Chicago Principles Came to Canada,” currently under review. Although the dissertation includes an all-encompassing bibliography, each of the three publications includes a separate references list. Further, the reference and citation styles of each of the publications reflect the venues in which they were published or the venue to which they will be submitted.

When I commenced my research project, I had every intention of writing a traditional dissertation. However, changing circumstances and opportunities during the course of my research made me increasingly gravitate towards a new ‘dissertation by publication’ option available to PhD candidates since 2017 in the Department of Political Science at the University of Alberta. I opted for the latter for two principal reasons, despite the fact that I have since collected more data than I could possibly analyze in three core dissertation publications.

First, free expression on campus became a live dispute in contemporary political affairs and much more than I could have imagined. Although I knew that there would

eventually be avenues for directly applying my research, I had no idea that the alleged ‘crisis’ of free expression would become such a pressing issue for public concern and public policy. But when majority Conservative governments were elected in Ontario (2018) and Alberta (2019), a longstanding debate about the proper limits of expression on campus gained new prominence. Essentially, the idea of a campus ‘crisis’ suddenly bore the imprimatur of two Canadian provinces, which meant campus expression was officially a ‘problem.’ Because of this unique circumstance, I wanted to ensure that my research could be made accessible as soon as possible.

Second, I wanted to write a book about free expression on campus. Despite a raft of academic books on the topic with the United States as their focus, there is *still* a curious lack of a similar academic book with Canada as its focus. Rather than writing a traditional dissertation that needs to be seriously reorganized for a potential manuscript, I decided to write the two projects in parallel but (sometimes) overlapping formats. I am happy to report that I have a book under contract with the University of Toronto Press and will hopefully submit a first draft in the summer of 2021. The book, tentatively titled *Free Expression on Campus: The Alleged Crisis and the Conceptual Elasticity of Harm*, will include the three publications that form the core of my dissertation and substantially expand upon them with additional data analysis and case studies (including the majority of interviews I conducted during the research). The book will be mostly aimed at a more general, rather than academic, audience while attempting to balance appeals to both general interest and specialist readers.

At a general level, the focus of my dissertation has been trying to understand the political contours of free expression on campus and how and why free expression has

become one of the most noticeable fractures in contemporary campus politics (and in academia more broadly). My three dissertation publications approach this research focus from three distinct angles. The first is philosophical and examines how different conceptualizations of harm serve as justifications for expressive restrictions. The second is philosophical and practical and contrasts the arguments marshaled in defence of expressive restrictions on campus with strategic considerations. The third is historical, comparative, and policy-oriented and offers an analytical framework for understanding the alleged campus ‘crisis,’ in addition to an analysis of public policy in response to the ‘crisis.’

Understanding the politics of free expression on campus (and elsewhere) is crucial for the discipline of Political Science. The most obvious reason is because Political Science is concerned with studying politics, and free expression is a prominent feature of politics at multiple levels. At the level of governance, free expression is widely recognized as an essential constitutional right for all liberal democracies. This means that laws protecting or restricting expression significantly affect a political community, by regulating one of our most important and consequential human behaviours. At the level of philosophy, questions related to the limits of free expression have preoccupied (political) philosophers for millennia. In addition to different regulatory approaches to expression across a range of liberal democracies (and non-democracies), the philosophical justifications buttressing free expression are still far from settled, and they continue to attract significant scholarly attention and debate. At the level of current affairs, it is impossible to ignore the degree to which free expression has become the focus of an impressive amount of political contestation. Evidence of this can be found in

a seemingly endless torrent of headlines, cases, and controversies. As a result, it would not be an exaggeration to say that an understanding of the politics of free expression is somewhat of a prerequisite for understanding the political moment in general.

More importantly, the discipline of Political Science has much to offer for our understanding of the politics of free expression. This research project reflects an approach to the discipline that is steeped in the subfield of Political Theory, but is not exclusively theoretical. As such, it combines philosophical debates about free expression with ample data collection and analysis. Some elements of the dissertation publications are also closely associated with other subfields of Political Science, like Law and Politics and Public Policy, in addition to reflecting insights from other disciplines, like Law and Legal Studies and Philosophy.

Political Theory offers rich insight into the philosophical justifications for free expression and a variety of critical responses. In a sense, free expression is a timeless object of philosophical study, as evidenced by a canon stretching from Ancient Athens to the present. Questions related to the limits of free expression are necessarily philosophical, as they often revolve around normative visions of a good life, different forms of legitimate governance and regulation, and the nature and scope of abstract principles like liberty and justice. Further, contemporary debates about free expression are essentially about conflicting arguments. My approach has thus been one that applies Political Theory in case studies to evaluate some of these conflicting arguments. The result, I hope, is research that contributes both the philosophy of free expression and the intersections of philosophy, law, and policy, for which the discipline of Political Science is capably positioned.

Although I did not initially conceptualize my research project as having a direct relationship to public policy, dramatic political events during the course of my PhD solidified a connection. Because the governments of Alberta and Ontario essentially compelled their post-secondary institutions to develop more explicit free expression policies (in 2019 and 2018, respectively), campus expression has undeniably become an object of public policy. In the fall of 2019, I had the immense privilege of directly applying the policy dimensions of my research as a member of the University of Alberta's Advisory Group on Free Expression. Relatedly, I published some additional (non-peer reviewed) pieces during the course of my PhD that are connected to my research project, some of which have a direct connection to policy: an opinion editorial about Alberta higher education policy (D'Orazio, 2019), an essay about free expression and public policy (D'Orazio, 2020c), an investigative essay about free expression and anti-vaccine activism (D'Orazio, 2020), a book review for the *Canadian Journal of Political Science* (D'Orazio, 2020d), an opinion editorial about academic freedom at the University of Alberta (D'Orazio, 2020f), an investigative essay about access to information legislation at Canadian universities (D'Orazio, 2020g), and an analysis of the Alberta ministerial directive (D'Orazio, 2021). As a result of some of this work, I was invited to serve as a blogger for the Centre for Free Expression at Ryerson University and be a member of its Working Group on Academic Freedom.

In addition to the three dissertation publications (and the aforementioned non-peer reviewed publications), I also published three peer-reviewed journal articles in the subfield of Sport Sociology in 2017 and 2020 (D'Orazio 2020a; 2020b; 2017). My interest in this field was first sparked by a research paper for my MA coursework in the



field of Political Economy. At the time, I was curious to know how some of the key concepts in Political Economy might overlap with the study of subcultures, specifically skateboarding. I later learned that since at least the 1970s, journalists, writers, and scholars had immersed themselves in subcultural phenomena as diverse as outlaw bikers, neo-Nazis, rock climbers, and My Little Pony enthusiasts. I was astonished to learn that interdisciplinary scholars had made relatively marginal sociocultural spaces objects of serious scholarly study. As I continued to immerse myself in these literatures, I was equally fascinated and dismayed. On the one hand, it was incredible to see scholars grappling with the minute details of a subculture that I know and love (skateboarding). On the other hand, however, it was often frustrating to see scholars, without a firm grounding in the subculture itself, essentially distort it. Often, this was the result of applying social theory in a clumsy and deductive manner. Ultimately, my desire to blend a grounding in Social and Political Theory and my knowledge and experience as a longtime skateboarder catalyzed a fruitful research agenda.

Although there is no formal connection between my research on free expression and my research on skateboarding subculture, there are some subtle connections that are worth a brief mention. First, skateboarding subculture has been characterized (at least historically) by an anti-authority or resistive attitude. Similarly, many of the individuals, groups, and organizations that are most enthusiastically invoking free expression at the moment believe themselves to be part of an embattled minority. I think this suggests that the *perception* of resistance is a potent means for creating and solidifying collective forms of identity. Along these lines, the contemporary momentum behind unsavoury political movements is relatively less reflective of coherent ideological or philosophical

beliefs, and relatively more reflective of individual desires for meaning and significance (that are satiated by alternative forms of political belonging). In future work, I will apply some of the insights from Subcultural Studies in an analysis of some of the most prominent young conservative pundits and entrepreneurs in an effort to understand how extreme political ideas can be rendered edgy and even attractive in popular culture.

Second, both free expression and skateboarding subculture are undergoing drastic changes. In the former, an ostensibly resistant subculture is gradually becoming an orthodox ‘sport’ as it enters the orbit of the Olympic Games. In the latter, the traditional progressive civil libertarian position supporting free expression is gradually waning at the same time that new right-leaning movements are happily carrying the banner of free expression (with measurable gains). In both of these contexts, these drastic changes, some of which are spurred by completely legitimate and well-intentioned desires for greater inclusion, are laden with unintended consequences. Accordingly, both of my research projects engage a range of nuanced positions within often fraught and polarized contexts to try to map precisely what is at stake and for whom, in addition to analyzing the counterintuitive effects of otherwise merited political impulses.

My personal motivations for undertaking a research project about free expression on campus are diverse and longstanding, so I will be brief on this note. I should begin by saying that I care very much about free expression and higher education. Free expression is invoked for a variety of purposes at the moment, including ones that are transparently cynical and sometimes even harmful, but I nonetheless think its most redeeming quality is that it has historically ensured that power is not wielded arbitrarily. Despite their ritual excesses, I have drawn much inspiration from the student movements in the 1960s and

especially the Free Speech Movement at the UC Berkeley campus. Free expression as a corrective for arbitrary power was powerfully expressed through the words and deeds of that movement's most famous protagonist, Mario Savio, who consistently demanded campus rules and regulations be informed by *reasons*. Whether or not free expression has a *natural* predilection towards devolving power may be reasonably disputed.

Nonetheless, I think that, on the whole, the history of free expression bears this out.

As a one-time activist, I intuitively understand that dissent is the greatest beneficiary of free expression. However, this view is not widely shared at the moment, particularly among politically invested youth who may or may not take cues from the historical precedents of social movements. Because I have often been intimately engaged in campus politics for over a decade, I have been privy to countless free expression controversies, ones in which the boundaries of expression are bitterly contested. Both then and now, I maintain a firm progressive but civil libertarian position, which unfortunately puts me at odds with wide swathes of my fellow travelers.

The former prominence of a progressive civil libertarian position in North America, one committed to greater equality *and* free expression, seems to be waning precipitously at the moment. What I think is missing in some of the symbolic debates of this significant shift is, in essence, a form of historical amnesia. To make matter worse, the moral and intellectual high ground necessary for a robust defence of free expression has been so effectively captured by those at odds with greater equality that some progressives have begun associating free expression itself with conservative impulses. This is a mistake that will have drastic consequences for both free expression and the promise of progressive politics. In that sense, my PhD dissertation has been an

opportunity to test my convictions in tandem with a volume of empirical data and analysis.

Although my position has changed significantly over time, and as a direct result of my research findings, some of my hypotheses have been bolstered by additional data and analysis. My basic intuition is that expressive restrictions too often fail miserably, and may in fact have the *opposite* effect. I first observed this dynamic while conducting research for my Masters thesis, in which I analyzed the repeal of Section 13 of the Canadian Human Rights Act, Canada's only non-penal hate speech legislation to apply specifically to the Internet. I realized then that the object of my investigation (the law) was actually much less consequential in establishing the boundaries of expression in Canada than I had earlier assumed.

Essentially, the debate *about the law* was inordinately more impactful than the *law itself*. This happened because a wide-ranging public debate managed to provide previously fringe voices with awe inspiring media coverage and all of the commensurate moral and intellectual legitimacy that comes with being perceived as a victim of censorship. Law and policy still matters, of course, but I had not yet fully understood the ways in which the boundaries of acceptable expression are in constant flux as a result of factors that are difficult to detect, measure, and analyze. My research impulse, then, has been to subsequently examine cases in which free expression creates various *tensions* – between conflicting normative priorities like open inquiry and harm reduction, between theoretical arguments and practical realities, and between competing conceptions of free expression itself.

Connected to this support for free expression is equal support for higher education. Universities are one of the only places in our society where people with fundamental disagreements can engage with one another in the pursuit of a common goal. Particularly at a time when there is both a growing skepticism of expertise and a splintering of traditional sources of information, universities are important sources of critical thinking and political literacy. On a personal level, too, higher education has been formative. University campuses have exposed me to new people, ideas, and challenges that I would have never experienced otherwise. As someone who took a few detours before deciding to pursue graduate degrees – and was not considered likely to succeed in higher education as a secondary student – I can attest to the remarkable and positive effects that education can have upon one’s life.

One of the most gratifying experiences of academic life is teaching and it is here that my support for free expression and higher education connect. As a teacher, I also intuitively understand that free expression is impossible to detach from good pedagogy. This is not to say that students ought to be comfortable expressing ill-informed opinions and prejudice, but that pedagogical environments *need* to create the conditions in which learners can make mistakes, take risks, and respectfully disagree. For example, I would be failing as a teacher if my students agreed with me, and what I selectively presented to them, instead of learning how to formulate *their own* ideas and positions. This is just one reason why the idea of a ‘crisis’ of free expression on campus is a gross exaggeration, if not a plain fabrication. I would like to think that the majority of my peers and colleagues approach pedagogy in a way that closely resembles this understanding.

Lastly, the politics of free expression is fraught territory, to say the least. As a result of the intense political polarization associated with free expression, even research based upon ample evidence and sound justification runs the risk of being filtered through predetermined political camps. In light of this, I have been much more interested in *understanding* the politics of free expression than tipping the scales of existing debates. Although I offer various arguments throughout my dissertation publications, my impetus was often an intellectual, and at times a journalistic, curiosity about why and how free expression has essentially become a ‘problem.’ Another way to summarize my approach is to say that it will likely disappoint those hoping for clear and simple declarations of support for, or denunciations of, specific interlocutors and movements in these public and academic debates. My analysis, arguments, and personal views do not easily align with the contemporary battle lines already drawn on campus.

As a result of this epistemic impetus for *understanding*, I can confidently say that my research took me to uncomfortable places. I sometimes needed to suspend my own judgment in order to interview individuals with ideas that I consider deeply unsavoury. Likewise, keeping apprised of developments in the politics of campus expression entailed immersing myself in subcultures that have been responsible for tangible harm. However, I embraced this epistemic position neither unthinkingly nor uncritically. I recognize that my relative privilege (and identity) meant that less was at stake for me, so to speak, when engaging the furthest margins of public discourse. But recognizing that the potential harms of a specific debate may be borne disproportionately does not mean that that debate itself is unwarranted. The result of my approach, I think, is a position conditioned by epistemic humility, and thus exposure to the widest possible array of approaches to

campus expression. As always, any mistakes or misunderstandings in what follows are mine and mine alone, despite the generous guidance and support of countless individuals along the way.

## ACKNOWLEDGEMENTS

Accepting the offer from the Department of Political Science at the University of Alberta is among the best decisions I have made in my lifetime. Moving to Edmonton was a significant change that was rife with new challenges, but I have relished every moment of my nascent academic career thus far.

The ultimate reason that I chose to study at the University of Alberta is Yasmeen Abu-Laban, my research supervisor. Over the past six years, I learned firsthand why she commands such high esteem in our discipline. Yasmeen has been an exemplary supervisor in every sense imaginable. She was a fount of sage advice through an arduous research journey, one that was thoroughly rewarding but sometimes circuitous. Further, she always encouraged me to be creative while ensuring that I stayed on track along the way. I was privileged to have her support throughout this project and I owe any modicum of my academic success to her guidance and supervision. Similarly, I was the beneficiary of an extraordinary dissertation committee that also included Catherine Kellogg and Mojtaba Mahdavi, both of whom were integral during *every* step of my program (coursework, comprehensive exams, and my dissertation proposal and defence). Similar debts are owed to dissertation committee examiners, Katharine Gelber and Toni Samek, who were equal parts critical, constructive, and encouraging. Their attention and care in assessing my work has had a measurable impact in strengthening what follows and provided ample resources for future research directions.

It is quite normal to forge close relationships with one's academic peers and colleagues, but I was privileged to embark upon my most recent journey with an especially tightknit PhD cohort. Because of Renée McBeth Beausoleil, Margot



Challborn, and Luke Sandle, my positive academic experiences extended to lively discussion and debate outside of the classroom. These relationships have been formative both academically and personally, and I can only hope that the experience has been mutual. There are too many other colleagues and peers (both faculty and students) that I am immensely grateful to have known and from whom I have learned much. In lieu of generalities that would fail to convey my immense appreciation, these gracious individuals will know who they are through direct communication that will hopefully not cease with my graduation.

The administrative staff in the Department of Political Science have been both kind and indispensable. To Cindy Anderson, Donna Coombs-Montrose, Sharina Prasad, and Lihong Yang, thank you for the behind the scenes encouragement and support.

To my parents, Barbara and Gary, I am forever indebted. As an aimlessly wandering youth, they encouraged my various creative outlets with patience and optimism. Though they were surely relieved when I finally decided to pursue a postsecondary education, I doubt they could have envisioned me going this far. Their support has been integral to this journey and everything that I have done is in some way connected to the values and principles they instilled in me. From both of them, I learned how to ask good questions, to take nothing for granted, and to savour the fleeting moments along the way. I would like to think that it is no small coincidence that they were both teachers by trade, as I have found my time in the classroom the most rewarding aspect of my PhD.

To my other parents (in-laws), André and Andrea, I am likewise forever indebted. Although my parents are essentially stuck with me, my in-laws have voluntarily invited

me into their family. Both of them have been incredibly helpful and generous throughout all of my projects and relocations over the past decade. They were often integral to meeting high-stakes deadlines and made countless trips halfway across the country to visit. Some of my enduring memories of Edmonton will include our trips exploring the majesty of the Rocky Mountains together. In sum, they often made my life relatively easy when it was supposed to be hard and have always made me feel as though I have two equally supportive families.

In May of 2018, my partner and I embarked upon a more intimidating and time-consuming project than any academic research I could imagine. Since then, our daughter Céleste has been my primary extra-curricular focus. Although my research has often entertained abstract and philosophical questions about the importance of free expression, it was witnessing the daily development of her language that confirmed my belief that expression is fundamental to the human condition. During all of the confusion and uncertainty associated with the global pandemic, our daily Edmonton river valley adventures were a source of joy and will be an enduring memory. Relatedly, I owe immense gratitude to the University Infant and Toddler Centre, and particularly Laura Gaudin and Cara Rowland, for their incredible care and nurturance of Céleste over the past two years. Likewise, Margot has, over the course of the last year, simultaneously developed an enviable bond with Céleste and allowed me to focus on research during a time of great stress and uncertainty.

At the same time that the Department of Political Science kept my mind limber for a half-decade, the Edmonton Road and Track Club kept my body (and social life) limber. I am grateful to have been a small part of what is, without a doubt, one of the

most eclectic, talented, and well-organized cycling clubs in the country. Some of my most memorable Alberta adventures are due to the club and the indispensable cycling community it has fostered.

Most importantly, my partner Myka has been an infinite source of patience, understanding, and support. She has, fortunately or unfortunately, been privy to every twist and turn over the past six years and shared all of the associated highs and lows with me. When things were frustrating and seemed insurmountable, she stoked my confidence and focus. When things were exciting and I was prone to complete absorption, she encouraged healthy pauses, escapes, and reflection. The last two years have been especially challenging as we chart another new course of our life together, this time as a family. It has been the greatest privilege of my life to share this journey with you.

Finishing my research project certainly did not include the graceful exit from the University of Alberta that I was envisioning. The global pandemic has effortlessly managed to make a relatively solitary pursuit (dissertation writing) into something even more solitary. As a result, many goodbyes were either incomplete or impossible given the circumstances. Regardless, I was happy to make Edmonton our temporary home and I am eternally grateful for everyone that was responsible for these good memories.

My research project received generous financial support from the Social Sciences and Humanities Research Council. Success in various funding and scholarship applications during my PhD is in large part due to ample guidance and support from the Department of Political Science and the Faculty of Graduate Studies and Research.

## TABLE OF CONTENTS

<b>ABSTRACT.....</b>	<b>II</b>
<b>PREFACE.....</b>	<b>IV</b>
<b>ACKNOWLEDGEMENTS .....</b>	<b>XVI</b>
<b>TABLE OF CONTENTS .....</b>	<b>XX</b>
<b>LIST OF FIGURES.....</b>	<b>XXII</b>
<b>CHAPTER 1.....</b>	<b>1</b>
1.1. INTRODUCTION .....	1
1.2. THE PHILOSOPHY OF FREE EXPRESSION .....	3
1.3. THE POLITICS OF CAMPUS EXPRESSION.....	22
1.3.1. FREE EXPRESSION VS. INSTITUTIONAL LATITUDE.....	31
1.3.2. INTERNAL CONFLICT AND THE FUTURE OF THE UNIVERSITY .....	36
1.3.3. AN AMPLE SOURCE OF CASES AND CONTROVERSIES.....	49
1.4. RESEARCH PROBLEM, RESEARCH QUESTIONS, AND RESEARCH METHODS .....	53
<b>CHAPTER 2.....</b>	<b>59</b>
2.1. “EXPRESSIVE FREEDOM ON CAMPUS AND THE CONCEPTUAL ELASTICITY OF HARM” .....	59
2.2. INTRODUCTION .....	60
2.3. HISTORY AND CONTEXT OF CAMPUS EXPRESSION IN NORTH AMERICA.....	63
2.4. TWO THESES OF THE CAMPUS CRISIS.....	66
2.5. CONCEPTUALIZING HARM IN POLITICAL THEORY.....	69
2.6. EPISTEMIC INJUSTICE.....	71
2.7. ARGUMENTATIONAL INJUSTICE .....	82
2.8. EPISTEMIC EXPLOITATION .....	85
2.9. CONCLUSION .....	89
<b>CHAPTER 3.....</b>	<b>99</b>
3.1. “DEPLATFORMING IN THEORY AND PRACTICE: THE ANN COULTER DEBACLE” .....	99
3.2. INTRODUCTION .....	100
3.3. THE ANN COULTER DEBACLE.....	105
3.4. DEPLATFORMING IN THEORY .....	112
3.5. DEPLATFORMING IN PRACTICE .....	125
<b>CHAPTER 4.....</b>	<b>136</b>
4.1. “FREE EXPRESSION AND THE ‘CAMPUS CRISIS FEEDBACK LOOP:’ HOW THE CHICAGO PRINCIPLES CAME TO CANADA .....	136
4.2. INTRODUCTION .....	137
4.3. THE ORIGINS OF THE CAMPUS CRISIS FEEDBACK LOOP.....	140
4.4. CAMPUS CRITICISM IN CONSERVATIVE DISCOURSE AND POLITICS AFTER THE 1960s .....	147
4.5. AN INCOMPLETE FEEDBACK LOOP: COMPARING CAMPUS UNREST IN CANADA .....	151
4.6. A RECEPTIVE PUBLIC CLIMATE: THE JORDAN PETERSON AND LINDSAY SHEPHERD AFFAIRS .....	160
4.7. POLICY RESPONSES TO THE ALLEGED ‘CRISIS’ .....	165

4.8. ANATOMY OF THE ALBERTA MINISTERIAL DIRECTIVE .....	168
4.9. EVALUATING THE ALBERTA MINISTERIAL DIRECTIVE: CLOSING THE FEEDBACK LOOP .....	176
4.10. CONCLUSION .....	182
<b>CHAPTER 5.....</b>	<b>202</b>
5.1. CONCLUSION .....	202
5.2. UNDERSTANDING HARM FOR UNDERSTANDING POLITICS .....	202
5.3. THE POLITICS OF FREE EXPRESSION IS NOT A ZERO SUM GAME .....	203
5.4. THE ‘CRISIS’ AND THE ROLE OF THE MEDIA .....	207
5.5. UNIVERSITIES IN THE PRISON OF THE MARKET .....	208
5.6. THE FUTURE OF THE POLITICS OF FREE EXPRESSION ON CAMPUS .....	210
5.7. FUTURE RESEARCH DIRECTIONS .....	213
<b>REFERENCES.....</b>	<b>218</b>

## **LIST OF FIGURES**

FIGURE 4.1. MINISTERIAL ASSESSMENT CRITERIA FOR INSTITUTIONAL COMPLIANCE .	178
FIGURE 4.2. MINISTERIAL ASSESSMENT FOR INSTITUTIONAL COMPLIANCE .....	179

## CHAPTER 1

### 1.1. Introduction

The proper limit for free expression is a perennial question for philosopher and policymaker alike. For better or worse, as a researcher that has been vexed by the question for approximately a decade, there is surely no shortage of contemporary controversies in which to dwell. But the last half-decade or so has heralded an often intense and disproportionate focus on one particular venue: the university campus. Accordingly, if one were following the mainstream news media in North American from 2015 on, they could not be blamed for thinking that something was terribly amiss on campus. One of the reasons that campus expression controversies attract this unprecedented attention is because expressive restrictions are rightly considered antithetical to the university's mission and purpose. Another is because the discourse and politics of free expression on campus is emblematic of much broader changes to free expression at the moment. In any case, it is impossible to ignore the degree to which university campuses have become an inextricable part of public and academic debates related to free expression.

This thesis responds to these developments by examining the 'crisis' of free expression allegedly gripping Canadian universities. At a general level, my focus has been trying to understand the political contours of free expression on campus and how and why free expression has become one of the most noticeable fractures in contemporary campus politics (and in academia more broadly). My three thesis publications approach this research focus from three distinct angles. The first is philosophical and examines how different conceptualizations of harm serve as

justifications for expressive restrictions. The second is philosophical and practical and contrasts the arguments marshaled in defence of expressive restrictions on campus with strategic considerations. The third is historical, comparative, and policy-oriented and offers an analytical framework for understanding the alleged campus ‘crisis,’ in addition to an analysis of public policy in response to the ‘crisis.’

The following introduction proceeds in four sections. In the second (next) section, I delve into the philosophical justifications for free expression. An immersion in the political philosophy buttressing free expression is mandatory for understanding the alleged crisis. It allows one to have a greater appreciation of why free expression is such an important principle for universities, and thus why a perception of principle’s violation is seen as so consequential. It also allows one to map the various reactions to free expression on campus, as there is still much philosophical disagreement about its limits in an academic environment. Accordingly, this section outlines the principle justifications for free expression, explains how each of them relate to the particular role and mission of the university, and then concludes by outlining some of the critical philosophical reactions to free expression.

Notably, this section is more descriptive than argumentative. Although I exhibit *some* skepticism of the dominant liberal philosophical paradigm, I am ultimately persuaded by arguments for free expression grounded in its essentially *democratic* character and *strategic* arguments related to the effectiveness of expressive restrictions. My philosophical commitments have thus contributed to a slightly unorthodox approach, which is not to question the normative commitments underpinning skepticism of free expression, but instead ask on what terms they might be given effect. Therefore, a more



pressing question for me is why, despite resting on noble normative commitments, efforts to restrict expression seem to not only fail miserably, but also result in *exactly the opposite* of the desired effect. I do, however, make the case that part of the ‘free expression skepticism’ that characterizes the contemporary moment is motivated by an unwarranted connection between the dominant liberal philosophical paradigm, and that future research, including my own, ought to explore philosophical justifications outside of this paradigm.

In the third section, I frame the alleged ‘crisis’ of free expression on campus by surveying relevant interdisciplinary literature. Here, I demonstrate some of the historical consistencies associated with the alleged ‘crisis’ and outline some of the political contours of campus expression in North America over the last few decades. I then outline four reasons why public university campuses are important for understanding the politics of free expression at the moment.

In the fourth section, I lay out the research problems, research questions, and research methods associated with each of my three thesis publications. Correspondingly, I demonstrate some of the gaps in existing academic research and literature and how my thesis publications contributes to these gaps. I also explain why I chose specific research methods to address my research questions. Lastly, I provide a snapshot of each of the three thesis publications and discuss a few of their common themes.

## **1.2. The Philosophy of Free Expression**

Free expression is widely recognized as an indispensable principle for a free society and among the most basic human rights. In the abstract, almost everyone can

endorse *some* version of free expression. Relatedly, there is wide recognition that expressive restrictions ought to be premised upon a pressing and substantial justification, which is why it is common for scholars to argue, for example, that laws restricting expression are “inherently problematic” (Newman, 2017, 679). But this remarkable consensus within contemporary liberal democracies squares uneasily with the undeniable reality that free expression is an anomaly in human history (Bromwich, 2016). Thus, to speak of free expression as a long-standing tradition is somewhat deceptive, as variants of absolutism and censorship have been much more durable phenomena. Thus, historically speaking, the evolution of free expression as an axiomatic principle has as its background the dissolution of formerly uncontested forms of authority, legitimacy, and power.

This is why free expression is such a radical idea, and especially so when put in its proper historical context. The idea that illegitimate and arbitrary power ought to entertain public scrutiny and critique when it could simply prevent it stands in stark contrast to the vast majority of human history. Likewise, on a personal level, it is often a visceral challenge to entertain expression that one finds unsavoury. Tolerating this form of difference, ranging from mere annoyances to the genuine material risks of expression, is surely no small task. Large and powerful institutions, like churches, monarchs, and states, have typically not exercised this toleration, and for good reason considering that greater latitude for expression was integral to their demise at countless points in history. This radical nature of free expression also means that advocacy for it will always be unpopular. It is rarely dangerous to defend orthodoxy. But a robust defence of the principle – and it really does bear repeating despite the truism – will necessarily entail the defence of ideas with which one disagrees and may find morally abhorrent and even

dangerous. History shows us that ideas once firmly rejected and even persecuted can eventually become common sense. Importantly, the concepts and criteria that we use to accept or reject ideas – like merit, truth, and harm – are both highly subjective and display remarkable variance over time.

The political theory and philosophy of free expression is as old as it is diverse. In the canon of ‘western’ political theory and philosophy, one can trace some of the first principles of free expression to Ancient Athens and, in particular, to the concepts of *isegoria* and *parrhesia* (Bejan, 2017; Cartledge, 2016, 129; Lewis, 1971). The death of Socrates in 399 BC was likewise an ancient lesson in free expression and continues to inform the democratic imagination (Saxonhouse, 2006, 100). Alexander Meiklejohn boldly proclaimed that the American First Amendment might not have been written if Plato’s *Apology* had not been written first (2014, 20). In light of this voluminous history, one stretching back millennia, this section will not claim the impossible task of synthesizing all (or even a *modest* snippet) of it. Instead, I will sketch at a more general level some of the philosophical justifications marshaled in defence of free expression in literature that is mostly associated with the ‘western’ canon.

The interconnected justifications for free expression normally revolve around three particular features: the pursuit of truth, the maintenance of democracy, and the respect for individual autonomy (Barendt, 2009, 6-22; Bollinger, 1986, 8; Moon, 2000, 8). The classical liberal defence of free expression is most frequently attributed to John Stuart Mill, and his writing endures as the most robust justification for the principle in pursuit of truth and with wide latitude (Dworkin, 1996: 200; Moon, 2000, 9-10). For Mill, “a healthy state of political life” requires forces of social progression *and*

conservation, as they complement each other's normative prejudices and buffer extremities (Mill, 2015, 47). A diversity of opinion is also an epistemic necessity because individuals can never completely divest themselves of their normative prejudices to engender an ostensibly 'impartial' approach to political affairs. Thus, the conflictual nature of political opinion allows for a collective and progressive refinement. Because humans are by nature fallible, their understandings of the truth are likewise fallible. Therefore, Mill elevates to a duty the continual refinement of human ideas to get as close to the truth as possible (2015, 21). Given this view, Mill unsurprisingly characterizes censorship as a "peculiar evil" (2015, 19), because it prevents an organic societal process of sorting truth from error.

In his famous formulation, Mill contests the legitimacy of sovereign authority (or any collectivity) to 'coercively' silence an opinion: "If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind" (2015, 19). If truth is prevented from being expressed, anyone who might have been influenced by it is negatively affected. Similarly, if a falsehood is prevented from being expressed, anyone who might have learned from the reasoned discounting of an opinion is also negatively affected. Yet, despite this, Mill does not naively hope that truth will inexorably succeed by ignoring unequal power relations (2015, 29-30). Nonetheless, as a fundamental organizing principle for a polity, it is pragmatic to maximize open channels of debate so as to mitigate the illegitimate sway that negative ideas might otherwise carry.

Mill's elucidation of human infallibility grounds such an approach. The process of gradually refining ideas could not take place without the presentation of those that are controversial, challenging, or just plain wrong, which naturally requires a healthy dose of epistemic humility. Even an illegitimate opinion based upon faulty presuppositions can potentially contain a kernel of truth (Mill, 2015, 46). In Mill's words: "To refuse a hearing to an opinion, because they are sure that it is false, is to assume that *their* certainty is the same thing as *absolute* certainty. All silencing of discussion is an assumption of infallibility" (2015, 19). Dissent from orthodoxy, therefore, can be conceptualized as a 'supplement' to the truth because the latter is never satisfactory or complete.

The suppression of opinion (what Mill labels 'intellectual pacification') has a wider and caustic effect upon society because it induces self-censorship among those who fear social repercussions. The repression is felt not only in 'the minds of heretics,' but extends to the whole of society, particularly those "whose whole mental development is cramped" by not being exposed to a diversity of opinion (Mill, 2015, 34, 51). Ostensibly legitimate discourse may be stifled not only by an overzealous censor, but also by individuals imbibing the acceptable limits of public discourse without first reasoning their own position.

In addition to considering human fallibility, Mill proposes that no orthodoxy should stand untouched as a 'dead dogma' (2015, 19). An idea unchallenged – even if completely legitimate, moral, sound, etc. – breeds intellectual laziness without constant reiteration amongst competing argumentation. Ideally, an individual has come to a specific conclusion by evaluating available arguments and evidence and is subsequently

able to *defend* said position (Mill, 2015, 36). Considering that it is impossible to have *absolute* truth, we require the humility to entertain alternative interpretations, even if to simply disarm them. Otherwise, we risk “not understand[ing] the grounds of our opinion” (Mill, 2015, 36-37). Mill further believed that contrary opinions should not be crude or convenient caricatures, but instead presented in their most potent form and by their most fervent believers (2015, 37).

According to Mill, moral progress is possible in large part because individuals are persuaded by the superior ideas of others, and only with this constant dialectic can the common sense of any age be transcended. Ideas are continually reformed and refined as new information is synthesized with existing thought (Popper, 2003, 262-263). There is, however, at least one potential inconsistency. Progress might also be signaled through the narrowing of acceptable debate. Within scientific progress, for example, competing explanations would continually narrow as more evidence is produced. As Mill wrote, “the well-being of mankind may almost be measured by the number and gravity of the truth which have reached the point of being uncontested” (2015, 43). However, while this narrowing of thought is necessary for progress, it need not be a foregone conclusion that breeds intellectual laziness. Even reigning orthodoxies need to be legitimated by the follies of competing explanations. In other words, Mill suggest that a devil’s advocate position is *always* justified, a contentious claim that has been a feature of many critical reactions to his paradigm (Waldron, 2009, 194).

Mill’s paradigm is reflective of the conventional constitutional position of contemporary liberal democracies, including Canada (Sumner, 2004): the state ought to be content neutral in the realm of citizen expression. While truth may be uncomfortable

and perhaps even harmful, its noble pursuit may have commensurate individual and societal benefits that outweigh any potential adverse externalities. Nonetheless, it is not self-evident how a liberal democratic society creates identifiable expressive boundaries that simultaneously facilitate a flourishing of individual development, a robust entertainment of competing ideas, and the minimization of undue harm. The pursuit of truth ideally leads to the creation of norms, processes, and institutions that are procedurally amenable to this goal. It is not the case that a dialogic process within a community will result in unadulterated truth, but there is an implicit recognition that wide latitude for expression is required to prevent state power from prejudicing communal dialogue itself.

In other words, while there is recognition that the pursuit of truth may create externalities like harms flowing from expression, provided the dialogic process has been genuine (i.e. no undue interference and relatively open participation), there are rarely, if ever, reasonable grounds for restricting expression. The strongest formulation of this position is found in American legal thought and jurisprudence, and particularly in the work of Ronald Dworkin. Because he emphasizes the innate worth of individuals developing their intellectual capacities, the only legitimate restriction of speech can occur when the state can prevent harm, whereby harm is narrowly defined as material and quantifiable (in the legal sense of an injurious tort) or an imminent threat of material injury (Dworkin, 1996: 206-207; Lewis, 2007; Strum, 1999).

In the same way that the pursuit of truth is the primary justification for free expression, harm is the primary justification for expressive restrictions. Although Mill tends towards an absolutist position, he also recognized some limits that could potentially

include the harmful externalities of speech. The ‘harm principle’ stipulates that the only justified interference upon the individual is for the end of mitigating harm that may be caused to another:

The [harm] principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant (Mill, 2015, 12-13).

Strictly in the context of free expression, this is somewhat difficult to reconcile with an absolutist position, whereby “everything must be free to be written and published without constraint” (Mill, 2015, 39). The obvious question is, then: how can truth based justifications for free expression coexist with this formulation of a harm principle?

According to Mill, “If any one does an act hurtful to others, there is a *prima facie* case for punishing him, by law, or, where legal penalties are not safely applicable, by general disapprobation” (2015, 14). The simplified answer is that it depends upon how one conceptualizes harm as a legitimate expressive restriction. In the first thesis publication, I further analyze different conceptualizations of harm in political theory and philosophy and their applicability in an academic environment. In subsequent work, including my book project, I will significantly expand this analysis to include a brief history of the concept of harm in political theory and philosophy, how it has changed throughout its history, and what different conceptualizations of harm mean for free expression more broadly. It is my contention that competing conceptualizations of harm underpin almost every free expression controversy, and especially those on university campuses.



Parallel to truth-based justifications are arguments related to democratic forms of governance (Weinstein, 2009, 27). Because of its foundational quality for democratic decision-making, free expression is also understood as a prerequisite for other civil and political rights in liberal democracies.

[F]reedom of speech is the life-blood of the democratic system. For these purposes, it is the vehicle that enables the aggrieved of society to mobilize the support of others for the redress of their grievances. In this sense, it is what the American philosopher, Sidney Hook, called a strategic freedom: a freedom upon which other freedoms depend (Borovoy, 1991, 243).

The philosophy of free expression is intimately connected to historical processes of devolving power and decision-making and, more specifically, the project of democracy (Durham Peters, 2005). This generative potency of freedom of speech is precisely what allows it to be a potential corrective for illegitimate power. Because individuals are able to deploy their rational faculties in order to critique the injustices they encounter, power cannot be wielded absolutely. Free expression means that the exercise of power must be based upon some public rationalization that is not immune from public critique. Although one might reflexively consider this historical process necessarily progressive, conservatives (among others) share a similar commitment: free expression as a check on governmental power and mechanism of public accountability (Schauer, 1982). For conservatives, an innate suspicion of government is warranted, because “every government bears within its personality an atavistic longing to recapture the autocratic powers of its ancestors” (Bollinger, 1986, 77). Understood in this historical context, free expression facilitates a collective form of quality control in collective decision-making:

“A system of free expression increases the likelihood that when groups and societies move in some direction, it is for good reasons” (Sunstein, 2003, 96).

Relatedly, free expression encourages the pacific settlement of disputes, because it minimizes the chances of superior physical force automatically translating into superior reasoning, legitimacy, or consent. If dissenters do not possess the requisite material capabilities to enact their interests, it is hoped that by appealing to the rational faculties of a polity’s majority, the persuasiveness of their ideas can render their material inferiority irrelevant. In the same way that democratic governance theoretically reduces political violence – because divisive energy is invested in the democratic process itself – free expression can mitigate violence by replacing sword with pen. Along these lines, Lee Bollinger expounds a ‘general tolerance theory,’ arguing that free expression breeds a societal virtues of tolerance of difference and self-restraint – “a *way of thinking*” – that has cascading benefits, a “sprit of compromise basic to our politics and the capacity to distance ourselves from our beliefs” (1986, 140, 141).

Free expression might also have international dimensions related to democratic governance. Some argue that a liberal disposition in domestic affairs – dubbed the ‘democratic peace thesis’ – predisposes a state to pursue its international objectives peacefully (Doyle, 1986, 2005). So, free expression might have a normative cascading effect domestically *and* internationally. But the obverse can also be true. An illiberal disposition in domestic affairs can result in the exportation and cross-pollination of practices of state-based censorship (Mchangama, 2018).

Like other basic constitutional rights, free expression can be understood as part of a social contract, as principles governing expression, thought, inquiry, and representation

directly bear upon representative democracy and self-government. For Meiklejohn, the primary justification for free expression is providing a process by which citizens can be apprised of anything that directly relates to public affairs: “What is essential is not that everyone shall speak, but that everything worth saying shall be said” (2014, 25). Since citizens are unable to directly participate in the minutia of political affairs, their individual and collective wills are translated into representatives, which requires an untrammelled flow of information.

Free expression thus provides the link between the will of the people and its enactment within government through elected representatives and a general state of public affairs (public opinion, the press, etc.). To make this process both democratic and legitimate, it must be available to *all*, which entails a modicum of free expression (Dworkin, 2000, 365). Sunstein also argues that, at least in the American paradigm, representative democracy ought not just aggregate static opinions, but facilitate a robust form of *public deliberation* that has the potential for swaying the public based on evidence and argumentation (1993, 244; 1996, 94). This state of public deliberation is often referred to as a ‘marketplace of ideas’ and it is here, again, that the liberal democratic paradigm informs understandings of free expression (Lewis, 2007, 185). It should be noted, however, that economic factors still constrain expressive opportunities to a large degree and complicate optimistic market analogies (Graber, 1992).

As an inherently democratic principle, free expression is frequently associated with other liberal and democratic philosophical commitments. Chief among them is a focus on the individual and especially individual autonomy. The autonomous individual is the fulcrum of the liberal democratic paradigm because individuals are conceptualized

as uniquely endowed with reason and can self-consciously make decisions based upon their own conception of what is good (Kymlicka, 1995, 80). In Mill's famous words: "Over himself, over his own body and mind, the individual is sovereign" (2015, 13). Accordingly, identifying the inviolable boundaries of the individual often motivates liberal democratic theories and theorists. In this context, because the state is understood as the primary violator of individual autonomy, free expression is a *negative* right, a non-interference principle of sorts.

Free expression is undeniably connected to what one might call self-realization or self-actualization. Self-realization includes developing a sense of self and a full range of well-reasoned ideas that form a life's lodestar. This naturally requires communication with others, and not just those with whom one already agrees or overlaps significantly in values and experiences. Without uninhibited expression, individuals run the risk of being epistemically siloed, and this obliviousness to difference might unnecessarily inhibit personal growth and development. Unhindered communication, therefore, is the process by which individuals come to understand the world, their place within it, and subsequently develop their own conception of a good life (Dworkin, 1996, 200). While Mill was concerned that expressive restrictions prevented the organic collision of truth with error, and therefore opportunities to sharpen normatively good ideas, a related worry is that expressive restrictions violate autonomy by paternalistically denying individuals the right of formulating *their own* positions (including exposure to potentially unsavoury ideas) (Hentoff, 1992, 147).

In another, related sense, free expression facilitates what has been referred to as *recognition* (Honneth, 1992; Taylor, 1992), a validation of identity reflected back in a

dialogic process with others, one that is crucial for a stable and healthy sense of self, belonging, and authenticity. A robust state of free expression is therefore required if individuals and groups are to be recognized. Similarly, *misrecognition*, or the mirroring and imbibing of negative characteristics that can result in harm, can be a symptom of an impoverished state of free expression.

Self-actualization includes giving effect to one's beliefs by expressing them to others. In the context of representative democracy, self-censorship poses a unique challenge because it means that an individual can potentially have a deeply held and well-reasoned position yet is unable to persuade others of its merits. Provided expression is reasonably within the bounds of law and policy, self-censorship is *always* anti-democratic. However, this does not mean that individual tact ought to be dispensed. Of course, it would be unwise for individuals to perpetually air their thoughts publicly and practice something akin to absolute honesty. But in the context of public affairs that require collective decision-making – precisely those issues that legal and political systems are ostensibly created to address – self-censorship essentially short circuits representative democracy if one imagines it as facilitating a robust public exchange of ideas.

There is sometimes an assumption that thought is *prior* to expression, or at least a hope that what an individual expresses has been thoughtfully considered. Often, this is not the case, as thoughts are continually examined and reformed precisely as a result of expression, reception, reaction, and exchange. This obviously underscores the social and collective characteristics of expression, but it much more importantly suggests that expression is an inextricable part of the act of thinking itself. Despite the fact that free

expression is reflexively understood as an individual negative right, its individual characteristics are more apparent in its legal form (as a constitutional protection) than in its practical form (the ability to express oneself). Expression itself is manifestly *social* (Bakan, 1997, 63; Moon, 2000, 3-4). But even in its legal form, as a constitutional protection, free expression also engenders some positive opportunities for individuals to communicate with each other across diverse mediums and foster personal development. In sum, despite some redeeming qualities of free expression being premised on individual autonomy, a disproportionate focus on such individuality runs the risk of obscuring the fact that all of the interrelated arguments for free expression require *others*. As Moon helpfully highlights:

[T]he value we attach to freedom of expression makes sense only if we recognize that the creation of meaning (the articulation of ideas and feelings) is a social process, something that takes place between individuals and within a community. If we can lift the concepts of autonomy and self-realization out of the individualist frame, so that they are no longer simply about freedom from external interference or freedom from others, then they may provide some explanation of the value of freedom of expression. If by autonomy we mean a capacity to think, judge, and give direction to one's life and the ability to participate in collective governance, then freedom of expression may have an important role to play in the realization of autonomy" (2000, 20-21).

Another way to think about these theoretical and philosophical justifications is to slightly alter the three-fold typology (truth, democracy, and autonomy) by emphasizing their *intrinsic*, *instrumental*, and *strategic* qualities. Intrinsic arguments are those that focus almost exclusively on the allegedly inviolable boundaries of the individual. Free expression is conceptualized as the *intrinsic right* of every individual, irrespective of whether or not expressive protections are constitutionally enshrined. Accordingly, individual moral autonomy is always at stake if the state or others regulate expression.

Because free expression is an intrinsic right, the ends to which it is exercised are relatively less important. So, free expression is perpetually a risk; it is by no means guaranteed that it will be exercised for virtuous ends, but this is largely irrelevant to its actual value as a principle.

Instrumental arguments for free expression are, in essence, utilitarian (much like Mill and the philosophy for which he argued). Put simply, free expression is a *means to an end* and its value is derived from its ability to facilitate higher order normative goods like representative democracy, the pursuit of truth and knowledge, and self-actualization and personal development. Notably, these arguments are relatively less connected to any imputed intrinsic rights of individuals, which means they are more likely to be ambivalent about an abstract concept of free expression divorced from other normative commitments. Instrumental arguments might also focus on less abstract normative goods, and instead value free expression because it is essential for more immediate and material normative goods, like the toppling of a tyrannical government or the advocacy of greater equality in society. Of course, instrumental arguments are always conditional on utility. If free expression falters in facilitating higher order normative goods, it may attract skepticism and need to be balanced with other priorities.

Strategic arguments often revolve around political or partisan considerations related to free expression. In essence, they are less philosophically committed to an abstract principle or normative good than reflective of calculated self-interest. In this understanding, free expression is a pillar of basic and fair rules for society and governance (akin to a social contract). At the state level, when power changes hands, the same protections for expression ought to persist, to ensure that the basic political rules do

not change simply to suit the desires of those who currently hold power. Likewise, individuals imbibe a similar reciprocal obligation, so one abides by free expression principles lest they possibly become the target of expressive restrictions themselves. Progressives, for example, might be ambivalent about the merits of free expression in a philosophical sense, but intuitively understand that progressive ideas have been historically suppressed, and that they are thus net beneficiaries of free expression.

Lastly, as is likely obvious, the philosophical literature buttressing free expression is steeped in the liberal (democratic) canon, and free expression itself is typically understood as a negative individual right of non-interference. However, as I observed in the course of my research, criticism of the dominant paradigm of free expression in North America tends to posit an immutable but untenable connection. Put another way, free expression is sometimes criticized because it is *essentially* liberal in character, and liberal theory and philosophy is held as suspect by large swathes of contemporary academic traditions. Likewise, when liberal theory and philosophy is criticized, problems associated with free expression are used to bolster the argument. Although the goal of this section was not to evaluate the theoretical and philosophical underpinnings of free expression, suffice it to say that I think this essentialized connection between free expression and liberal philosophy is unmerited.

Here, I follow the work of Eric Heinze (Heinze, 2016, 2019), who argues that free expression is a *democratic* rather than a liberal principle. In subsequent research, which I briefly discuss in the conclusion, I intend to more systematically analyze and evaluate critical theory paradigms and argue that they have ample philosophical resources consistent with a *progressive* conception of free expression. My goal is to carve out



additional space for *non*-strategic arguments, specifically, in order to bolster a progressive civil-libertarian perspective that avoids conditional support for free expression (i.e. if the principle results in progress). Likewise, I am curious to explore defensible versions of individualism as a justification for free expression, ones that either mitigate or negate the presumed tension between free expression and non-liberal philosophy.

In general, I harbour a healthy skepticism of liberal philosophy, but I do not believe that this skepticism inexorably leads to an abandonment of *some* version of individualism. Where I think one ought to be ‘individualistic,’ so to speak, is in having a default antipathy for the exercise of power in compulsion and an allergy to orthodoxy, even when either is based on sound justification. Additionally, it seems uncontroversial to me to assert that *some* form of individual autonomy – in the sense that our own good judgment is not collapsed under the weight of the orthodoxy of larger groups to which we belong – is a prerequisite for political freedom. There must, then, be a way to balance this impulse with philosophy that emphasizes care, mutual dependence, and relationality. In sum, I remain convinced that justifications for free expression need not be hopelessly tethered to a dominant liberal philosophical paradigm and that there are ample scholarly opportunities to creatively blend philosophical paradigms for a robust defence of free expression.

Further, I intend to make the case that the traditional justifications for free expression (including some of those above) are in serious need of updating for contemporary realities, particularly the increasing irrelevance of state power in expressive restrictions and the commensurate fragmenting of expressive venues and

information sources. My predilection for wide latitude for expression, therefore, may be less a result of a philosophical commitment than it is pragmatism. While not principally opposed to expressive injunctions and restrictions that mitigate harm, contemporary events seem to suggest that our philosophies of expression fail to grasp the enormous gap between justifiable injunctions and restrictions and the actual diminution of harmful expression. Part of this work, which begins in earnest here but will expand in my future research agenda, will include analysis of how censorship fails, not by violating individual autonomy, the pursuit of truth, or principles of democracy, but by buttressing harmful expression and potentially aiding its dissemination.

To conclude this section, a brief explanation of how these interconnected philosophical justifications relate to public universities is warranted before delving into why universities are important for free expression in a general sense (in the following section). First, it is impossible to separate the university as an institution and the pursuit of truth, irrespective of how one's philosophical proclivities might cast doubt on liberal philosophy. The various forms of quality control on campus (i.e. peer review) are what imbue the knowledge generated in universities with credibility and authenticity in the public sphere. It is also why societies implicitly recognize that universities are worthy of their prestige and subsequently commit to their preservation. As I explain further in the next section, the reflexive association of university campuses with the pursuit of truth is one of the primary reasons why expressive restrictions are considered antithetical and, relatedly, why free expression controversies animate such disproportionate scrutiny and criticism.

Second, universities are an important democratic institution. Despite universities increasingly conceptualizing themselves as businesses necessarily in competition with each other, they still enjoy a comparatively diffuse power structure. In stark contrast to strictly hierarchical organizations, a system of collegial governance is an imperfect but redeeming quality of university life. Managerialism and associated phenomena have surely eroded the practice and promise of collegial governance, but the idea that university communities themselves collectively determine their future is powerful. Free expression is, therefore, an integral component of university governance. In the same way that self-censorship inhibits a properly functioning liberal democracy, self-censorship inhibits a properly functioning university. Further, universities offer some extraordinary protections for expression that is critical of the institution itself (at least in theory), although this freedom has been both inconsistent and uneven (as academic freedom cases and controversies illustrate).

Third, universities relate to individual autonomy in some ways, but perhaps less directly than the pursuit of truth and the maintenance of democratic decision-making. Whereas the pursuit of truth and democratic governance are integral to the role and mission of the public university, individual autonomy is arguably a derivative feature of university life. There is, however, an explicit recognition that higher education nurtures both a civic and intellectual spirit, including exposure to a wide range of new arguments, evidence, and ideas that contribute to personal growth and development. Where individual autonomy surfaces most prominently as a feature of free expression (and academic freedom) cases and controversies, whereby the putative rights and privileges of the individual are in tension with those of the community (or administration) or other

normative commitments. In cases and controversies involving students, for example, claims are often made that insulating students from a wider variety of perspectives (even objectionable ones) inhibits their own intellectual growth and fosters a climate of intolerance. In the following section, I more systematically outline reasons why public university campuses are important for understanding the politics of free expression and these interrelated philosophical justifications for free expression continue to inform my analysis.

## **2. The Politics of Campus Expression**

*The university is so many things to so many different people that it must, of necessity, be partially at war with itself* (Kerr, 2001, 7).

Although the vast majority of university business passes daily without arousing much thought or scrutiny, the institution has become an unmistakable symbol. More than ever, and perhaps undeservedly, university campuses are portrayed as consequential political battlegrounds, “the Stalingrad of the 21st century” (McCrea, 2018). Nonetheless, events on campus are just one element of an ongoing and particularly fraught public and academic debate about the proper limits of free expression in liberal democracies. As the CEO of PEN America, Suzanne Nossel, explains in a new book, controversies related to free expression “have become fodder for daily headlines” (2020, 3) and examples assuredly abound across North America.

The most recent rounds of headlines have revolved around the concept of ‘cancel culture,’ an allegedly punitive predilection for addressing potentially harmful speech with intense ostracism (CBC Radio, 2019; Gerstmann, 2020; Goldstein, 2020; Hagi, 2019;

Kay, 2020; Rauch, 2020). The concept spurred intense debates following a petition pushing for the Linguistics Society of America to distance itself from prominent public intellectual, Steven Pinker (Friedersdorf, 2020; Kastner, et al., 2020; Powell, 2020), and the publishing of an open letter in *Harper's Magazine*. The latter was penned by an impressive cross section of acclaimed writers and researchers (Giorgis, 2020; Moon, 2020; Schuessler, 2020). In their "Letter on Justice and Open Debate," signatories argue that the boundaries of reasonable disagreement are noticeably narrowing. Ostensibly for just ends, they contend that this phenomenon is actually at odds with a just society:

The restriction of debate, whether by a repressive government or an intolerant society, invariably hurts those who lack power and makes everyone less capable of democratic participation. The way to defeat bad ideas is by exposure, argument, and persuasion, not by trying to silence or wish them away (Harper's, 2020).

One signatory in particular, *Harry Potter* franchise author, J.K Rowling, attracted harsh criticism, already widely panned for public commentary that was considered transphobic and had catalyzed an earlier and similarly intense free expression controversy (BBC News, 2020; Gross, 2020). Even though the *Harper's* Letter was responsible for a mostly public, rather than academic, debate, it still featured a subtle but important campus connection. Thomas Chatterton Williams, the letter's primary organizer, was in part motivated by the recent firing of David Shor, a data analyst who was promptly fired after approvingly tweeting academic research that suggested that violent protests have unintended effects at the ballot box (at the same time that protests against racial injustice were sweeping across the United States) (Bartlett, 2020; Yglesias, 2020). The research author, Assistant Professor of Politics at Princeton University, Omar Wasow, was subsequently the target of online harassment himself.

In response to these and countless other free expression controversies, it is hard to miss the profound pessimism exhibited by a wide range of influential voices. For example, *The Economist* ruefully notes a *global* retreat for free expression, and claims that “[n]owhere is this more striking than in universities in the United States” (2019). As *New York Times* columnist, David Brooks, observed at the close of 2020: “This has not been a great period for free expression. The range of socially acceptable opinion has shrunk” (2020). Lest one think that the pessimism is consigned to the United States, Canada is not merely in an American shadow, but constantly generating its own free expression controversies (Gee, 2020). Conservative Party leadership hopeful, Leslyn Lewis, recently claimed that “people are not free to disagree, and even an innocent or naive verbal misstep can have dire consequences” (Lewis, 2020). These claims are not uncontested, though, and one can certainly interpret them as self-serving attempts to maintain a privileged public sphere (Franks, 2019). But the basic sentiment that free expression is, at the very least, facing extraordinary pressure at the moment, seems to have taken root in a variety of prominent academic, political, and journalistic fora.

While concerns related to free expression transcend campus politics, what happens on campus still figures prominently in approaches to free expression across North America, mostly because campuses have offered a seemingly endless stream of controversies for public consumption. Even private venues off campus face backlashes for hosting controversial academics (Faulder, 2018) and public libraries suddenly became another front for what were mostly campus debates about who ought to enjoy a platform for expression (Boothby, 2020; Kopun, 2019; Seucharan, 2019).

Around the middle of the last decade, a raft of high-profile campus controversies in the United States – most prominently at the Evergreen State University, Yale University, the University of Missouri, UC Berkeley, and Middlebury College (Fuller, 2017; Hartocollis, 2017a, 2017b, 2015) – attracted significant media attention and subsequently pushed campus expression into the spotlight (Chait, 2015; FIRE, 2014; Friedersdorf, 2015; Lukianoff, 2014a, 2014b; Schlosser, 2015). Nothing conveyed the seeming disjuncture between campuses as exemplars of free expression and contemporary events like the UC Berkeley campus. The birthplace of a Free Speech Movement that once inspired student activism around the world, Berkeley suddenly became synonymous with censorship. In 2014, the year of the 50<sup>th</sup> anniversary of the Free Speech Movement, Bill Maher was protested during his commencement address and was the subject of a disinvitation petition (Jaschik, 2014). Three years later, a proposed visit by a professional provocateur and self-described troll, Milo Yiannopolous, would instigate a riot and nationwide consternation about the dire state of free expression on campus.

An important part of these controversies is the degree to which ‘controversy entrepreneurship’ (Eliadis, 2009) has become a lucrative business model at the same time that new media platforms expand alternatives to traditional information sources. A range of pundits have taken advantage of both of these trends and monetized culture war punditry completely outside of establishment media (Nagle, 2017; Nguyen, 2018; Roose, 2020). Prominent Americans in this genre are mostly young, and reflect the shock and awe template long perfected by Ann Coulter (Svrluga, et al., 2017). A representative sample of them ought to include: Steven Crowder (Bergen, 2020), Nick Fuentes

(Anderson, 2019), Charlie Kirk (Guinto, 2018), Gavin McInnes (2018), Andy Ngo (Saltman, 2020), Candace Owens (Cineas, 2019), Dave Rubin (McCrea, 2018), Ben Shapiro (Volkh, 2017), Richard Spencer (Svrluga, 2018), and Milo Yiannopoulos (Svrluga, 2017). Although Canada lacks the same sociocultural prominence of such punditry as the United States, it similarly features some prominent individuals who have deployed the same tactics, including: Faith Goldy (Booth, 2018), Ezra Levant (Norman, 2020), Jordan Peterson (Hauen, 2017), and Lauren Southern (Khandaker, 2017).

Importantly, free expression advocacy figures prominently in these pundits' public images, and campus events (and even tours) have been both part of a premeditated political strategy and a reliable source of publicity (Holiday, 2017; Mangu-Ward, 2018). 'Trolling,' as it's been loosely described, can be a potent political tool, by provoking opponents to speak and behave in ways that bolster negative stereotypes about them and allowing those instigating provocations to claim moral and intellectual superiority. As Coulter once explained in a documentary about her, she was first motivated to become a firebrand pundit by the pleasure derived from political provocation: "It was when I started editing *The Cornell Review* my senior year of college that I suddenly decided I wanted to be a writer because it was really fun getting liberals to go crazy; it's kind of addictive" (Wright and Burkett, 2004, 0:45). With this dynamic playing out in a dramatic way on campuses across North America, speaking events have now become the fulcrum of a wide-ranging debate about the merits of 'deplatforming' (Smith, 2020). In the second thesis publication, I examine a classic case study of deplatforming in Canada – the abortive visit of Coulter to the University of Ottawa campus in 2010 – and demonstrate



how, despite being symptomatic of current events on campus, is laden with unintended consequences.

With large swathes of media outlets keen to report on the latest campus controversy, previously fringe voices gained an increased prominence as the new defenders of free expression (Mullen and Rak, 2019, 723). In a curious twist, a variety of right-leaning controversy entrepreneurs are now deploying some of the same political tactics on campus that were historically part of the arsenal of left-leaning groups (Harkinson, 2017; Kolowich, 2017; Marantz, 2018). At the same time, controversies began to erupt that were not the result of deliberate provocations. Even in the realm of academic publishing – a venue that rarely attracts outside attention – concerns about free expression seemed to provide evidence of an increasingly polarized environment.

For example, two respected academic journals were at the center of high-profile controversies as a result of articles that they published. In April of 2017, the feminist philosophy journal *Hypatia* published ‘In Defense of Transracialism,’ written by Associate Professor of Philosophy at Rhoades College, Rebecca Tuvel. In the article, Tuvel argued that scholars ought to be open to the concept of transracialism in the same way that transgender identities have been open to philosophical analysis (Singal, 2017; Travis, 2017; Winnubst, 2017). Tuvel faced intense criticism online and a petition was created that demanded *Hypatia* retract the article and revamp its double blind peer review process (McKenzie, 2017). In October of 2017, *Third World Quarterly* published an article defending the legacy of Western colonialism, written by Professor of Political Science at Portland State University, Bruce Gilley (Flaherty, 2017b). Fifteen members of the journal’s editorial board subsequently resigned in protest (Flaherty, 2017c). ‘The

Case for Colonialism’ was eventually retracted after a flood of criticism inundated the journal, including threats of physical violence directed at its editors (Flaherty, 2017d; Patel, 2018).

Academic publishers faced additional challenges, including the publishing of research that uses contentious terminology (like ‘TERF,’ or trans-exclusionary radical feminist) (Flaherty, 2018b), research related to sex and gender in academic mentorship opportunities (Science, 2020), and, ironically, books about free expression itself (Flynn, 2019). Concerns about the lack of openness in research venues led some academics to create the *Journal of Controversial Ideas*, an open-access, peer-reviewed journal in which authors can remain anonymous. Its creators were inspired to promote free inquiry on controversial topics (Anthony, 2018; Flaherty, 2018a).

Over the course of 2017 and 2018, academic publishers were also the targets of an elaborate hoax connected to concerns about free expression and academic merit. Peter Boghossian, James A. Lindsay, and Helen Pluckrose submitted several deliberately deceptive (and ridiculous) articles for peer review in order to expose the allegedly shoddy intellectual standards of what they call ‘grievance studies.’ Focusing mainly on journals within the ambit of critical theory, they were successful in publishing four articles before they revealed their hoax and the journal articles were retracted. Dubbed ‘Sokal squared’ due to its similarity to another hoax paper submitted by Alan Sokal to influential postmodernist journal, *Social Text*, in 1996 (Sokal and Bricmont, 1998), the affair polarized academics, but more importantly bolstered negative public perceptions of contemporary higher education (Egginton, 2018; Flaherty, 2019; Mounk, 2018; Florence, 2019).

For at least a short while, it seemed as though Canada was relatively immune to the most acute symptoms of the alleged campus ‘crisis’ (Wells, 2018). But the discourse and politics of campus expression changed significantly in Canada, too. News and opinion started to offer a familiar narrative about allegedly problematic campus phenomena, including ‘trigger warnings,’ ‘safe spaces,’ ‘identity politics,’ ‘social justice warriors,’ and ‘political correctness.’ Apparently, ‘academic extremism’ was mainstream in Canada, too (Wente, 2016). The folk theory seemed to be that these phenomena collectively imperil free expression on campus, and the threat was especially grave because free expression ought to be a sacred value on campus. Simultaneously, a relatively obscure clinical psychologist and Professor at the University of Toronto, Jordan Peterson, and a Masters student and teaching assistant at Wilfrid Laurier University, Lindsay Shepherd, essentially guaranteed that Canadian campuses would be the subject of headlines across Canada and around the world in 2016 and 2017.

Things changed considerably again following the election of majority Conservative governments in Alberta (2019) and Ontario (2018). Whereas campaigns for addressing free expression on campus in the United States mostly revolved around voluntary adoption of the Chicago Principles and an Executive Order that had negligible concrete effects, Canadian responses to the alleged ‘crisis’ went one dramatic step further. News, opinion, and advocacy stretching back decades were given greater credence when allegations about a dire state of free expression on campus were suddenly official government policy. Both provincial policies were based on the Chicago Principles, a free expression policy statement that was the result of a specialized committee at the University of Chicago in 2014. Although the approach was initially

proprietary to the University of Chicago and an integral component of its rising profile and stature (Nwanevu, 2018), it later became the focus of a nationwide campaign for institutional adoption with the help of advocacy organizations like the Foundation for Individual Rights in Education (FIRE). Billed as the ‘gold standard’ of policy frameworks by provincial governments to address this new and pressing problem, some worried that protestors would bear the brunt of new policy when they confront potentially harmful expression (Davis, 2019).

Observers are quick to point out the differences between American and Canadian free expression jurisprudence, and thus the limited applicability of the Chicago Principles in the latter (Moon, 2018). The former is essentially a global anomaly (Turner, 2011, 124), generally recognized as “the most speech-protective in the world” (Strossen, 2011, 25). Conversely, Canadian constitutional law provides less latitude for expression when balanced with equality rights (Mahoney, 1995; Roach and Schneiderman, 2013). Although the Charter of Rights and Freedoms does not apply to public universities, it still arguably contributes to a sociological environment in which expression is but one right to be reasonably balanced with others (Clément, 2016; Eliadis, 2014; Heathorn and Goutor, 2013). Provincial human rights codes likewise include equality right protections that might entail relatively less latitude for expression (Eliadis, 2014).

But if the university campus is rightly considered an exemplar of the principle of free expression, it ought to, *at the very least*, exemplify the expressive protections that apply *generally* in society (i.e. constitutional law). One could plausibly argue that universities ought to actually *go further* and enshrine *extra* expressive protections because it is relatively less immune to hate speech via standards of merit and self-

regulation (unlike vast segments of the public sphere). This is why some – mostly progressive academics and activists – worry that invocations of free expression in the form of the Chicago Principles (or related advocacy efforts) will provide greater latitude for harmful expression, because it amounts to “all expression should be allowable in universities, including hate speech” (Mullen and Rak, 2019, 726). But this argument only has credence if one assumes that existing policy essentially permits ‘hate speech,’ since the adoption of the Chicago Principles (or any other policy framework) does not supersede applicable law (i.e. criminal hate speech and provincial human rights laws that apply to campuses). While the long-term effect of these provincial policy initiatives is still unclear, they will continue to animate academic and public debate about the state of free expression on campus.

Even if current events and the associated political polarization might lead one to conclude that the alleged ‘crisis’ was precipitated only recently, concerns about campus expression are far from novel. In fact, campus events have been a consistent pillar of the culture wars of the last few decades (Chapman, 2010; Hunter, 1991, 211). Understanding this broader political context, then, is key to understanding how and why campus expression is seen as so consequential for a variety of political actors. With this broader context in focus, I suggest three primary reasons why university campuses are key sites for understanding the politics of free expression in Canada.

### **1.3.1. Free Expression vs. Institutional Latitude**

First, there is a constitutive tension related to free expression on campus, between universities understood as exemplars of free expression in theory and their proprietary

latitude in restricting expression in practice (D’Orazio, 2020c). Public universities are widely expected to provide wide latitude for expression due to their particular role and mission in society. As Thorstein Veblen once explained, the university has historically enjoyed an unequivocal association with the pursuit of knowledge:

The university is the only accepted institution of the modern culture on which the quest of knowledge unquestionably devolves; and the visible drift of circumstances as well as of public sentiment runs also to making this the only unquestioned duty incumbent on the university (1994, 15).

Because universities are expected to provide spaces where ideas can flourish without constraint, expressive restrictions are rightly considered antithetical to the entire enterprise of intellectual inquiry, for student and teacher alike (Whittington, 2018).

Likewise, those who follow inconvenient lines of inquiry ought to be able to do so without fear of retribution, provided they are within the bounds of applicable law (civil, criminal, labour, and human rights) and policy (institutional rules and regulations), and also conform to scholarly standards (i.e. peer review). This uniqueness on the part of universities thus *requires* expressive protections, because the pursuit of knowledge and truth will eventually arouse controversy, as history amply demonstrates. Recognition of this is reflected in the impressive independence and autonomy enjoyed by publicly funded universities in Canada. Accordingly, one would expect universities to feature some of the most robust protections for expression, which they mostly do, and those protections have historically safeguarded the scholarly mission from undue interference.

For students, there is an assumption that they will develop their intellectual capacities in an environment that exposes them to conflicting analyses, arguments, and evidence. Although their exposure is conditioned by the discretion of academics, they

retain a significant independence of mind. Further, in the wake of loosening *in loco parentis* rules and regulations, students now enjoy a variety of expressive venues proprietary to the university, including student clubs, unions, newspapers, and radio stations. In the same vein, publicly oriented spaces on campus (i.e. ‘the quad’) are reflective of the importance of student autonomy and expression.

Professors are beneficiaries of a *particular* category of free expression that is perhaps one of the most robust expressive protections in society: academic freedom (Bilgrami and Cole, 2015; Lackey, 2018). In Canada, academic freedom protections are principally included in the collective agreements between institutions and faculty associations (Lynk, 2020). In accordance with the pursuit of truth and knowledge, professors (especially those that have been granted tenure) are imbued with these contractual protections to insulate them from various forms of interference in their teaching, research, and service (Fish, 2014; Kahn, 2000; Reichman, 2019; Scott, 2019; Turk, 2014). In stark contrast to the vast majority of employment relationships (i.e. the private sector), personal and professional expression is often severely restricted and hierarchical. In the American Association of University Professors’ seminal *Declaration of Principles*, “one of the most important documents defining the meaning of academic freedom” (Wilson, 2016), the organization provided a vision of academic freedom that was intimately connected to the public good but necessarily disconnected from majoritarian impulses:

The 1915 *Declaration* staked its claim for academic freedom on the special relationship between higher education and society. That relationship – and higher education’s concomitant responsibility to create, preserve, and transmit knowledge – required that trustees and legislatures refrain from interfering with professors’ scholarly activities or otherwise limiting their freedoms. Proprietary institutions and

those that otherwise saw their purpose as inculcating preordained doctrines were duty-bound to admit that they were of a different type and not part of that same special relationship. For the majority of institutions serving the public good, though, the document argued that only by preserving academic freedom could universities attract the most desirable men to the profession, sustain the public's trust in scholarly expertise, offer disinterested criticism, and further the development of knowledgeable public servants... it warned that public opinion more broadly presented the gravest danger. For institutions of higher learning to fulfill their responsibilities, they must be an 'inviolable refuge' from the 'tyranny of public opinion' (Reese Cain, 2012, 39).

This is not to say that academic freedom has always been an effective antidote to interference; sometimes, these protections are inconsistent in coverage and uneven in practice. At the moment, there is no shortage of news and commentary suggesting that the principle is perpetually challenged (Gillman and Chemerinsky, 2017; Jaschik, 2017; McWhorter, 2020; Rees, 2017). As historian Michiel Horn explains, the history of academic freedom in Canada demonstrates that possibilities for dissent are in some ways conditioned by the available expressive protections:

The history of academic freedom in Canada is in part the history of the relatively small number of professors who, in expressing their professional or personal views, found themselves at odds with received wisdom in religion, morality, business, economics, politics, or university government. This became more common in the 1960s, as academic freedom became more secure than it had been, though never fully secure. It and academic tenure came to be enshrined in agreements that came to be enforceable in law after faculty associations began to unionize in the early 1970s (1999, 27).

Nonetheless, the concept of academic freedom creates a unique situation, whereby academics ostensibly enjoy incredible expressive latitude, including expression that critiques or challenges the conditions of their own employment (Horn, 1999, 202). At times and in contexts in which dissent is threatening to the status quo, an expressive protection like academic freedom is a potent check on power (Wilson, 2008, 1). For both



free expression and academic freedom, expression at the boundaries of acceptable debate tests a society's commitment, forms a litmus test for legal protections, and helps to flesh out the tangible borders of an abstract ideal (Bollinger, 1986, 4; Schrecker, 2010, 39).

Despite these commitments to free expression, however, public universities also have proprietary latitude to restrict expression aligned with its particular role and mission, and could not do justice to the latter if it adopted an absolutist position or conceptualized free expression (or academic freedom) as a simple non-interference principle. For example, good pedagogy in the classroom would reasonably restrict speech that is *technically legal* but could nonetheless constitute an inhospitable learning environment. Likewise, teaching reasonably restricts content based on disciplinary expertise and discretion. Academics are subject to rigorous peer-review processes in line with scholarly standards of merit. Universities are also within their rights to enforce time, place, and manner expressive restrictions, as expression that fundamentally disrupts its function (i.e. interrupting classes) could not be justified through a non-interference principle. Universities are bound by criminal law like hate speech prohibitions and provincial human rights law, but are essentially exempt from Canada's strongest (legal) expressive protection: Section 2(b) the Charter of Rights and Freedoms.

All of this means that universities have relatively wider discretion in restricting expression if, for example, it is likely to interfere with normal university operations, poses a legitimate risk to the safety of the campus community, or fails to satisfy standards of scholarly merit. It also means that, contrary to public universities' image as exemplars of free expression, they actually restrict expression *in excess* of legal protections that apply generally in Canada (i.e. constitutional law). Expressive restrictions are, "in one

sense, a defining characteristic of the university” (Sunstein, 1996, 105). Cass Sunstein outlines four different ways in which universities exercise expressive restrictions: content and subject restrictions, pedagogical and civility expectation, distinctions of quality (admissions, grading, etc.), and “viewpoint based” academic discretion related to promotion, tenure, etc. (1996, 105-106).

A common proposal to address this tension is to say that expressive restrictions (premised on protection from harm) and free expression are *not* antithetical. In Sigal Ben-Porath’s proposed ‘inclusive freedom’ framework (2017), she argues that, “the presumed tension between free speech and protection from harm is the result of a rigid and inaccurate description of both” (2017, 42). If one desires free expression, which entails equitable participation in public deliberation, it is impossible to discount the negative effects of harmful expression in preventing public participation (Waldron, 2012). Similarly, if one desires the pursuit of knowledge, it is impossible to discount the benefit of a diversity of views and approaches. Ben-Porath also notes that contemporary campus diversity is not just reflective of demographic changes but also an effect of the public university’s new role as “an engine for social mobility and equal opportunity” (2017, 34). Nevertheless, the ostensible tension between free expression and protection from harm continues to serve as the fulcrum of wide-ranging debates about the state of free expression on university campuses in Canada.

### **1.3.2. Internal Conflict and the Future of the University**

A second reason why universities are important sites for understanding the politics of free expression lies in how, despite the fact that free expression is a constitutive principle for

universities, the latter are actually marked by intense disagreements about the proper limits of expression in an academic environment. Therefore, the political contestation related to free expression on campus is not merely one issue among many that arouse controversy, but an integral component of an ongoing struggle to define the role and mission of the university itself. In this sense, universities are both peculiar and hybrid institutions. On the one hand, the university is relatively democratic, collegial, autonomous, and increasingly representative of societal diversity. It relies significantly upon public largesse, conceptualizes itself as supporting the common good, and carries out public functions like education, research, and civic development. On the other hand, the university is directly linked to state priorities (reflected by research and development funding), increasingly imbibes new public management and public relations principles, and restricts access based on standards of merit (which may be exclusionary and undemocratic). The ‘student experience,’ too, increasingly reflects a customer service orientation of higher education, whereby knowledge is valued as a means to an end (employment, prestige, status, etc.) rather than an end in itself. Put simply, the contemporary university is an institution that sits uneasily between public and private, and thus exhibits some particular tensions related to free expression that have given rise to political contestation.

From the left and from the right, from within and without, a range of critics argue that universities are being led astray. Historically, conservatives and traditionalists of one variety or another have attempted to constrain the independence of mind and word enjoyed on campus (Kant, 1979; Newman, 1996). Since early universities were intimately tied to preserving national culture and almost always featured a religious hue

(Readings, 1997), a philosophically conservative impulse fit quite easily in earlier academic environments. More recently, though, aggressive critiques have become a routine feature of contemporary conservative discourse and politics. In the postwar era, conservative icon William F. Buckley Jr. set the tone with a polemic against his alma mater, Yale University, allegedly a bastion of liberal and secular indoctrination (1951). The anti-communist fervour of the post-war era certainly lent credence to claims that universities could wittingly or unwittingly harbour radicals that ought not bear the imprimatur of such institutions, and unpopular expression often played a role in high profile controversies and dismissals (Hofstadter, 1963; Horn, 1999; Schrecker, 1986). Then, the sociocultural tumult of the 1960s, which included significant campus protest and disruption, created a firmer link between universities and social unrest, the antithesis of conservatism and traditionalism (Lipset, 1993). For the most radical conservative critics, the university was simply politics by other means. Because “academia is the last major institution where dissent is permitted and even encouraged” (Wilson, 2008, 7), they began portraying it as a once politically neutral institution was briskly hijacked in the wake the 1960s:

[T]he Left made a swift transition from the Cold War to the culture wars, from Marxism to multiculturalism. Having failed to burn down the universities in the 60s, radicals went back to graduate school in the 70s in response to German new leftist Rudi Dutschke’s call for a long march through the institutions – and now they sit on tenure committees, making sure that only those who think as they do are hired period (Collier and Horowitz, 2006, 385).

Until the 1960s, the conservative reaction to campus politics and protest tended to focus on individuals, typically professors who were deemed subversive. Although many student-led social movements waned after the 1960s, concrete changes remained on

campus, including a gradual diversification of both student populations and academic canons. But as time progressed and universities became both larger and more accessible (Kerr, 2001), campus critiques expanded significantly to more diffuse concerns about loosening standards of merit, the abandoning of classics and embrace of relativism, and the dilution of objective truth (Bercuson, et al., 1984; 1997; Hook, 1971). For some, universities had ceased to be an institution dedicated to civic virtue and instead were paving the way for social revolution by instilling in students a questioning orientation to the world around them.

Allan Bloom's now infamous *Closing of the American Mind* brought all of these grievances proprietary to the scholarly mission to a more mainstream audience in 1987, and a new conservative literary genre was born. A devotee of many conservative academics' patron saint, Leo Strauss (Annette, 1994, 7), Bloom had experienced the campus tumult of the 1960s first hand, reportedly coming close to a "breakdown" as a result of the violent disruptions at Columbia University (Schrecker, 2010, 90). Enthusiastic readers were perhaps not so much attracted to Bloom's impressive command of "esoteric philosophy," but instead embraced his "intellectual legitimation for a populist and conservative critique of progressive change in the university" (Hunter, 1991, 220). Described as the "first shot in the culture wars" (Paglia, 1997), Bloom's treatise solidified campus as one of its most prominent fronts (Mücke, 2015, 10), and therefore made campus politics the natural source of a range of perceived problems in society. To this day, university campuses figure prominently in the contemporary culture wars genre (Dirks, 2015; Gitlin, 2017a, 2017b; Murray, 2019; Pluckrose and Lindsay, 2020; Saad, 2020), and conservatives often lament the fact that "progressives rule higher education"

(Shields & Dunn, 2016, 1; Marks, 2020). In the third thesis publication, I explore in more details how conservative discourse and politics related to campus expression has led to the creation of what I call a ‘campus crisis feedback loop,’ one that helps explain the government responses to campus unrest in Canada and the United States.

Liberals and progressives have perhaps had a more mixed relationship with the public university in recent history. Progressive dissenters were unambiguously beneficiaries of free expression (and academic freedom) on campus, even when the principle’s protection was inconsistent and uneven (Horn, 1999; Schrecker, 2010). Universities have also been vehicles for an increased prominence for ideas that challenge the status quo and imagine alternatives. Bertrand Russell, for example, was skeptical about the societal influence of non-technical intellectuals, but he thought that they served a crucial role in formulating a collective vision for humanity that ‘blind’ technical scholarship might elide (1939: 495).

Particularly in the Arts, Humanities, and Social Sciences, a critical or questioning orientation to the world is practically a prerequisite. In their classic and expansive study of the American professoriate, Everett Carll Ladd and Seymour Martin Lipset found that it was generally liberal in disposition and attributed this to the creative role of scholars, whereby innovation and critique are rewarded (1976). In Canada, too, analysis has highlighted a tendency for the professoriate to lean left (Nakhaie and Brym, 2011). An associated formulation is one that underscores the concept of the *public* good, which entails an adversarial or contrarian role for academics. Accordingly, Edward Said described the role of the academic in this way:

The central fact for me is, I think, that the intellectual is an individual endowed with a faculty for representing, embodying, articulating a message, a view, an attitude, philosophy or opinion to, as well as for, a public. And this role has an edge to it, and cannot be played without a sense of being someone whose place it is publicly to raise embarrassing questions, to confront orthodoxy and dogma (rather than to produce them), to be someone who cannot easily be co-opted by governments or corporations, and whose *raison d'être* is to represent all those people and issues that are routinely forgotten or swept under the rug (1994, 11).

This critical orientation would eventually be turned inward, as academics imbued with academic freedom could more readily rely upon expressive protections to critique society and their own institutions. In his infamous debate with Noam Chomsky, Michel Foucault summarized an epistemic position that is now commonplace in much of contemporary academia:

[T]he real political task in a society such as ours is to criticize the workings of institutions, which appear to be both neutral and independent; to criticize and attack them in such a manner that the political violence which has always exercised itself obscurely through them will be unmasked, so that one can fight against them (1971).

Accordingly, progressive critics have availed themselves of academic opportunities but have not done so uncritically, by highlighting a number of legitimate problems and tensions. Universities are inexorably attached to the state, which means they are by no means neutral in knowledge production. One of the legacies of the anti-war movement, for example, was documenting the links between knowledge production and the 'military-industrial complex' (Chomsky, 1997; Simpson, 1998; Slaughter and Rhoades, 2004, 29; Soley, 1995, 77). In general, the concept of an objective and disinterested researcher implodes if research is clearly mobilized for unsavoury moral ends (such as weapons research and development). This has led to an increasingly

reflexivity among academics, or a recognition that what they do has ethical, moral, and political dimensions beyond the mere technical elements of research (Chatterjee and Maira, 2014; Spooner and McNinch, 2018).

On an economic level, market forces condition and often limit the ability of universities to fully satisfy their purported objectives (Axelrod, 2002; Bok, 2004; Brownlee, 2015; Bruneau and Turk, 2004; Bousquet, 2008; Docherty, 2015, 2018; Giroux, 2014; Schrecker, 2010; Soley, 1995; Tudiver, 1999; Slaughter and Leslie, 1997; Woodhouse, 2009). Progressive critics of the university have highlighted a number of associated challenges, all of which have profound effects upon free expression: dwindling of public funding and concurrent reliance on corporate contributions, universities imbibing principles from new public management and public relations, research priorities determined in line with economic incentives, precarious labour conditions for sessional and adjunct instructors, and a customer service orientation in undergraduate education. For Sheila Slaughter and Gary Rhoades, this form of ‘academic capitalism’ entails an institutional “shift from a public good knowledge/learning regime to an academic capitalist knowledge/learning regime” (2004, 8). Commensurate with this transformation has been a tendency for universities to uncomfortably balance lofty ideals related to the public good and an acute risk-aversion related to their public image or ‘brand’ (Dwyer, 2001).

Universities have been traditionally elite and exclusionary at both a demographic and epistemic level (Ahmed, 2012; Bannerji, et al., 1991; Chatterjee and Maira, 2014; Ferguson, 2012; Henry and Tator, 2009; Henry, et al., 2017; Mills, 2000; Razack, et al., 2010; Strange and Hardy Cox, 2016). Although universities are based on a standard of



merit, ranging from admissions to peer review, the allegedly objective, neutral, and democratic elements of merit have been questioned.

While optimists have placed their faith in merit to promote democratic inclusion, critics – and there have been many – claim that merit serves as an ideological tool that allows elites to maintain their position in society and to pass down privileges to their children. Scholars in the tradition of social reproduction have long argued that educational institutions simply reproduce class status. They demonstrate how schools and universities reward upper-class characteristics, such as how one speaks and responds to authority, and label those characteristics as meritorious (Warikoo, 2016, 14).

If universities are exemplars of free expression, and free expression requires a robust marketplace of ideas including equitable participation, universities ought to be representative of a society's diversity in order to promote free expression (Ben-Porath, 2017). Despite universities often highlighting their role in buttressing the public good, they are nonetheless an integral component of a society's social and ideological reproduction (Castenall, 1998, 12; Gillies and Lucey, 2007, 1; Hamilton, 2010; Schueller and Dawson, 2009, 5). As such, they are not uniquely immune to harmful ideas and may in fact help to sharpen and propagate them (Galabuzi, 2018, 91). In a settler-colonial context, for example, universities are a potent source of colonial ideas and understandings (Battiste, 2001; Grande, 2018; Kuokkanen, 2007; Morgensen, 2012; Smith, 1999; Tuck, 2009; Wilder, 2013; Tuck and Yang, 2014).

Calls to reform an inhospitable environment (Berry & Mizelle 2006; Gabriel & Smithson 1990; Gutiérrez y Muhs, et al., 2012; Meyers, 2012; Sue, 2010) within an historically elitist and exclusionary institution have led to equity, diversity, and inclusion efforts, including employment equity standards set at the federal level, diversifying curriculum, hiring more representative faculty, and individual university policies,

practices, and specialized offices (i.e. student codes of conduct and variously termed Student Affairs, Human Rights, Safe Disclosure, and Equity offices) (Henry, et al., 2017; Henry and Tator, 1994, 2009; Siegel, 2003). Despite endemic problems associated with the diversity agenda – like the anger and resentment of marginalized groups being interpreted as counterproductive, uncivil, etc. (Coulthard, 2016; Scott, 2019; Srinivasan, 2018) and the disproportionately valorized labour for such initiatives – progressive movements within the university still hold promise (Ferguson, 2017) and have, in some ways, become a regular feature of academic life:

In many universities across Canada, the debate about diversity and inclusion has gone mainstream, largely in response to critiques emanating from communities of difference, and in particular, Indigenous and racialized communities and academics who are defined by these identities (Galabuzi, 2018, 90).

At the epistemic level, a variety of disciplines in the Arts, Humanities, and Social Sciences have embraced theories and methodologies that contest notions of expertise, disinterest, and objectivity by highlighting how identity and experience conditions the disproportionate assignment of credibility, the implicit assumptions and biases channeled into academic research, and the normative commitments one brings to research and teaching. Much of this work contests the colour-blind, liberal, and neutral character of universities, highlighting instead its “racial and colonial character” (Dei, 2000, 26; Galabuzi, 2018, 104). Likewise, a range of feminist academics, attendant to the political dimensions of realms previously considered largely irrelevant to politics (Lloyd, 2005, 4), highlighted the gendered biases of knowledge production. Collectively, these epistemic shifts gave birth to new fields and objects of study and have the effect of *politicizing* a variety of elements of the academy that had previously taken for granted or completely

ignored. Chela Sandoval nicely summarizes the promise of these critical, interdisciplinary approaches:

The twentieth-century season of reproachment shook the Western will to know in all its settling points, permitting a lease of new knowledges in the sciences, arts, and humanities. This decolonizing period cultivated knowledge formations that defied and transgressed the traditional boundaries of academic disciplines: ethnic studies, women's studies, global studies, queer theory, poststructuralism, cultural studies, New Historicism, and the critique of colonial discourse developed as intellectual movements that similarly understood Western rationality as a limited ethnophilosophy – as a *particular* historical location marked by gender, race, class, region, and so on. Their shared aim was to generate new analytic spaces for thought, feeling, and action that would be informed by *world* historical conditions” (2000, 8).

The broader point amid these different and often competing visions of the role and purpose of the university is that free expression (and academic freedom) looms large in almost every critique of the university as an institution. For some conservatives and traditionalists, free expression is imperiled because new demands upon academics, canons, and institutions have allegedly shrunk its ambit. For some liberals and progressives, free expression is merely a convenient method of insulating deliberately provocative (and sometimes harmful) expression from legitimate consequences. Throughout the significant changes in higher education over the last half-century, questions related to free expression have either been a substantive component of these changes or been lurking not too far in the background. In sum, questions about the proper limits of free expression are *inextricable* from the ongoing debates about the future of the university.

Underlying all of this contestation to determine the future of the university is a broader philosophical shift reflected in approaches to free expression. Again, although

the increased prominence of free expression controversies on campus (and elsewhere) might provide the perception that this shift is novel, the ostensible consensus underpinning the tolerance of potentially harmful expression has always been fraught in North America. Increasingly, left-leaning voices seem to exhibit greater skepticism of free expression as a redeeming principle, despite a relatively consistent position that injustice persists “through the systemic silencing of oppositional voices” (Dei, 1996). In sum, the form of progressive civil libertarianism that characterized much of left-leaning politics over the past half-century has struggled to reconcile with its tolerance for harmful expression, especially amid new waves of far-right and populist politics.

Concurrently, right-leaning voices seem to have comfortably appropriated a civil libertarian position to great effect (Wright, 2020), commensurate with all of the moral and intellectual legitimacy that that position entails. There is some irony associated with this, as liberals and progressives have been great beneficiaries of free expression in the post-war era, and there was often significant overlap between a civil libertarian position and the advocacy of progressive ideas. The irony is not lost on observers, who readily argue that liberals “are at war with themselves” (Fiss, 1996, 1) and “have become as keen on censorship as conservatives once were” (Cohen, 2012, 227).

Arguably, this shift experienced a critical mass moment – most palpably on university campuses – in the 1990s due to the influence of new research and advocacy associated with Critical Race Theory (CRT) and the often intense culture war conflagrations related to ‘political correctness.’ For the main proponents of CRT, for example, approaches to free expression constituted an ‘ideological drift,’ marked by a “failure to observe how an instrument, speech, that formerly served progressive causes

has been captured by the libertarian right (as well as by white supremacists, pornographers, and other dubious allies)” (Delgado and Stefancic, 2004, 218). The basic premises of the CRT approach to free expression seem to have borne fruit, in both the United States and Canada, as there is no shortage of scholars who question the wisdom of traditional approaches to free expression (Bleich, 2011; Delgado and Stefancic, 1992, 1997, 2004, 2012; Delgado and Yun, 1995; Dworkin, 1981, 1985; Gillborn, 2009; MacKinnon, 1993; Mahoney, 2009, 2010; Maitra and McGowan, 2010, 2012; Lederer and Delgado, 1995; Matsuda, et al., 1993; Marcuse, 1969; McGowan, 2019; Moskowitz, 2019; Titley, 2020; Tsesis, 2002; Waldron, 2012).

Even in the United States, where free expression enjoys a heightened prominence and constitutional protection, drastic changes are afoot as a traditionally civil libertarian position continues to erode. The starkest sign of these changes are the challenges now faced by organizations that defend civil liberties from a politically progressive position, like the American Civil Liberties Union (ACLU). In 1977, the ACLU defended the right of neo-Nazis to march in Skokie, Illinois, a town with a high proportion of Holocaust survivors. Despite that decision causing many to disavow the organization and its efforts failed to even yield a legal precedent (Kneeland, 1977; Neier, 2012), the case remains emblematic of the degree to which Americans cherish free expression and the relatively more absolutist position of the First Amendment. ACLU lawyers instinctively understood that the moral and intellectual high ground at stake in the defence of free expression was easily lost. If the organization wanted to advocate on behalf of progressive dissenters, it would need to be consistent in its interpretation of the First Amendment.

Today, the ACLU is protested for its civil libertarian position, including chants of “ACLU, you protect Hitler, too” (Bauer-Wolf, 2017). Following the ACLU’s controversial decision to assist with a lawsuit in response to the racist (and ultimately deadly) debacle in Charlottesville, Virginia, the organization has been experiencing a new bout of ‘soul-searching’ (Goldstein, 2017). The rift is, however, a perpetual challenge. Some previously associated with the organization allege that it slowly “retreated from protecting politically incorrect, ‘offensive’ or ‘hateful’ speech” (Kaminer, 2009, 15). The previous head of the ACLU branch in Illinois, David Hamlin, once argued that the mantra which animated the response to neo-Nazis in Skokie, and has now enthralled many progressives (‘no free speech for fascists’) (Bray, 2017), “was just as amusing at it was stupid” and equated it with *fascism itself* (1980, 72). Then, like today, these cases and controversies are emblematic of “the uneasy alliance between people with a primary commitment to left-wing politics and people with a primary commitment to civil liberties” (Neier, 2012, 14).

In sum, as I argue in the first thesis publication, campus events are also emblematic of much deeper philosophical disagreements. However difficult these disagreements may be to discern in what passes for informed commentary at the moment, they are not merely consigned to privileged academics theorizing from the ivory tower. They play out in dramatic ways in the discourse and politics of campus expression on a quotidian level and are incredibly consequential for the future of free expression in liberal democracies.

### **1.3.3. An Ample Source of Cases and Controversies**

The third reason that universities are so critical in capturing the politics around free expression is that university campuses have a long history as sites of widely reported free expression controversies. For academic researchers like myself, universities are both an obvious site of contestation regarding the limits of free expression and a source of ample case studies. A range of contentious political issues has been vigorously contested on university campuses. Some of the most prominent issues over the last few years include: abortion (Bundale, 2018), the Israel-Palestine conflict (Abu-Laban and Bakan, 2019; Drummond, 2013; Flaherty, 2016; Mearsheimer, 2015; Nathan-Kazis, 2015; Thompson, 2011), the advocacy of ‘men’s rights’ (Collier, 2015), transgender identities (Dea, 2019; Pearce, et al., 2020), race and racism (Eisenkraft, 2010), and sexual harassment and assault (Kipnis, 2017; Outhit, 2017; Patai, 2000). Add to this a culture of student dissent and protest (Austen, 2010; Duffy, 2015; Hopper, 2013; Todd, 2016; Urback, 2014a, 2014b) and an expressive environment where institutional and administrative impropriety is often challenged publicly (Ackerman, 2019; CBC News, 2014; Cobb, 2015; Fine and Friesen, 2020; Schuchman, 2005).

In my book project, I will dedicate significant space to addressing the discourse and politics of the Israel-Palestine conflict, in particular. This is because the issue is representative of a number of campus phenomena that can help explain the politics of free expression on campus. First and foremost, contestation related to the issue illustrates the degree to which university campuses are perceived as politically consequential battlegrounds. As such, a vast network individuals and groups expend significant time and resources to impact debate and discussion related to the topic on campus. These

range from large and well-organized lobby organizations to decentralized international networks of student activists. Second, some of the most high-profile free expression and academic freedom cases and controversies over the last two decades in North America have revolved around criticism of Israel. Third, a controversial definition of anti-Semitism at the heart of recent government and institutional adoption campaigns – originating from the International Holocaust Remembrance Alliance – has become yet another high-profile debate about free expression and academic freedom in Canada.

There have been countless high-profile academic freedom cases and controversies over the past two decades, which can be grouped into three categories with noteworthy examples (while refraining from normative judgments about the expression in question). First, there are professors that have been fired or retired early due to their expression, including, for example: Ricardo Duchesne at the University of New Brunswick (CBC News, 2019, 2015; Crawford, 2019), Anthony Hall at the University of Lethbridge (CBC News, 2018; Richards, 2018), Rick Mehta at Acadia University (Prentiss, 2019, 2018), and Denis Rancourt at the University of Ottawa (Anderssen, 2009; Butler, 2014; CAUT, 2017). Second, there are professors that faced repercussions as a result of challenging their own institutions in various ways, including, for example: Robert Buckingham at the University of Saskatchewan (CBC News, 2014), Kathleen Lowrey at the University of Alberta (Labine, 2020), David Noble at York University (Brown, 2007; Makin, 2010), Nancy Olivieri at the University of Toronto (Shuchman, 2005), and Andrew Potter at McGill University (Shingler, 2017). Third, there are professors that have generated public controversy and protest due to their expression, including, for example: Janice Fiamengo at the University of Ottawa (Crawford, 2018; Teitel, 2013), Dougal MacDonald at the



University of Alberta (Fida, 2019), Jordan Peterson at the University of Toronto (Flaherty, 2017a; Schuler, 2017), Philippe Rushton at the University of Western Ontario (CBC News, 2020; Edwards, 2019; Pettigrew, 2012; Rodriguez, 2020), Sunera Thobani at the University of British Columbia (Birchard, 2001; Bohn and Bolan, 2001; Thobani, N.D.; Wente, 2001), and Frances Widdowson at Mount Royal University (Overholt, 2020; Shimo, 2009).

Notably, broader societal debates about the proper limits of free expression have routinely invoked campus events. Debates about the concept of ‘political correctness’ from the 1990s, for example, often highlighted campus phenomena as preludes to broader societal changes, both positively and negatively (Berman, 1992; Dunant, 1994; Richer and Weir, 1995; Wilson, 1995). Likewise, contemporary public debates about free expression point to the fact that new concepts and ideas that have become controversial, like CRT, intersectionality, and gender identity preoccupied critical scholars before they gained traction in popular culture (Ferber, 2020; Lang, 2020; Nash, 2019).

Perhaps the most significant explanatory factor for these free expression controversies is the long history of universities being incubators of new ideas that challenge the status quo, vanguards of dissent and protest (Ladd and Lipset, 1976, 132). Students have always been a potent historical force, but the 1960s, in particular, made university campuses and protest movements synonymous (Edelman Boren, 2001; Keniston, 1971). A range of important movements had strong ties to campus (Ferguson, 2017) that pushed boundaries for free expression and highlighted fractures in society based on systemic inequalities. As Dennis Forsythe argued after the Sir George Williams affair (a seminal event explored in more detail in the third thesis publication):

Protests within universities have always been good indicators of the ills that cripple the society. Everywhere students have led the way in sensitizing the people to the discrepancies within the society generally as well as those within their particular university setting (1971, 11).

Universities are particular in this regard, because their conditions are ripe for political organizing, including proximity of like-minded individuals, a well-educated and materially self-sufficient population, and modest protections for expression (and employment). For all these reasons, “[t]he university campus is an ideal place in which to be a radical activist” (Lipset and Altbach, 1969, xvii).

Concurrently, universities have come under significant pressure to constrain this independence and autonomy (Schueller & Dawson, 2009, 2). In relatively less free societies, universities are an obvious source of ideological and state legitimacy and thus highly coveted political territory for capture (Connelly and Gruttner, 2005). But universities in liberal democracies are also sources of explicit political contestation and backlashes against dissent, evidenced most dramatically during the McCarthy and Cold War eras (Chomsky, 1997; Heins, 2013; Schrecker, 1986; Simpson, 1998). This political contestation underscores the wider ramifications of campus politics, as what happens on campus is rarely confined to campus. With a community comprised mostly of relatively younger adults, universities have a remarkable ability to preformulate common sense through its cultivation of new ideas and future opinion leaders, and eventually affect more tangible policies and practices. As CBC journalist, Lorenda Reddekopp, recently put it while exploring campus events in the wake of the alleged ‘crisis:’ “What happens on campuses can define generations” (2017).

#### **1.4. Research Problem, Research Questions, and Research Methods**

As mentioned, my research has been focused on understanding the political contours of free expression on campus, including how political contestation related to free expression has animated one of the most noticeable fractures in the contemporary academy.

However, because this research project is comprised of three wholly different but interconnected publications, it does not respond to a single, guiding research question.

Instead, the project pursues three different lines of inquiry that all stem from a multipronged analysis the alleged ‘crisis’ of free expression on Canadian university campuses. Notably, the research does not definitively address the question of whether or not the contemporary state of campus expression constitutes a ‘crisis.’ Although it is likely obvious from the dissertation publications below, I think that there is ample evidence to demonstrate that the state of expression on campus is robust by any measure. Likewise, I think there is ample evidence to demonstrate that the provincial policy response to the alleged ‘crisis’ reflects a partisan impetus lacking empirical justification. Nonetheless, the absence of a ‘crisis’ is not the absence of a problem, so my three lines of inquiry have highlighted some of the problems and tensions associated with campus expression that ought to attract more scholarly attention. Each publication includes its own individual explanation of the research methods used, so this section will instead provide a general summary of their contours and contributions, and then explain the specific research methods for the project as a whole.

The first thesis publication, a peer-reviewed journal article titled “Expressive Freedom on Campus and the Conceptual Elasticity of Harm,” is primarily philosophical in orientation and contributes to the interdisciplinary literature on free expression and its

limits. This publication was accepted by the *Canadian Journal of Political Science* and is forthcoming. I first outline two different explanatory frameworks that have been offered in response to the alleged campus ‘crisis:’ the ‘snowflake thesis,’ which tends to locate controversy in the psychosocial deficiencies of campus interlocutors, and the ‘backlash thesis,’ which tends to locate controversy in a longstanding backlash to increasing diversity on campus. I argue that while both have some merit, they are ultimately insufficient for explaining the contemporary contestation related to free expression on campus. Instead, I offer an alternative and argue that competing conceptualizations of harm are actually at the root of the vast majority of campus controversies, as harm is the most reliable justification for expressive restrictions.

I then offer a sympathetic critique of three interrelated concepts that feature elastic conceptualizations of harm and are consequential for expressive limits in an academic environment: epistemic injustice, argumentational injustice, and epistemic exploitation. I argue that all three concepts require a distinction between testimony (recounting personal experience grounded in identity) and argumentation (making a normative argument or claim). This distinction, I hold, strikes a better balance between free expression in an academic environment and protection from harm, in addition to salvaging each concept from elastic conceptualizations of harm that are untenable in an academic spaces.

The second thesis publication, a peer-reviewed book chapter in an edited book titled “Deplatforming in Theory and Practice: The Ann Coulter Debacle,” is both philosophical and practical and analyzes a (mostly) campus phenomenon that has been at the centre of the alleged ‘crisis:’ ‘deplatforming,’ or when an invited speaker is cancelled,

interrupted, or otherwise unable to address an audience. Curious about a possible disjuncture between the philosophical justifications for deplatforming and the practical effectiveness of the tactic, I argue that deplatforming is prone to unintended consequences. Essentially, I ask if deplatforming *works* by using an infamous case study: the abortive visit of firebrand conservative pundit, Ann Coulter, to the University of Ottawa campus in March of 2010. In this case-based analysis, I combine secondary literature (mostly news reporting) with data gleaned from an access to information request and a handful of personal interviews with some individuals who were proximate to the case.

I begin by providing an in-depth look at the case study, including some background context for Coulter and a chronology of the protest event and eventual cancellation. I then survey literature outlining three philosophical justifications for deplatforming: merit, harm reduction, and discursive strategy. Here, I survey interdisciplinary (philosophical) literature that addresses questions of expression and harm for potential justifications for deplatforming. The final section combines theory and practice, by examining some strategic considerations related to deplatforming as a protest tactic, which raises a potential disjuncture between philosophical justifications and actual effectiveness. The latter, I argue, was important in this case study, because a result of Coulter's cancellation was greater exposure and unearned moral and intellectual legitimacy. This publication was accepted in a volume edited by Emmett Macfarlane from the University of Toronto Press (*Dilemmas of Free Expression*) and is forthcoming. The third thesis publication, a journal article currently being prepared for submission to the *American Review of Canadian Studies*. Titled "Free Expression and the 'Campus

Crisis Feedback Loop:’ How the Chicago Principles Came to Canada," it is simultaneously comparative, historical, and policy oriented and addresses the unprecedented policy response from the governments in Alberta and Ontario (in the form of the Chicago Principles). First, I use a comparative historical method to present an analytical framework for understanding the emergence of the two provincial ministerial directives. I argue that the successful California gubernatorial campaigning of Ronald Reagan (for the 1966 election) created a ‘campus crisis feedback loop,’ one that includes the mutually reinforcing phenomena of campus unrest, sensationalistic news coverage, overwhelmingly negative public opinion, and partisan opportunities to channel negative public opinion.

I then demonstrate how the feedback loop became a pillar of conservative political messaging in the United States and argue that Canada’s importation of the Chicago Principles signalled a final closing of its own feedback loop. I then provide a brief explanation and chronology for two Canadian controversies that, more than any others, helped to create the perception of a campus ‘crisis:’ the Jordan Peterson and Lindsay Shepherd affairs. Finally, I present an anatomy of the ministerial directive in Alberta and argue that its ineffectiveness is a result of flawed policy development and implementation, demonstrating a partisan impetus that significantly borrows from the American experience. The policy analysis section is informed by never before released access to information data that sheds light on ministerial decision-making and policy development, in addition to a personal interview with the Alberta Minister for Advanced Education, Demetrios Nicolaides.

My research project used a qualitative, mixed-methods approach that includes different combinations of literature reviews, media analysis, legal analysis, interviews, and access to information (ATI) requests. Literature reviews included both academic and non-academic publications. Academic literature included the fields of Political Science, Law and Legal Studies, Political Theory, and Philosophy and some interdisciplinary work that straddles some or all of these disciplinary boundaries. Subject areas included free expression, academic freedom, the politics of higher education, and theories of harm. Non-academic literature reviews focused mostly on news and opinion within mainstream journalistic outlets like newspapers (national, municipal, and campus), but also included current affairs magazines, websites, blogs, and social media. In tandem with my literature reviews, the following research included modest amounts of media and legal analysis. The former included analysis of the mainstream news coverage of the alleged ‘crisis’ of free expression on campus and specific case studies campus controversies. The latter included an analysis of some seminal free expression legal cases in Canada in order to better understand the applicable law and policy related to campus expression.

The primary source of data collection for the project was semi-structured interviews. In total, I conducted 85 research interviews with individuals that are proximate to the issue of free expression on campus, including: students, faculty, administrators, journalists, lawyers, activists, NGOs, politicians, and pundits. Interview participants were identified through both purposive and snowball sampling methods, and then recruited via email and social media platforms (Facebook, LinkedIn, and Twitter). Interview questions were tailored according to context but generally included three pillars of potential questions: a) establishing and assessing the various

positions and approaches related to free expression and academic freedom in a university context; b) establishing chronological accuracy and corroborating details of case studies; and, most importantly c) gaining a deeper understanding of how harm is conceptualized as a justification for expressive restrictions and how these conceptualizations are reconciled with free expression and academic freedom in a university context.

ATI requests were used as a complementary research method but became a more substantive source of data during the course of the research. Despite the value of the data received, ATI is one of the most under-utilized social science methods (Mopas and Turnbull, 2011; Kazmierski, 2011; Walby and Larsen 2011a; Walby and Larsen, 2011b). I was able to solicit data from the Government of Alberta and the University of Ottawa, including internal emails, briefing notes, research, reports, and advice. This data allowed me to: a) corroborate and mutually inform literature reviews and interviews; b) understand how the decision-making of university administrations and provincial governments affect free expression and academic freedom on university campuses; and c) capture and analyze data related to how pressures from outside of the university have a role in decision-making (i.e. complaint processes, funding pressures, lobby/activist groups, and media exposure).



## CHAPTER 2

### 2.1. “Expressive Freedom on Campus and the Conceptual Elasticity of Harm”

Venue: *Canadian Journal of Political Science* (Published)

Abstract: High-profile controversies have created an impression that expressive freedom is imperilled on university campuses in North America. Analyses of this alleged campus crisis typically focus on the negative psychosocial characteristics of those who oppose potentially harmful expression or the cynical ways expressive freedom can be invoked to normalize harmful expression. Conversely, I argue that theories of harm are key to understanding the contemporary discourse and politics of expressive freedom on campus. To shift the frame of analysis, I critically analyze three interrelated theoretical concepts that feature elastic conceptualizations of harm and are consequential for expressive limits in an academic environment: epistemic injustice, argumentational injustice, and epistemic exploitation. I argue that all three of these concepts require a distinction between testimony and argumentation in order to better balance protection from harm on the one hand, and expressive freedom and open inquiry on the other.

## 2.2. Introduction

In the contemporary moment, expressive freedom looms large. Particularly on North American university campuses, high-profile event disruptions and cancellations (‘deplatforming’), and concerns about campus phenomena like ‘trigger warnings’ and ‘safe spaces,’ have prompted some critics to question whether expressive freedom might be imperiled precisely where it ought to be most cherished (Haidt and Lukianoff, 2018). While much of this criticism merely echoes the ‘culture wars’ from previous decades (Berman, 1992; Gates Jr. et al., 1994; Kimball, 1990; Marchak, 1996; Richer & Weir, 1995), some of its contours are novel. For example, the effects of social media, new protest movements, and the intensification of partisan political polarization are distinctive features of the past decade. In turn, the increased cadence and novelty of these controversies has also renewed interest among academics (Baer, 2019; Ben-Porath, 2017; Chemerinsky and Gillman, 2017; Palfrey, 2017; Roth, 2019; Scott, 2019; Whittington, 2018).

Although this alleged ‘free speech crisis’ could be easily mistaken for an American phenomenon, Canada too has experienced its fair share of campus controversy (Reddekopp, 2017). Wanting to capitalize on the perception that something is terribly amiss, recently elected centre-right provincial governments in Ontario (2018) and Alberta (2019) swiftly moved the alleged crisis from the pages of opinion editorials to official government policy. Doug Ford’s Progressive Conservatives and Jason Kenney’s United Conservative Party have now compelled postsecondary institutions in their respective provinces to create explicit expressive freedom policy statements (Cameron, 2020; Friesen, 2018; Graney, 2019).

High profile controversies and the demand for expressive freedom policies have led to a search for compelling explanations. Chief among them is the argument that expressive freedom is degenerating on campus because of increasingly intolerant, censorious, and (sometimes) violent students and the timid administrations that enable them (Carpay and Kennedy, 2018; Friedersdorf, 2016; Murphy, 2016; Wente, 2016). This narrative (the ‘snowflake thesis’) is best represented by Jonathan Haidt and Greg Lukianoff’s *The Coddling of the American Mind* (2018), easily the most commercially successful and accessible take on the topic. In the book, they argue that the lack of campus ‘viewpoint diversity’ is less about political divides, but instead the generational differences that imbue students with a particular blend of intolerance and fragility.

Another popular explanation, partially framed in response to the ‘snowflake thesis,’ argues that the alleged campus crisis is merely a continuation of an historical backlash to universities becoming more diverse (the ‘backlash thesis’). In this understanding, the invocations of expressive freedom on campus are cynical attempts to shield questionable ideas from scholarly scrutiny and normalize potentially harmful expression on campus. While both of these approaches offer some insight, they ultimately elide the core theoretical question at hand: how should harm be conceptualized as expression’s natural restraint in an academic environment? Accordingly, I argue that *theories of harm* are key to understanding the contemporary discourse and politics of expressive freedom on campus. In particular, what often gets (mis)represented as ‘coddled’ students or an uncomplicated backlash against diversity is a much more nuanced question about theorizing harm.

My primary goal, then, is to shift the frame analysis away from the ‘snowflake thesis’ (alleged individual psychosocial deficiencies) and ‘backlash thesis’ (antipathy to diversity) towards the argumentation and justification that might be marshaled when harm is invoked as an expressive limit. I do this by engaging with novel theoretical approaches that challenge assumptions about the proper limits of expression, and bear directly on expressive limits in an academic environment. Chief among these is the concept of ‘epistemic injustice,’ drawn from the work of philosopher Miranda Fricker, which has the capacity to harm individuals as ‘knowers’ if and when they suffer identity-based credibility deficits. I offer a mostly sympathetic critique of the concept and two additional (but intimately related) concepts.

To begin, a brief historical comparison is provided to illustrate how approaches to expressive freedom have changed in recent history. From there, I critique the two dominant explanations for the alleged campus crisis (the ‘snowflake’ and ‘backlash’ theses), and make the case for shifting the frame of analysis to theories of harm. I then analyze three interrelated theoretical concepts that are emblematic of elastic conceptualizations of harm – epistemic injustice (Fricker, 2007), argumentational injustice (Kapusta, 2017), and epistemic exploitation (Berenstain, 2016) – and highlight the problematic ways each could unjustifiably restrict expressive freedom in an academic environment. Bolstered by a distinction between dignitary and intellectual safety in the recent work of Sigal Ben-Porath (2017), my threefold analysis primarily suggests a similar distinction be made between testimony (personal experience) and argumentation (normative claims). This distinction allows each theoretical concept to retain their ethical

imperative without reflexively validating invocations of harm as an expressive injunction and thus potentially impinging upon expressive freedom and open inquiry.

### **2.3. History and Context of Campus Expression in North America**

Although critiques of higher education predate the sociocultural upheavals of the 1960s (Buckley, 1951), this period is key to understanding the alleged campus crisis. An obvious exemplar is the Free Speech Movement on the UC Berkeley campus in the early 1960s. Student activists, some of whom had recently returned from civil rights activism (volunteering in the Freedom Summer of 1964) were incensed that the Berkeley administration mostly forbade political expression on campus. Ensuing protests and sit-ins attracted thousands of students, eventually led to the administration relenting, and galvanized student movements across the country and around the world (Cohen 2009). Student activists were demanding that the university loosen its expressive restrictions and sought to expose inconsistencies between the university's self-proclaimed mission to pursue truth and knowledge without constraint, its institutional rules, and the capricious behaviour of administrators.

According to Mario Savio, the most recognized face of the Free Speech Movement, expressive freedom was “the most dangerous [right]... in the last analysis, because if the thing you tell people about is *bad enough* then it... leads immediately to advocacy, and action” (Ibid: 79). During negotiations, Savio was explicit about demanding legitimate reasons for the authority wielded by the university, especially when it made policy decisions with little to no discernable rationale (Ibid: 83). Thus, the Free Speech Movement practiced a radical immanent critique of the institution, arguing that

expressive restrictions were *incompatible* with its self-avowed mission (the pursuit of truth and knowledge). As a result of this and other student upheavals, campuses quickly became synonymous with the specter of youthful protest in the popular imaginary. Further, these movements contributed to the impression that campuses ought to be exemplars of expressive freedom by retaining their unique form of collegial autonomy and a singular mission.

Approximately five decades later, UC Berkeley was again the fulcrum of a debate about the state of expressive freedom on campus. In response to an event featuring far-right provocateur (and self-proclaimed ‘troll’), Milo Yiannopoulos, several hundred protestors descended upon Berkeley in early 2017. Some of the protestors used black-bloc tactics, engaged in skirmishes with Yiannopoulos supporters, and damaged (and then set fire to) campus and police property estimated at more than \$100,000 (Fuller, 2017). The debacle resulted in a predictable chorus of criticism. Many noted the historical irony, which was obviously Yiannopoulos’s strategy all along (Wong and Levin, 2017). Even President Trump chimed in on Twitter, warning that his administration could withhold federal funding if colleges and universities don’t protect expressive freedom. Two years later, he signed an executive order mandating just that, although the order merely underlines existing protections (Thomason, 2019).

Confrontations like this – between student protestors and edgy political pundits turned entrepreneurs – are now commonplace, with the latter relishing an opportunity to portray campus as a bastion of progressive intolerance and attract some sympathetic media coverage. Interestingly, student protestors were again practicing a radical immanent critique of the institution. This time, however, they argued that restrictions on

expression were *compatible* with another self-avowed mission: providing a safe and hospitable environment for its community members. Whereas the Free Speech Movement asserted expressive freedom as a non-interference principle that befitted *less* institutional control, contemporary student protestors demanded precisely the *opposite*, an administration that would more readily interfere with expressive freedom if warranted.

Similar events across North America likewise suggest that changes in approaches to expressive freedom on campus are afoot. The most widely reported events typically revolve around a controversial speaker being deplatformed as a result of venues being pressured to cancel and/or raucous and disruptive protests (Heinze, 2019; Smith, 2020). At Berkeley, other conservative pundits stirred controversy after the Yiannopolous riot, including Ann Coulter and Ben Shapiro (Panzar and Tchekmedyian, 2017; Peters and Fuller, 2017). At Middlebury College, Charles Murray was violently deplatformed (Saul, 2017). At Yale University and The Evergreen State College, students berated their administrators for allegedly failing to create a more hospitable environment for minorities and the terse confrontations went viral (Friedersdorf, 2015; Hartcollis, 2017).

In Canada, examples include a fire alarm effectively cancelling an event featuring Faith Goldy at Wilfrid Laurier University and an appearance of Ezra Levant at Ryerson University being disrupted after it was relocated due to security concerns (Booth, 2018; Malyk, 2017). Ironically, one of the most high profile incidences of deplatforming involved an event titled ‘The Stifling of Free Speech on University Campuses.’ In response to an inundation of complaints and an inability to provide adequate security, Ryerson University cancelled the event and it was subsequently moved to a different venue (Hauen, 2017). The original lineup for the event featured Goldy (who was later

excluded due to her extremism) and University of Toronto Professor and Clinical Psychologist, Jordan Peterson.

Nothing would solidify the perception that something was terribly amiss on Canadian campuses more than Peterson himself. In the fall of 2016, when he declared his refusal to use gender-neutral pronouns allegedly compelled by new legislation (via Bill C-16), he quickly became the cause célèbre of campus critics everywhere (Bartlett, 2018). Later, Wilfrid Laurier teaching assistant Lindsay Shepherd would magnify Peterson (and the alleged campus crisis) by showing a clip of him on TVO's *The Agenda* to her introductory Communications seminar and then being critically questioned by superiors in her department (Hutchins, 2017).

To be clear, these events are neither indicative of a 'crisis' (Sachs, 2018), nor novel when put in historical context (Smith, 2020). But they do vividly demonstrate that approaches to expressive freedom may be changing in the contemporary moment. Rather than speculatively extrapolating from these events, it would be much more productive for scholars to analyze the ideas and arguments that can be marshaled to justify expressive limits on campus. Before analyzing some of these novel conceptualizations of harm, the following will discuss two explanatory frameworks catalyzed by the aforementioned events.

#### **2.4. Two Theses of The Campus Crisis**

Two explanatory frameworks for understanding the alleged campus crisis predominate, the 'snowflake thesis' and the 'backlash thesis,' but both have some inherent limitations that political theory can address. The 'snowflake thesis' has gained impressive



momentum since 2015 (Lukianoff and Haidt, 2015). It has the advantages of piggybacking on longstanding anxieties about youth culture, decades of punditry alleging that higher education has been captured by progressives, and a flurry of controversies demonstrating the sometimes-absurd nature of campus unrest. Although there is an explicit recognition that scholarship is consequential for evolving approaches to the question of expressive freedom on campus, if and when Haidt and Lukianoff engage with theory, it is strikingly shallow.

They do, however, offer brief criticisms of ‘concept creep’ (i.e. words being understood as literal violence), Kimberlé Crenshaw’s version of ‘intersectionality’ in theory and practice, and Herbert Marcuse’s concept of ‘repressive tolerance’ (Haidt and Lukianoff, 2018: 24-26, 64-71). But much more often, they frame the problem as the individual psychosocial deficiencies of those who oppose potentially harmful expression on campus. As a result, their analysis ends up pathologizing students with potentially legitimate grievances about expressive freedom; notably, the book includes an appendix on Cognitive Behavioural Therapy, ostensibly to provide a redress for some of the cognitive distortions underpinning campus unrest.

Although the ‘snowflake thesis’ predominates despite being based on scant empirical data (Dea, 2018; Sachs, 2018), arguments against it have sometimes relied upon flimsy argumentation and analysis, too. The major countervailing argument, the ‘backlash thesis,’ draws attention to the longstanding efforts to resist diversity on campus. In the wake of the 1960s, various social movements transformed into academic disciplines, commensurate with novel theories and methodologies grounded by collective identity and experience (Ferguson, 2012). Student populations also became increasingly

diverse as universities loosened their exclusionary norms (Baer, 2019; Ben-Porath, 2017). This means that individuals and groups that were once easily ignored are now an important part of academic life, even though access remains uneven (Henry et al., 2017).

But these marginal gains for equity seeking groups have not been without resistance. A host of critics have argued that scholarship grounded in identity-based particularism perverts the pursuit of truth and knowledge (Bawer, 2012; MacDonald, 2018; Scruton, 2015). In this context, the ‘weaponization’ of expressive freedom sits comfortably within a broader, ongoing backlash against diversity on campus (Liptak, 2018; Malik, 2019; Manne and Stanley 2015; Moscovitz, 2019; Picazo, 2017; Zine, 2018). Expressive freedom itself is sometimes considered a ‘red herring,’ ‘Trojan horse,’ and ‘dog whistle,’ facilitating the normalization of far-right politics and discourse on campus (Climenhaga, 2019; Levenson, 2017; Press Progress, 2019; Rangwala, 2019).

While the ‘backlash thesis’ has some explanatory potential, it is an oversimplification to frame all (or even most) invocations of expressive freedom on campus as a backlash to diversity. Likewise, the reflexive association between a strong defence of expressive freedom and classical liberal theory (or conservative and libertarian thought) is largely unearned (Heinze, 2016a, 2016b, 2017, 2019b). In the same way that there are potentially sound reasons for challenging a generous margin of appreciation for expression on campus, there are potentially sound reasons for challenging expressive restrictions on campus, and from a wide range of perspectives. A corrective for these partial explanations, then, is to focus on the *ideas* at the root of the alleged campus crisis (Whittington, 2018: 57), something for which political theory is well positioned.

## 2.5. Conceptualizing Harm in Political Theory

What can account for these markedly different approaches to expressive freedom in academic contexts? The answer, I think, is that *elastic* conceptualizations of harm are increasingly legitimizing expressive restrictions, despite there being reasonable disagreements to have about definitively drawing these boundaries.

Because harm is expression's inseparable restraint in theory and practice, a *specific* conceptualization of harm is indispensable for understanding issues related to expressive freedom. For example, in Canada, Section 2(b) of The Charter protects a wide scope of expression, but (if it is non-violent) it is tempered by limits informed by the connection between expression and reasonably anticipated harms (Cameron, 1997; 2012; Moon, 2000). In the most recent ruling on the constitutional validity of hate speech proscriptions, *Saskatchewan (Human Rights Commission) v. Whatcott* (2013), the Supreme Court unanimously decided that “a reasonable apprehension of societal harm” is the barometer for a legislative prerogative in this context (Ibid: para. 135). Although some scholars disagree over the speculative connection between expression and harm in Canadian law (Braun, 2004; Cameron, 2013; Heinze, 2016a; Newman, 2017; Schutten and Haigh, 2015; Sumner, 2004; Zwibel, 2013), similar debates in political theory are perhaps even more intricate and contentious.

The reflexive conceptualization of expression and harm in liberal democracies (including Canada) is best encapsulated by the work of John Stuart Mill (Heinze, 2016a: 62; Moon, 2000: 9-12). Mill's truth-based defence provides a wide margin of appreciation, warning that all forms of censorship are in practice an assumption of infallibility (Mill 2015: 19). Although he also grants government the authority to wield

coercive power over the individual to prevent harm done to others, harm is largely understood as material, demonstrable through direct causation, and experienced at the individual level.

Since then, however, various strands of interdisciplinary theory have offered some robust and nuanced (re)conceptualizations of harm. For example, harm can also be psychological (Fanon 2008; Lawrence, 1987), environmental (Dworkin, 1981; MacKinnon, 1993; Waldron, 2012), epistemic (Medina, 2013; Spivak, 1988), experienced at the group level (Delgado and Stefancic, 2004, 2018; Matsuda et al., 1993), and need not have a clear chain of causation (Gelber, 2002; Gelber and McNamara, 2016; Langton 1993; McGowan, 2019; Tsesis, 2002). In practice, these competing conceptualizations of harm contest the margin of appreciation that typically applies to liminal expression sitting uneasily between the merely offensive and objectionable, on the one hand, and what is explicitly proscribed by law, on the other. Unsurprisingly, this type of liminal expression is the catalyst for almost every contemporary expressive freedom controversy on campus.

Many of the debates associated with the alleged campus crisis hinge less on whether individuals have a *legal* or *institutional* right to expressive freedom, but whether their expression has caused sufficient harm to legitimize expressive restrictions. How one conceptualizes harm will, then, *automatically* condition the margin of appreciation for expression, and can further condition expression itself (i.e. self-censorship), even when the latter falls well within legal or institutional thresholds. Consequently, well meaning but elastic conceptualizations of harm are laden with unintended consequences. While they might admirably sensitize one to various forms of harm that are well below the

aforementioned thresholds, they might also unduly restrict expressive freedom and open inquiry, and especially so in an academic environment.

As Richard Moon rightly points out, if the theoretical assumptions that undergird justifications for expressive freedom are unwarranted – namely, individual rationality and autonomy, good faith epistemic engagement, and equitable access and distribution in the marketplace of ideas – then a reexamination of the principle is in order if it is to remain relevant in changing circumstances (2019). In this sense, the university campus is an ideal litmus test for expressive freedom writ large (Heinze, 2016a: 177), and further consequential for expressive freedom for society more broadly (Whittington, 2018).

Despite its obvious imperfections, an academic environment is still the closest resemblance of the ideal conditions in which expressive freedom can flourish. Even if one argues that these assumptions are unfounded, and thus bring the justifications into disrepute, if expressive freedom is impossible and/or undesirable in an academic environment, it is likely impossible and/or undesirable *anywhere else*. This raises the stakes of scholarship on the topic, so to speak, because if the diagnoses related to expressive freedom hold on campus, they will certainly hold elsewhere.

## **2.6. Epistemic Injustice**

Miranda Fricker's *Epistemic Injustice: Power and the Ethics of Knowing* (2007) is now a referential text, one that has helped spawn an expanding sub-field of similar work (Dotson, 2011, 2015; Kidd et al., 2017; Medina, 2013; Pohlhaus, 2011) and ought to be a pillar of contemporary expressive freedom theory. Essentially, she argues that 'testimonial exchange' features the potential for biased filtering. On the receiving end of

an exchange, individuals “use social stereotypes as heuristics in their spontaneous assessments of their interlocutor’s credibility” (16-17). If prejudice does in fact lead to an interpretive loss of credibility in the speaker, two things subsequently occur: a) an “epistemic dysfunction” whereby a credibility deficit results in less knowledge created; and b) the individual who suffers the deficit is harmed in their “capacity as a knower” (17). Credibility deficits are most troubling when they are persistent *and* systematic, in the sense that they are linked to broader social signs, meanings, interpretations, etc. that have prejudicial effects based upon one’s identity-related social situatedness (i.e. disproportionately less power):

Many of the stereotypes of historically powerless groups such as women, black people, or working-class people variously involve an association with some attribute inversely related to competence or sincerity or both: over-emotionality, illogicality, inferior intelligence, evolutionary inferiority, incontinence, lack of ‘breeding’, lack of moral fibre, being on the make, etc. (32).

Primarily, the harm that accrues through epistemic injustice is an individual “wronged *qua* giver of knowledge” (45). Since knowing is “a capacity essential to human value,” it is a harm borne by those whose contributions are assigned less credibility for reasons *extrinsic* to the epistemic engagement (and it might additionally entail being “symbolically degraded *qua* human”) (44). At the least, prejudice uncharitably filters potential contributions to knowledge and at most outright obstructs them; therefore, it should be considered “a serious form of unfreedom in our collective speech situation” (43). One might also argue that secondary forms of harm similarly accrue at a broader level for anyone whose understanding is unnecessarily limited (and even for systems of knowledge). In this sense, “prejudice presents an obstacle to truth, either directly by

causing the hearer to miss out on a particular truth, or indirectly by creating blockages in the circulation of critical ideas” (43). Finally, there are additional secondary harms associated with epistemic injustice that might include cascading perceptions of untrustworthiness and an epistemic inferiority complex (46-48).

However, not all disproportionate assignments of credibility are necessarily suspect; Fricker also outlines the parameters for “innocent error” (21). This occurs when an individual assigns less credibility to a speaker than they ought to due to “a false belief about the speaker’s level of expertise and/or motives” (21). Importantly, a “non-culpable mistake” such as this does not inflict harm because the root of epistemic harm is a *specifically prejudicial* judgment of the hearer (22). Instead, it might be “an unlucky epistemic mistake” (21) or “collective epistemic bad luck” (32). She uses the example of someone who has ‘shifty eyes’ while presenting testimony and a hearer who in turn uses a potentially reliable stereotype to infer untrustworthiness. Likewise, in a more fitting academic context, she highlights potential testimonial exchanges in which a credibility deficit does not *automatically* translate into harm (22). For example, because academics routinely assess each other’s credibility, one might erroneously assume that another lacks credibility, expertise, or authority. Fricker argues that this should be considered “a very weak sense of injustice” as the misperception lacks “something ethically bad about the hearer’s misjudgment” (22). By contrast, the main forms of epistemically and ethically culpable practices are related to what she terms ‘identity-prejudicial credibility deficits’ (28). Thus, “an unreliable empirical generalization” itself may or may not be a case of epistemic injustice (32).

Crucially, Fricker suggests that testimonial injustice can result in epistemic exchanges that are not strictly testimonial and that the concept should be interpreted to include “all cases of telling” (60). These instances might include, for example, “when a speaker simply expresses a personal opinion to a hearer, or airs a value judgement, or tries out a new idea or hypothesis on a given audience” (60). Within an academic context, however, there is a crucial distinction to be made between testimony – understood as the recounting of personal evidence and/or experience – and argumentation. Despite the former being easily discounted due to the credibility deficits Fricker analyzes, it is relatively less open to disagreement when compared to an explicitly argumentative assertion or statement. When recounting a personal experience (i.e. ‘X happened to me’ or ‘this is what it is like to be X in Y situation’), there is less room for interpretation because it cannot be falsified in the same way that an argument might be. Part of experience is obviously subjective, but a great part of testimony is whether or not the event or experience actually transpired in the way recounted; hence why the assignment of credibility is so crucial. A slight exception might be if one imputes motivation or causation related to their experience. Or, similar to the concept of ‘gaslighting,’ one might be persuaded that their interpretation or account of events is distorted and/or unnecessarily unsympathetic, potentially a form of epistemic (hermeneutical) injustice (McKinnon, 2017).

Argumentation, on the other hand, is much more open-ended in the sense that it invites contestation by design, and particularly in an academic context. Because argumentation is *always* susceptible to potential disagreement, it is practically the *prerequisite* for scholarship. For example, the particular right of expressive freedom for



academics, academic freedom, sharpens expressive freedom with institutional protections. Similar to expressive freedom (in a general sense), it is a counter-majoritarian protection (Fish, 2014; Horn, 1999a). According to James L. Turk, academic freedom “is a *special* right of academics – a right to freedom from prescribed orthodoxy in their teaching, research, and lives as academics” (2014: 11). Therefore, provided that neither institutional policy nor applicable law has been violated, academic freedom ought to insulate scholars from undue interference and subject their work only to the judgment of their peers. Without a distinction between testimony and argumentation, elastic conceptualizations of harm might legitimize expressive injunctions well *within* the boundaries of expressive freedom (and academic freedom) and similarly delegitimize interrogative practices that are necessary to assess scholarly merit.

Although non-academics do not enjoy these special protections – and thus a distinction between expressive freedom and academic freedom is merited (Dea, 2018; Fish, 2019; Scott, 2019) – expressive freedom is still a pillar of campus life that animates the unique role of the university in society, as even a cursory review of institutional mission statements will quickly reveal. Further, one might argue that expressive freedom derives its legitimacy less from external legal frameworks than the fact that “it is constitutive of the institution” (Whittington, 2018: 29). This is at least one reason why student agitation, including the Free Speech Movement, was able to gradually expand the scope of expressive freedom for students on campus (Horn, 1999b).

If this distinction between testimony and argumentation holds, I argue that it would be unreasonable to adopt the same standards for epistemic injustice in both domains. Within the domain of argumentation, in particular, there is a responsibility to

carve out a space for reasonable disagreement. The key difference is that while an individual's identity and/or experience should not be 'up for debate,' their arguments (i.e. analysis, recommendations, proposals, suggestions, hypotheses, etc.) absolutely are, and it needs to be the case that an individual's argumentation can be challenged without necessarily invalidating their identity and/or experience. Similarly, while one easily strays into unsavoury territory by evaluating the merit of an identity and/or experience, universities are an enterprise dedicated to the *evaluation* of argumentative merit (Fish, 2019; Heinze, 2016a: 176-177; Scott, 2018). Therefore, credibility deficits related to one's argumentation are not exactly analogous to credibility deficits related to one's testimony.

Aiding this distinction is another made by Sigal Ben-Porath in her recent book, *Free Speech on Campus* (2017). In assessing the alleged campus crisis, she advocates for a theoretical position parallel to those who argue for hate speech restrictions in liberal democracies (Waldron, 2012). Essentially, the dichotomous framing of protection from harm and expressive freedom belies the mutually constitutive nature of the two concepts (42-43). In order for epistemic exchange to actually mirror the ideal of expressive freedom, individuals must enjoy democratic equality. Thus, well-defined expressive restrictions may be consonant with expressive freedom, rather than an aberration. Nonetheless, she is also attendant to the ways expressive freedom and open inquiry can be limited by elastic conceptualizations of harm.

In this spirit, she argues that one ought to distinguish between two forms of safety on campus: dignitary and intellectual. Dignitary safety is the ability for professors and students to be accorded both equality and dignity in their academic pursuits. This type of

safety is arguably *the* prerequisite for a properly functioning academic environment. Hopefully, if this is satisfied, members of the community are equally “invited to contribute to a discussion as a valued participant” (62). Intellectual safety, on the other hand, is to have one’s concepts, ideas, worldviews, and opinions remain intact, without needing to judge their merit through epistemic contestation. It includes a “refusal to listen to challenges to one’s views or to consider opposing viewpoints” and is ultimately antithetical to the mission of higher education (62).

Ben-Porath’s modest remedy is a framework of ‘inclusive freedom’ that balances the putative tension between protection from harm and valuing expressive freedom in an academic context. Importantly, she also claims that not every invocation of harm is necessarily legitimate, in the sense that it is automatically sufficient to justify expressive limits on campus. In other words, while one may genuinely experience harm, it should not be uncritically received as an expressive injunction. In fact, there may be many academic contexts in which some discomfort could be considered good pedagogy, and educational environments ought to cultivate spaces of reasonable disagreement. Likewise, an identity reliably commensurate with disproportionately less identity-based power does not automatically translate into argumentative potency or legitimacy (68). Instead, “dignitary safety... should be understood as an aspect of access” (68). Put more simply, identity itself cannot insulate an individual from legitimate criticism, provided it does not cause dignitary harm, and dignitary harm (as outlined by Ben-Porath) is a more useful framework for drawing lines about what types of expression are (il)legitimate on campus. While not prescriptive, one potential way to distinguish dignitary harm is to take into consideration a distinction between testimony and argumentation. Credibility deficits

arising from testimony would constitute dignitary harm. Credibility deficits arising from argumentation, however, would not constitute dignitary harm; they would merely constitute a challenge to intellectual safety.

But if identity and argumentation were interwoven, as many scholars might argue, is it epistemically unjust if someone regarded someone working within a specific framework as intellectually untrustworthy? How might one draw the line between an *identity*-based and an *argument*-based prejudice? The problem, then, is that neatly delineating testimony and argumentation is no simple task. The example mentioned earlier can be slightly altered to clarify. Considering that so much of scholarship is divided into various theoretical and methodological camps, it is likely that credibility is spontaneously assigned prejudicially in academic exchanges as a rule and not an exception. As Fricker mentions, “a hearer could seemingly perpetrate a testimonial injustice without harbouring any prejudice at all” (41).

However, for Fricker, the determinative factor in assessing the moral culpability associated with potential credibility deficits is *prejudice* (and especially prejudice related to disproportionate identity-based power). Assigning a default credibility deficit to an interlocutor within (academic) testimonial exchange would be non-culpable if is based upon one’s well-considered beliefs about an inferior theory, framework, methodology, approach, etc. However, this becomes more complicated when these are intimately interwoven with personal experience and/or group identity. For example, is it possible to know if prejudice is the genuine catalyst for assigning a credibility deficit? If someone, as another example, finds feminist theorists or critical race theorists genuinely unpersuasive because of their scholarly argumentation (rather than the normative ends attached to such

scholarship), can they do so without moral culpability? What would be the difference between finding a specific theory and/or methodology suspect because it lacks sufficient merit in their view, and suspect because it is associated with a stereotypical (negative) conjuring of an identity group?

Although it is impossible to conclusively separate scholarly merit and the conjuring of negative stereotypes (and the former can surely masquerade as the latter), a distinction between testimony and argumentation can substantially address the problem. The ethical imperative or virtue associated with Fricker's framework is to maintain a position of 'critical openness' (66) that subsumes the potential for credibility deficits via (un)conscious prejudice (92-93). Thus, in order for good communication to transpire, "the hearer must exercise a certain reflexive critical awareness" (92). In its most basic form, individuals should overcome the default skepticism they might normally exercise when engaging in epistemic exchanges. This is a reasonable expectation and Fricker is correct to say that denying some the ability to contribute to the creation of knowledge (and the necessary trust and good will to foster epistemic exchange) is a *serious* injustice (58-59). However, it is not self-evident how this theoretical approach might coalesce with an academic environment in which expression typically enjoys a wide margin of (moral) appreciation. For example, would a broad position of default skepticism in the academy be problematic? I think not, and for this reason, the same ethical position cannot extend from the realm of testimony into argumentation. However, there is a crucial caveat to be made: a distinction between testimony and argumentation can solely apply in circumstances in which a credibility deficit can be attributed to an anticipated argumentative position and *not* an identity category.

For good reasons, an expectation of falsifiability would be unreasonable in the domain of testimony. It would inevitably lead to the harm of invalidating one's identity and/or experience, such as attempts to convince them that their perceptions are mistaken. One can legitimately question experiential interpretation but an adversarial method, for example, would not necessarily refine testimony to be more 'truthful.' Due to the particularities of an academic environment, and especially the reflexive nature of the adversarial method of knowledge production, the suspension of default skepticism is as difficult as it is undesirable. Even amid the lack of a "simple universal characterization of good scientific reasoning" (Moulton 2003: 152), there is still good reason to prioritize argumentation, because it is a form of 'quality control' (ensuring scholarship is properly vetted by relevant experts) and the foundation of institutional legitimacy (how the scholarly enterprise justifies itself).

As Fricker mentions, there are epistemic exchanges in which it would be completely reasonable to assign an interlocutor a default credibility deficit (35). For example, if someone were known to contribute unreliable information, it would be reasonable to assign him less epistemic credibility. Likewise, if someone were known to contribute reliable information, it would be reasonable to assign her more epistemic credibility. While extrinsic factors might influence one's spontaneous assignment of credibility (like appearance and/or behaviour, etc.), it is not unreasonable to assume that the reliability of their (argumentative) epistemic contribution is the primary catalyst for such a determination. In such cases, a credibility deficit would not constitute harm; it is instead 'epistemic bad luck,' even if the subject of the credibility deficit has disproportionately less identity-based power.

This raises at least two potential problems. First, there is the obvious difficulty of how to understand credibility deficits that arise when there is significant overlap between one's identity (and commensurate identity-based power) and one's argumentation. Importantly, an academic environment that thrives on reasonable disagreement does not necessarily *require* the suspension of default credibility deficits in order to foster good epistemic practices. The barometer should not be whether or not individuals suffer credibility deficits but rather whether or not interlocutors are ultimately impervious to superior reasoning and argumentation. In other words, the fact that an interlocutor might assign a speaker a default credibility deficit based on their perceived argumentative position does not mean that they are impervious to that speaker's reasoning or argumentation. While it would be reasonable to say that such a speaker might face a disproportionate burden in imparting their position because of a credibility deficit, the deficit itself would not be unjust provided it is not catalyzed by their identity. In sum, while it would be harmful to assign less credibility to an interlocutor due primarily to their identity (especially if they hold disproportionately less identity-based power), it would not be harmful to assign less credibility to an interlocutor due primarily to their argumentation.

Second, could it be reliably predicted whether or not a credibility deficit is catalyzed by an interlocutor's argumentation and not their identity? I think yes, because an academic environment is nominally premised upon (argumentative) merit. While a hearer may assign a credibility deficit during epistemic exchanges, they ultimately bear the onus of presenting reasons why a specific argumentative position deserves less credibility. Thus, the test case for predicting the catalyst for (un)just credibility deficits is

whether or not superior argumentation and reasoning is able to shift one's view (Fricker, 2007: 34). If an inferior argument persists despite compelling epistemic contributions, one may reasonably conclude that something extrinsic to the merits of the contribution (like prejudice and/or stereotypes) is part of the interpretive calculus.

## **2.7. Argumentational Injustice**

Stephanie Kapusta (2018) builds upon Fricker's concept of epistemic injustice, specifically examining the nexus of identity and argumentation. In 2017, the feminist philosophy field was polarized by a peer-reviewed journal article in *Hypatia* (written by Rebecca Tuvel) that analogized transgender and transracial identities, framed in part by the radically different reactions to Caitlyn Jenner and Rachel Dolezal's self-identifications. According to Tuvel's critics, her analysis was not just lacking in rigour, but *harmful* (Schuessler, 2017; Tuvel, 2017; Winnubst, 2017). Kapusta responds directly to this controversy by focusing on the ways in which marginalized identities might experience disproportionate burdens within epistemic exchange ('argumentational injustice').

She argues persuasively that philosophical engagement ought to be considered a form of 'argumentational work' (65), with naturally associated benefits that make it a desirable pursuit. These are typically "non-monetary 'goods'" that include "excellence in performing relevant tasks, social status, community and collaboration, and a sense of self-respect" (65). However, there are differential costs and benefits associated with epistemic engagement that can be traced to identity. In her words: "there is an unwarranted selective exposure of some of the arguers to the risk of these harms, and this



exposure occurs due to the fact that they are members of a marginalized group, that is, socially situated within systems of subordination” (66). Particularly in academic disciplines where an individual researcher or writer’s own identity is relevant as it relates to disadvantage, marginalization, and/or exclusion, it is more difficult to construe intellectual engagement as a disinterested or detached endeavour:

[S]ome philosophers have an acute interest in presenting or disputing arguments that treat *their own* identity, oppression, or marginalization. That interest arises because these philosophers are existentially invested in presenting and correctly analyzing the injustice to which they themselves, as members of marginalized communities, are exposed. It is thus an over-simplification to consider merely the cognitive costs of engaging in certain arguments. There may also be significant emotional costs of some form (65).

The potential harm, then, is the experience of disproportionate burdens that flow naturally from certain forms of argumentation; not only is someone marginally situated less likely to derive expected goods from epistemic engagement, but they are also more likely to experience psychological harm (64). It is not primarily the assignment of credibility within epistemic exchange that is privileged *per se* (although this is certainly relevant), but rather the reasonably expected identity-related costs and benefits that might be sufficient conditions for ‘argumentational injustice.’ As a result, there are two types of injustice that potentially flow from argumentational work: a) some will face relatively higher ‘burdens of argumentational engagement’ commensurate with their social situatedness; and b) arguers might experience psychological harm (‘harm injustice’) as a result of epistemic engagement (62). Avoiding such pitfalls requires, according to Kapusta, engagement with academic literatures that engage diverse identities and

experiences, in addition to being attentive to the concerns of marginalized individuals so as to not perpetuate disproportionate burdens (70).

Kapusta entertains a number of potential objections to her position (68-69), but I think there are at least two additional (but no less relevant) difficulties that flow from her argument. First, it is entirely possible that an individual invokes harm (and experiences this harm as something intimately connected to their identity) to describe an epistemic engagement where there is simply reasonable disagreement. Considering harm is innately subjective, it is always possible that what is experienced as harm can be amplified or dampened based upon an individual's personal circumstances and experiences. That said, while one ought not simply discount experiences of harm (as this would constitute dignitary harm), invocations of harm are not an *automatic* indication that a specific epistemic exchange is illegitimate and/or expressive freedom ought to be restricted. Further, since the invocation of harm might lead to some form of punitive consequences, precision in the description of harm is paramount. Relevant questions might include who has been harmed, whether or not the epistemic exchange is linked to broader patterns of marginalization, and the type and level of harm (potentially ranging from mild conversational discomfort to palpable psychological trauma).

Second, it seems untenable that certain arguments would be relatively more immune from scholarly criticism simply because specific arguers had borne disproportionate burdens of argumentation. A reasonable ethical imperative is taking these burdens into consideration within epistemic engagement, but drawing a more definitive line between violations of dignitary safety and intellectual safety is warranted. After all, one might unfortunately face disproportionate burdens of argumentation but

still present arguments that are worthy of critique. In consideration of these two difficulties, I again think there is a sharp distinction to be made between testimony and argumentation. In this instance, it is more specifically the difference between one's argumentation being invalidated and one's identity being invalidated; the former does not *automatically* constitute the latter even when there is a strong correlation between the two. Although Kapusta's work is framed as a good epistemic practice and not a prescriptive injunction, it still runs the risk of positing an elastic conceptualization of harm by conflating disproportionate argumentative burdens and dignitary harm. While the latter might render expressive restrictions appropriate, evidence of the former alone would not be a sufficient condition for limiting expressive freedom in an academic context.

## **2.8. Epistemic Exploitation**

Nora Berenstain similarly builds upon Fricker's concept of epistemic injustice with a specific focus on the position of default skepticism (2016). According to her, 'epistemic exploitation' occurs when marginalized individuals have an explanatory obligation placed upon them if and when they invoke harm (i.e. testimony of disadvantage, marginalization, and/or exclusion). When invocations of harm are greeted with skepticism rather than acknowledged as "contributions to knowledge," a privileging occurs whereby some have access to the epistemic labour of others without any innate value attached to it (586). In this sense, identity again conditions epistemic exchange because harm may be experienced doubly; first as a result of one's identity and again in needing to overcome default skepticism to gain credibility and legitimacy. In her words:

Epistemic exploitation occurs when privileged persons compel marginalized persons to produce an education or explanation about the nature of the oppression they face. Epistemic exploitation is a variety of epistemic oppression marked by unrecognized, uncompensated, emotionally taxing, coerced epistemic labor (570).

Accordingly, warranting explanation is a typical method of diversion or distraction, conveniently eliding any responsibility or implication in the conditions that might generate such harm. The onus of surmounting this burden of proof often relegates complaint to the less valued epistemic class of conjecture, personal affect, and partial observation. To compound this uneven demand of epistemic labour, the potential consequences of non-performance further constitutes a double bind. If a marginalized individual chooses not to substantiate their claims, so to speak, they may cement their image as opportunistic, angry, aggressive, or as acting in bad faith. Nonetheless, if they choose to perform this ostensibly “exploitative demand,” there is by no means a guarantee that the result will be positive for either interlocutor (576). On this point, Berenstain and Kapusta overlap seamlessly. The result of these epistemic exchanges may in fact be a disheartening confirmation of ignorance and wasted emotional, psychological, and physical energy. Most importantly, Berenstain argues that those who defend interrogative practices – being a ‘devil’s advocate’ or ‘offering alternative explanations,’ for example – are masquerading epistemic exploitation as a “virtuous epistemic practice related to the pursuit of truth” (571).

Clearly, Berenstain’s point is merited; good epistemic practices would surely include being cognizant of disproportionate identity-based burdens. But is harm *self-evident* when an individual invokes it? Further, is every invocation of harm legitimate in the sense that default skepticism is rarely, if ever, warranted? In practice, particularly for

an academic environment, this conceptualization of harm poses some difficulties. Principally, it posits harm as something entirely subjective. Of course, in an academic environment, the object of moral concern ought to be potentially harmful expression that jeopardizes full participation in the community. Thus, this should not be read as an invitation to automatically question the identities and experiences of individuals if and when they present painful testimony. In this case, a ‘virtuous epistemic practice’ would be empathy and humility and decidedly *not* default skepticism. But due to the institutional mandate to foster spaces of open inquiry on campus, drawing a neat line between mere discomfort (as a potentially unavoidable externality) and harm (which might merit an institutional response) is no easy task. Unfortunately, there will be occasions in which otherwise reasonable disagreement is subjectively experienced as harm. In these situations, it would be presumptuous to assume that specific identity categories (even those that reliably correlate with relatively less identity-based power) *automatically* translate into credibility and/or argumentative superiority (or that skepticism itself constitutes an oppressive act).

The obvious retort is that not all potential harms are equal. As all three of the interrelated concepts – epistemic injustice, argumentational injustice, and epistemic exploitation – make clear, identity conditions one’s epistemic exchanges and may disproportionately burden some over others. Accordingly, the harm experienced by those with relatively less identity-based power takes normative precedence over those with relatively more. If one truly cares about equity within educational contexts, this principle or position is unassailable. Its negation would seriously jeopardize the prerequisite equality for open and equal learning opportunities. However, again, a distinction between

testimony and argumentation is useful in parsing this complexity in order to do justice to both expressive freedom and equitable learning environments.

While default skepticism is typically inappropriate in the context of presenting testimony related to one's identity and experience, interrogative practices (like those earlier mentioned) are not necessarily inappropriate in the context of argumentation (even if related to potentially painful experiences). In this sense, it ought to be reasonable to assume that interrogative practices can engage with argumentation (i.e. reasonable disagreement) without impinging upon the moral and intellectual worth of epistemic interlocutors. Since judging argumentative merit (by some standard) is required of all scholarly pursuits, it remains unclear how critical but legitimate questions could be raised without doing *some* harm by Berenstain's standard.

The primary target of Berenstain's position is default skepticism, a pillar of political theory but no less vital to a range of other disciplines. But here, again, a distinction between testimony and argumentation is useful to address the elasticity of harm within Berenstain's framework. When marginalized individuals provide testimony related to the oppression they face, an ethical epistemic practice would be the "reflexive critical awareness" suggested by Fricker (92). But while one should hopefully extend the same critical awareness to marginalized individuals when they make arguments, it is not necessarily an oppressive practice to interrogate *specifically* argumentative claims (even if based to a large degree on identity and/or experience). There is no doubt that an onus placed on marginalized individuals to substantiate testimony would be unjust if it were disproportionately burdensome and/or catalyzed by identity-based credibility deficits. In an academic environment, however, identity and/or experience cannot insulate someone

from scrutiny and criticism if and when they are making specifically argumentative claims, nor should invocations of harm be an automatic expressive injunction.

## **2.9. Conclusion**

Contemporary events confirm the truism that expressive freedom's limit is a perennial question for liberal democracies, and the university campus is an unambiguous front in debates to redefine that limit. But despite the alleged campus crisis resulting in much spilled ink, the predominant explanatory frameworks focusing on student fragilities or diversity backlashes mostly fail in grappling with the core issue: how elastic conceptualizations of harm are increasingly legitimizing expressive restrictions. As a partial corrective, I have offered a mostly sympathetic critique of three exemplary theoretical concepts that offer novel conceptualizations of harm, and bear directly on expressive limits in an academic environment; epistemic injustice, argumentational injustice, and epistemic exploitation.

While these approaches are laudable in the sense that they highlight potential harms flowing from expression that may not be part of mainstream debate about expressive limits, they pose some particular problems for an academic environment. Taken together, they require a more definitive conceptualization of harm in order to distinguish between reasonable disagreement, on the one hand, and morally culpable harm arising from expression, on the other. I contend that a distinction between testimony and argumentation is a way to retain the ethical imperative associated with each of these concepts while minimizing the risk of elastic conceptualizations of harm that are laden with unintended consequences for expressive freedom.

Of course, this does not mean that expression that falls short of legal or institutional thresholds does not or cannot cause harm, but it does mean that harm itself is neither a self-evident and sufficient justification to limit expression, nor an automatic immunization from scholarly interrogation and critique. To be clear, there are surely ways to be sensitive to invocations of harm while simultaneously fostering expressive freedom and open inquiry. Good epistemic practices, then, require careful distinction if one is to do justice to both imperatives.



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## CHAPTER 3

### 3.1. “Deplatforming in Theory and Practice: The Ann Coulter Debacle”

Venue: *Dilemmas of Free Expression* (University of Toronto Press), Edited by Emmett MacFarlane (In Press - Forthcoming)

Abstract: High-profile controversies have created an impression that expressive freedom is imperilled on university campuses in North America. Analyses of this alleged campus crisis typically focus on the negative psychosocial characteristics of those who oppose potentially harmful expression or the cynical ways expressive freedom can be invoked to normalize harmful expression. Conversely, I argue that theories of harm are key to understanding the contemporary discourse and politics of expressive freedom on campus. To shift the frame of analysis, I critically analyze three interrelated theoretical concepts that feature elastic conceptualizations of harm and are consequential for expressive limits in an academic environment: epistemic injustice, argumentational injustice, and epistemic exploitation. I argue that all three of these concepts require a distinction between testimony and argumentation in order to better balance protection from harm on the one hand, and expressive freedom and open inquiry on the other.

### 3.2 Introduction

Over the last few decades, the perception that North American university campuses are increasingly intolerant has gained impressive traction.<sup>1</sup> While much of this discourse echoes some familiar critiques of higher education from the culture wars, a moral panic that was once largely confined to the op-ed pages is now official government policy.<sup>2</sup> Solidifying the perception that freedom of speech is under attack is a particular type of campus controversy, one that tends to attract a disproportionate amount of media coverage and public scrutiny: when a potential speaker is cancelled, repeatedly interrupted, or otherwise unable to address an audience as a result of opposition to their speech. This protest tactic is colloquially known as ‘no platforming’ or ‘deplatforming’ (I use the latter term). It ought to be distinguished from both ‘counter speech,’ which can take the form of sometimes raucous objections to speech during events on campus (but not completely derail an event), and event cancellations or modifications that are *not* the result of a conscious effort to deny a platform to a specific group, individual, or type of speech on campus. Usually, but not always, deplatforming involves the denial of a platform to groups and individuals that are not invited to present scholarship. More frequent (and recent) examples include groups and individuals outside of campus communities that attempt to access campus space and resources by paying a fee.

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<sup>1</sup> Ellen Schrecker, *The Lost Soul of Higher Education: Corporatization, the Assault on Academic Freedom, and the End of the American University* (New York, NY: The New Press, 2010), 122. See also: Lorenda Reddekopp, “Free speech under attack,” *CBC News: The National*, April 17, 2017,

<sup>2</sup> Joe Friesen, “Ontario colleges adopt single free-speech policy as universities rush to meet deadline,” *The Globe and Mail*, December 16, 2018, <https://www.theglobeandmail.com/canada/article-ontario-universities-scramble-to-release-common-free-speech-policy/>. Emma Graney, “UCP prepares to roll out Ford-flavoured post-secondary changes in Alberta,” *Edmonton Journal*, May 6, 2019, <https://edmontonjournal.com/news/politics/ucp-prepares-to-roll-out-ford-flavoured-post-secondary-changes-in-alberta>.

Because there is a reflexive assumption that university campuses are the most appropriate venue for entertaining potentially controversial and uncomfortable ideas,<sup>3</sup> it is not entirely surprising that deplatforming generates such controversy. In this sense, campus is emblematic of a deeply entrenched liberal ideal, as a literal ‘marketplace of ideas.’<sup>4</sup> Thus, deplatforming has become a central pillar of contemporary critiques of higher education, often referenced as evidence that campus is an inhospitable environment for conservative ideas and individuals.

Although contemporary media coverage might give the impression that these controversies are novel, deplatforming on university campuses has a much longer history. As Evan Smith notes, the practice has been animating concerns for freedom of speech since the 1960s in Europe and North America.<sup>5</sup> Although social protest has been a consistent theme of campus life in the post-war era, many trace the popularization of deplatforming as a legitimate tactic to the British National Union of Students, who adopted an explicit institutional ‘no platform’ policy in 1974 (one that remains today in altered form).<sup>6</sup> Smith refers to this policy as “a bureaucratic measure that formalised the ad hoc protests that had occurred over the last half decade.”<sup>7</sup> Essentially, students were concerned about an influx and normalization of far-right discourses on campus and they were actively engaged in protest tactics that would diminish their physical presence.

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<sup>3</sup> The university “is the ultimate mental gymnasium, full of advanced equipment, skilled trainers, and therapists standing by, just in case.” Jonathan Haidt and Greg Lukianoff, *The Coddling the American Mind: How Good and Bad Ideas are Setting Up A Generation for Failure* (New York, NY: Penguin, 2018), 9.

<sup>4</sup> As Schrecker notes, “campuses are among the last few places where it is still possible to deal with complicated ideas or entertain unorthodox opinions.” Schrecker, *The Lost Soul of Higher Education*, 4.

<sup>5</sup> Evan Smith, “50 years of snowflakes,” *\*Research Professional*, November 4, 2018, <https://www.researchresearch.com/news/article/?articleId=1378065>.

<sup>6</sup> For a brief FAQ and additional context, see: National Union of Students, “Implementing ‘No Platform’ policies,” March 24, 2015, <https://www.nusconnect.org.uk/resources/implementing-no-platform-policies>. National Union of Students, “NUS’ No Platform Policy,” February 13, 2017, <https://www.nusconnect.org.uk/resources/nus-no-platform-policy-f22f>.

<sup>7</sup> Evan Smith, “45 Years On: The History and Continuing Importance of ‘No Platform,’” *New Socialist*, April 18, 2019, <https://newsocialist.org.uk/45-years-history-and-continuing-importance-no-platform/>.

Nonetheless, more recent and sensational incidences of deplatforming have sharpened scrutiny and criticism. In March of 2017, student protestors deplatformed Charles Murray at Middlebury College. Allison Stanger, a Middlebury faculty member and Murray's interlocutor for the event, suffered a concussion while both of them were accosted.<sup>8</sup> In response, the college disciplined 67 students who were involved.<sup>9</sup> In February of 2017, a peaceful protest turned riot forced the cancellation of a planned Milo Yiannopolous visit to the Berkeley campus. The riot resulted in more than \$100,000 in damage and managed to raise the ire of President Trump, who warned that colleges might risk public funding if they did not guarantee freedom of speech.<sup>10</sup> In October of 2017, the University of Florida paid more than half a million dollars in associated security fees for an event featuring Richard Spencer that resulted in Governor Rick Scott declaring a state of emergency.<sup>11</sup> Although the talk was cut short rather than cancelled, this case illustrates some of the incredible challenges universities face when potentially harmful individuals seek a platform on campus.<sup>12</sup> In Canada too, instances of deplatforming have made headlines and catalyzed debates about the state of freedom of speech on campus. In March of 2018, a fire alarm effectively cancelled an appearance by Faith Goldy at Wilfrid Laurier University, although she later addressed supporters outside and vowed to

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<sup>8</sup> Taylor Gee, "How the Middlebury Riot Really Went Down," *Politico*, May 28, 2017, <https://www.politico.com/magazine/story/2017/05/28/how-donald-trump-caused-the-middlebury-melee-215195>.

<sup>9</sup> Stephanie Saul, "Dozens of Middlebury Students Are Disciplined for Charles Murray Protest," *The New York Times*, May 24, 2017, <https://www.nytimes.com/2017/05/24/us/middlebury-college-charles-murray-bell-curve.html>.

<sup>10</sup> Thomas Fuller and Christopher Mele, "Berkeley Cancels Milo Yiannopoulos Speech, and Donald Trump Tweets Outrage," *The New York Times*, February 1, 2017, <https://www.nytimes.com/2017/02/01/us/uc-berkeley-milo-yiannopoulos-protest.html>.

<sup>11</sup> Monique O. Madan, "UF paid Richard Spencer's \$300K security fees — by mistake. Now they want the money back," *The Miami Herald*, January 29, 2018, <https://www.miamiherald.com/news/state/florida/article197316814.html>.

<sup>12</sup> Anemona Hartocollis, "University of Florida Braces for Richard Spencer," *The New York Times*, October 17, 2017, <https://www.nytimes.com/2017/10/17/us/florida-richard-spencer.html>.

return to campus.<sup>13</sup> In March of 2017, a talk by Ezra Levant was disrupted by protestors on the Ryerson campus,<sup>14</sup> after it was relocated due to security concerns.<sup>15</sup> A few months later, Ryerson cancelled a panel titled ‘The Stifling of Free Speech on University Campuses’ amid an inundation of complaints and an inability to provide adequate security.<sup>16</sup> The proposed panel originally included Goldy and Jordan Peterson, among others, although the panel was later moved to a different venue and excluded Goldy.

In response to the controversy generated by deplatforming, this paper asks a simple question: does deplatforming *work*? Admittedly, this question is both broad and ambitious. Sufficiently answering it would require both precise measurements for defining success and a long-range comparative data set. Instead, I pose the question as a way to delve into some relevant political theory and philosophy to map the various justifications one might marshal in assessing the legitimacy of the tactic. Further, I am curious to know if there is a potential disjuncture between deplatforming *in theory* and deplatforming *in practice*, and what this might say about its potential effectiveness.

To do this, I analyze a seminal case study from approximately a decade ago that foreshadows the contemporary moral panic about freedom of speech on campus: Ann Coulter’s aborted visit to the University of Ottawa campus in 2010. Because of the high profile of Coulter and some well-organized opposition, it garnered an impressive amount of national media coverage (and even some international coverage). Coulter is a

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<sup>13</sup> Laura Booth, “Faith Goldy talk at Wilfrid Laurier University shut down by fire alarm after protest,” *The Toronto Star*, March 20, 2018, <https://www.thestar.com/news/canada/2018/03/20/faith-goldy-talk-at-wilfrid-laurier-university-shut-down-by-fire-alarm-after-protest.html>.

<sup>14</sup> Lauren Malyk, “Protesters disrupt Ezra Levant talk at Ryerson,” *The Ryersonian*, March 23, 2017, <https://ryersonian.ca/protesters-disrupt-ezra-levant-talk-at-ryerson/>.

<sup>15</sup> Christopher Blanchette, “Ezra Levant event relocated due to security concerns,” *The Ryersonian*, March 22, 2017, <https://ryersonian.ca/ezra-levant-event-relocated-due-to-security-concerns/>.

<sup>16</sup> Jack Hauen, “Facing pushback, Ryerson University cancels panel discussion on campus free speech,” *The National Post*, August 16, 2017, <https://nationalpost.com/news/canada/facing-pushback-ryerson-cancels-panel-discussion-on-campus-free-speech>.

compelling case for two reasons. First, she is not just a popular and best-selling author, but also someone whose ideas have influenced real policy in the United States. Therefore, the consequences of her deplatforming (i.e. potentially reduced credibility) might have wide ranging effects. Second, as will be outlined below, Coulter inhabits a liminal space between offensive speech and potentially illegal speech (at least in Canada). Therefore, the potential effectiveness of deplatforming might inform and enhance strategies for responding to speech that is potentially harmful but not *prima facie* illegal. Although university affairs are typically mundane, cases such as these are instructive because they test the boundaries of acceptable debate, something that necessarily involves public discourse at the margins of society.<sup>17</sup>

Overall, my research suggests that deplatforming is prone to unintended consequences and, for this reason, ought to be considered carefully and deployed only in extreme circumstances. I use a qualitative mixed methods approach that includes: reviews of relevant scholarly literature (primarily political theory and philosophy), reviews of relevant news and opinion (primarily newspaper articles and op-eds), access to information (ATI) records solicited from the University of Ottawa (administrative correspondence, security reporting, external complaints, and donor records), and semi-structured personal interviews with individuals proximate to the Coulter protest (four students; three protest organizers and one former executive of the Student Federation of the University of Ottawa).

The following proceeds in three parts. The first section provides context for Coulter's abortive appearance, including a brief background on Coulter herself and a

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<sup>17</sup> In this sense, "academia's squeaky wheels are the canaries in the coal mine, perched at the edge of a slippery slope." Likewise, controversial speakers from outside the university community are increasingly testing these boundaries. Schrecker, *The Lost Soul of Higher Education*, 39.

chronology of the protest and eventual cancellation. The second section considers deplatforming in theory by outlining some relevant political theory and philosophy with a particular focus on potential justifications. Importantly, not all the literature discussed here explicitly endorses deplatforming; rather, it provides some justifications that could be marshaled in support of deplatforming on campus. This section is organized along three interconnected levels that include: merit, harm reduction, and discursive strategy. The third section considers deplatforming in practice by outlining some of the political and/or strategic considerations at play when it is deployed. I shed light on why incidences of deplatforming catalyze a disproportionate amount of media attention and public scrutiny and then outline two possible unintended consequences of the practice: greater exposure and unearned moral and intellectual legitimacy.

### **3.3 The Ann Coulter Debacle**

Firebrand conservative pundit Ann Coulter was slated to speak on the University of Ottawa campus on March 23rd, 2010. She was on a three-day tour through Canada (London-Ottawa-Calgary) organized by the International Free Press Society and the Clare Boothe Luce Policy Institute.<sup>18</sup> Known for her abrasive and often offensive polemic, Coulter has slowly become an American institution in the realm of punditry, despite her long history of objectionable (typically racist) comments. More recently, her ideas have been credited as a blueprint for President Trump's populist electoral success and she herself has been open about her influence,<sup>19</sup> although Trump now disputes this.<sup>20</sup>

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<sup>18</sup> Matthew Pearson, "Host U of O draws ire of U.S. firebrand," *The Ottawa Citizen*, March 23, 2010, [http://www.ottawacitizen.com/story\\_print.html?id=2714542](http://www.ottawacitizen.com/story_print.html?id=2714542).

<sup>19</sup> Skavlan, "Ann Coulter Interview," October 8, 2018, <https://www.youtube.com/watch?v=hxTtjGamJtI>. 8:15... <https://www.youtube.com/watch?v=VXOFHr6tGMQ>

Interestingly, her fateful evening at the University of Ottawa was the first time that she had ever been prevented from speaking on a campus.<sup>21</sup> This novelty and symbolism – a Canadian campus shutting down an American – easily led to headlines across North America.<sup>22</sup>

The event cancellation itself included a confluence of factors. First, student protestors mounted a well-organized campaign in opposition to Coulter, hoping that the university administration would explicitly bar her from campus. Their campaign included backchannels to senior administration,<sup>23</sup> gathering petition signatures (including organizational endorsements), distributing literature on campus and online, soliciting supporters to contact the senior administration, and inviting students (and others) to protest at the event. An organizer described the process as a “grassroots” effort that included ample “word of mouth” mobilization.<sup>24</sup> The campaign boasted the explicit support of the Student Federation of the University of Ottawa (SFUO),<sup>25</sup> which went so far as banning posters advertising the event in the University Centre.<sup>26</sup> Despite student protestors finding a sympathetic ear in the SFUO, the senior administration did not

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<sup>20</sup> Quint Forgey, “Trump fires back at ‘Wacky Nut Job’ Ann Coulter,” *Politico*, March 9, 2019, <https://www.politico.com/story/2019/03/09/trump-ann-coulter-1214720>.

<sup>21</sup> Zev Singer and Kristy Nease, “‘Free speech in Canada leaves much to be desired’: Ann Coulter after event cancellation,” *The National Post*, March 23, 2010, <https://nationalpost.com/news/free-speech-in-canada-leaves-much-to-be-desired-ann-coulter-after-event-cancellation>. She has, however, catalyzed much protest. See, for example: Jennifer Amsler, “Coulter avoids pie in the face,” *Arizona Daily Wildcat*, October 22, 2004, [https://wc.arizona.edu/papers/98/44/01\\_1.html](https://wc.arizona.edu/papers/98/44/01_1.html).

<sup>22</sup> Ian Austen, “Free Speech Debated After Ann Coulter Cancels Appearance,” *The New York Times*, March 24, 2010, <https://www.nytimes.com/2010/03/25/world/americas/25coulter.html>. Andrew Cohen, “Even Canadians Can’t Tolerate Ann Coulter,” *Vanity Fair*, March 24, 2010, <https://www.vanityfair.com/news/2010/03/ann-coulter-unwelcomed-guest>.

<sup>23</sup> One interviewee was privy to these communications between the SFUO and administration.

<sup>24</sup> Personal Interview, December 11, 2018.

<sup>25</sup> Then President of the SFUO, Seamus Wolfe, was quoted as saying: “Anyone that consistently promotes hatred of violence towards any individual or group of people should not be permitted to use a public institution, like a university, as a soapbox for that hatred and promotion of violence.” Jennifer Pagliaro, “Ann Coulter went home,” *Maclean’s*, March 23, 2010, <https://www.macleans.ca/education/uniandcollege/coulters-u-of-o-event-canceled/>.

<sup>26</sup> Matthew Pearson, “Host U of O draws ire of U.S. firebrand,” *The Ottawa Citizen*, March 23, 2010, [http://www.ottawacitizen.com/story\\_print.html?id=2714542](http://www.ottawacitizen.com/story_print.html?id=2714542).



outright cancel the event. Instead, the Provost and VP Academic, Francois Houle, would send an ill-fated message to the organizers on March 19th,<sup>27</sup> essentially warning Coulter that Canadian hate speech laws might proscribe some of her standard fare.<sup>28</sup>

Obviously, the email would cause a freedom of speech controversy and be widely condemned (it was originally leaked by *The National Post* in Canada).<sup>29</sup> Although criticism within Canadian media was not surprising, it was not confined to the op-ed pages.<sup>30</sup> The Canadian Association of University Teachers, for example, expressed concern directly to Houle, noting that his missive “raises serious questions about the University of Ottawa’s respect for freedom of expression and academic freedom.”<sup>31</sup>

Coulter added more controversy during an exchange with a young Muslim woman the

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<sup>27</sup> The operative passage of the email reads, in part: “I therefore encourage you to educate yourself, if need be, as to what is acceptable in Canada and to do so before your planned visit here... I therefore ask you, while you are a guest on our campus, to weigh your words with respect and civility in mind. There is a strong tradition in Canada, including at this University, of restraint, respect and consideration in expressing even provocative and controversial opinions and urge you to respect that Canadian tradition while on our campus.”

<sup>28</sup> In a letter dated March 16, 2010, Wolfe directly wrote to President Rock on behalf of the SFUO executive to thank him. It read, in part: “While we may disagree in our method of response to such a situation, it is heartening to know that our values of a positive community are shared. I trust that Ms. Coulter’s event will proceed with its usual passion and vitriol, and I do not doubt that it will be received with antagonism by many students who oppose her paradigm of intolerance. As ever, we appreciate your collaboration and support.”

<sup>29</sup> Bruce Cheadle, “Watch your mouth, Ann Coulter warned for Canadian tour,” *The Toronto Star*, March 22, 2010, [https://www.thestar.com/news/canada/2010/03/22/watch\\_your\\_mouth\\_ann\\_coulter\\_warned\\_for\\_canadian\\_tour.htm](https://www.thestar.com/news/canada/2010/03/22/watch_your_mouth_ann_coulter_warned_for_canadian_tour.htm). Internal correspondence gleaned from ATI requests made matters worse by highlighting President Rock’s unfiltered opinion of Coulter. *National Post*, “Editorial: Allan Rock’s faulty concepts of free speech,” July 2, 2010, <https://nationalpost.com/full-comment/editorial-allan-rocks-faulty-concept-of-free-speech>. On March 18, he wrote directly to Houle to suggest that while the university should not obstruct the event in any way, security costs ought to be the responsibility of the organizers and Houle (as Provost) ought to convey applicable freedom of expression laws in Canada. He prefaced his advice with the following: “Ann Coulter is a mean-spirited, small-minded, foul-mouthed poltroon. She is ‘the loud mouth that bespeaks the vacant mind.’ She is an ill-informed and deeply offensive shill for a profoundly shallow and ignorant view of the world. She is a malignancy on the body politic. She is a disgrace to the broadcasting industry and a leading example of the dramatic decline in the quality of public discourse in recent times. D’accord.”

<sup>30</sup> ATI data reveals that the University of Ottawa kept an inventory of dozens of print and TV media coverage, almost exclusively and overwhelmingly negative. ATI data also reveals that the University of Ottawa’s Advancement Services kept records related to negative responses from alumni. Many of these responses mention that they will no longer consider donating because of the scandal.

<sup>31</sup> Canadian Association of University Teachers, March 22, 2010, [https://www.caut.ca/docs/default-document-library/ottawau\\_coulter.pdf?sfvrsn=0](https://www.caut.ca/docs/default-document-library/ottawau_coulter.pdf?sfvrsn=0).

previous evening (in London, ON). During the Q&A period, the woman asked how she ought to travel since Coulter had previously remarked that Muslims should not be able to fly (but rather should take ‘flying carpets’). She eventually told her to ‘take a camel.’<sup>32</sup> This confrontation was widely reported so it was no surprise that the evening in Ottawa featured a raucous protest.<sup>33</sup>

On March 19th, University of Ottawa Protection Services noted that there would likely be more than 100 students at the event to protest. Days later, they noticed that student organizing had intensified, as campus was blanketed with promotional material. Security consisted of five Protection Services members, two members of the Ottawa Police (one constable and one sergeant), and Coulter’s personal bodyguard (Floyd Resnick). Although estimates of the crowd varied between a few hundred to as many as two thousand, reliable sources suggest the former is accurate.<sup>34</sup> The event itself had approximately 460 registered attendees and it was not an open event (online registration only). Access to the auditorium was restricted to one entrance where organizers were verifying registration but the situation became ‘unmanageable’ shortly after admittance began, according to Protection Services. At one point, a fire alarm was triggered, although it was quickly remedied because there was no evacuation order. Protection Services described the quickly spiraling situation like this in their internal reporting:

As the crowd started arriving, it was quickly realized that there was not sufficient security and extra resources were requested... There were several people in the crowd that were not registered and when they found

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<sup>32</sup> Randy Richmond, “Firebrand Singes Muslim.” *The London Free Press*, March 23, 2010, <http://www.lfpress.com/news/london/2010/03/22/13322401.html>.

<sup>33</sup> She was also protested in Calgary, but it was mostly peaceful. See: *Calgary Herald*, “Coulter in Calgary,” *YouTube*, March 29, 2010, <https://www.youtube.com/watch?v=bplbcqZZcEk>.

<sup>34</sup> John Baglow, “A different view on the Coulter file,” *The National Post*. March 25, 2010, <https://nationalpost.com/full-comment/john-baglow-a-different-view-on-the-coulter-file>.

out that their name was not on the list, they refused to leave the registration table area, which caused severe issues with the access to the room. The registration volunteers were being over powered by the people wanting access and the crowd was trying to force their way past them.

A small handful of protestors registered for the event, gained admission, and disrupted it from the inside.<sup>35</sup> According to the former SFUO executive, this was no small feat, as the organizers of the event had rejected the registrations of those who they thought were left-wing activists.<sup>36</sup> Eventually, in a conversation between Protection Services, Resnick, and Ottawa Police, a decision was made that it would be unsafe for Coulter to appear. However, the ultimate source of this decision has been disputed, largely due to the media narrative being shaped by Coulter's own statements. According to internal Protection Services reports:

[A]ll parties involved agreed that the event could not be continued. Public Safety was the overall deciding factor for the cancellation...All parties agree that in the best interest of everyone, the decision to cancel the event was the appropriate action to take given the circumstances we were faced with.

However, additional data suggests otherwise. According to an Ottawa Police Media Relations Officer, it was Coulter's security (presumably Resnick) who ultimately decided to nix the event, even after being offered alternative courses of action.<sup>37</sup> The former SFUO executive confirmed this, explaining that they had approached the head of

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<sup>35</sup> Once the letter was sent they wanted to "get as many of our people in the room as possible" because they could ask challenging questions, according to the former SFUO executive. Personal Interview, October 25, 2018. Personal Interview, December 11, 2018. See, also: *Associated Press*, "Protest Cancels Ann Coulter Speech in Ottawa." *YouTube*, March 24, 2010, [https://www.youtube.com/watch?v=mOP\\_kbU7XxA](https://www.youtube.com/watch?v=mOP_kbU7XxA).

<sup>36</sup> They described it as needing to "sneak" people through the online registration process. Personal Interview, October 25, 2018.

<sup>37</sup> Kady O'Malley, "Ann Coulter's Adventures in Ottawa: So, what happened last night?" *CBC News*, March 24, 2010, <http://www.cbc.ca/politics/insidepolitics/2010/03/ann-coulter-adventures-in-ottawa-so-what-really-happened-last-night.html>.

Protection Services explicitly, due to a worry that a contrived cancellation on the part of Coulter would generate undue criticism of the SFUO.<sup>38</sup> After the debacle, a prepared statement from the University of Ottawa read, in part: “the organizers themselves decided at 7:50 p.m. to cancel the event and so informed the University’s Protection Services staff on site.” Nonetheless, the precise details of the conversation that led to this decision are still unclear; for example, what alternative courses of action might have been pitched?<sup>39</sup> For those who were there, one thing *was* clear: the cancellation could also be reasonably attributed to “a combination of overcapacity and utter disorganization,” as reporter Daniele Hamamdjian described it.<sup>40</sup>

A related question is whether or not deplatforming was the *explicit* strategy of the protestors, since the administration had decided to allow the event to proceed. Although the data suggests that it was and protest organizers were relatively clear in their intention to pressure the administration to cancel the event,<sup>41</sup> there was *some* divergence exhibited in the protest itself, particularly in the approach of the SFUO.<sup>42</sup> Regardless, one can reasonably say that despite a noticeable lack of an explicit plan for the protest (i.e. clear direction for protest attendees to disrupt) deplatforming was a likely result. The messaging of the campaign made it clear that Coulter ought not be allowed on campus

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<sup>38</sup> They explained that “campus security never told her that [it was unsafe]” and the SFUO enjoyed “a very good relationship with [Protection Services].” Personal Interview, October 25, 2018.

<sup>39</sup> Internal reports also noted that Resnick was solo on site only to assess the situation. He had told Protection Services personnel that if he had arrived *with* Coulter he would have immediately turned around after seeing the protest numbers.

<sup>40</sup> *CTV News Calgary*, “Coulter protesters attack free speech: Levant,” March 24, 2010, [http://calgary.ctv.ca/servlet/an/local/CTVNews/20100324/coulter\\_cancellation\\_100324/20100324/?hub=CalgaryHome](http://calgary.ctv.ca/servlet/an/local/CTVNews/20100324/coulter_cancellation_100324/20100324/?hub=CalgaryHome).

<sup>41</sup> All three of them said that deplatforming Coulter was the explicit goal, although one noted that at the protest itself “some people clearly wanted to shut it down and others just wanted to protest.” Personal Interview, December 17, 2018. Personal Interview, November 22, 2018. Personal Interview, December 11, 2018.

<sup>42</sup> Theirs was essentially disruption but not cancellation, due to strategic concerns. Personal Interview, October 25, 2018

and protest attendees more intent on confrontation and disruption (rather than a mere registering of discontent) could do so without contradicting the impetus of the protest. Inside the lecture hall and addressing the irate crowd, Levant alleged that Houle's earlier advisory emboldened student protestors by "telegraph[ing] to the community that the University of Ottawa is not a place for free debate."<sup>43</sup> He alleged that the SFUO followed the lead of the senior administration,<sup>44</sup> when in fact it was the SFUO who had been pressuring the administration behind the scenes.<sup>45</sup> Interestingly, one of the organizers explained the administrative receptivity to concerns from the SFUO and broader University of Ottawa community historically and contextually. According to them, the previous university president (Gilles Patry) had a much more antagonistic relationship with student activists. Part of then President Allan Rock's appeal was that his political experience (as a former Liberal cabinet minister) would allow him to repair a broken relationship.<sup>46</sup>

Predictably, Coulter used the controversy as an opportunity for more media coverage and "indulged in a media orgy of invective," criticizing both the University of Ottawa (as 'bush league') and the student protestors (who allegedly victimized *her*).<sup>47</sup> Several months later, it was revealed that Rock had actually seriously considered re-inviting Coulter in an attempt to satiate critics and rehabilitate the university's reputation.

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<sup>43</sup> Singer and Nease, "Ann Coulter lambastes University of Ottawa and Canada's 'free' speech."

<sup>44</sup> Pagliaro, "Ann Coulter went home."

<sup>45</sup> According to the former SFUO executive, the Houle email was "100%... directly from the SFUO" and a "compromise" that they "weren't unhappy with." Personal Interview, October 25, 2018.

<sup>46</sup> In their words: "He brought with him an approach to conflict resolution that was quite diplomatic" and thus the Houle letter could be reasonably interpreted as "an attempt by the administration to demonstrate to students that they were listening." Personal Interview, December 11, 2018. The former SFUO executive also noted the closeness of their relationship, emphasizing that they understood each other, in essence, because of Rock's political pragmatism. Personal Interview, October 25, 2018.

<sup>47</sup> Michael Rowe, "Sorry Ann Coulter, Canada's Just Not That Into You," *The Huffington Post*, May 25, 2010, [https://www.huffpost.com/entry/sorry-ann-coulter-canadas\\_b\\_513865](https://www.huffpost.com/entry/sorry-ann-coulter-canadas_b_513865).

In the end he yielded to advice suggesting that such an opportunity would be manipulated by Coulter to further amplify her profile.<sup>48</sup>

### 3.4 Deplatforming in Theory

In general, there are three interconnected levels of justification for deplatforming. These justifications were key in the present case but they also strongly correlate with secondary literature (academic and non-academic work) and some other recent incidences of deplatforming (based on news media). First, deplatforming is justified by appealing to the concept of merit. Importantly, contemporary discussions about freedom of speech on campus sometimes make a significant analytical error by conflating this principle with academic freedom. Freedom of speech is typically conceptualized as a general non-interference principle because individuals in liberal democracies are understood to have some inviolable boundaries as citizens. Conversely, academic freedom is *not* a general right, but instead one tailored to particular, professional duties. Thus, academic freedom “is a *special* right of academics – a right to freedom from prescribed orthodoxy in their teaching, research, and lives as academics.”<sup>49</sup>

Put more concretely, it “is actually a complex set of beliefs, traditions, procedures, and legal rulings that govern many of the relationships between faculties and their employing institutions, the government, students, and the broader public.”<sup>50</sup> Despite

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<sup>48</sup> Dean Beeby. “Plan to invite Coulter back thwarted by University of Ottawa advisers.” *The Globe and Mail*. June 30, 2010. <https://beta.theglobeandmail.com/news/national/plan-to-invite-coulter-back-thwarted-by-university-of-ottawa-advisers/article4323285/>.

<sup>49</sup> James L. Turk, “Introduction,” In *Academic Freedom in Conflict: The Struggle Over Free Speech Rights in the University*, edited by James L. Turk, 11-20 (Toronto, ON: Lorimer, 2014), 11.

<sup>50</sup> Schrecker, *The Lost Soul of Higher Education*, 10.

a noticeable gap between professional rules and norms and actual law,<sup>51</sup> there is wide recognition that academic freedom is at once a functional *right* necessary to perform professional duties and a professional *obligation* (with reasonable limits likewise tailored to the university's mission). Thus, while the principle of freedom of speech emphasizes content neutrality (on the part of the state, institution, etc.), the university is typically *not* neutral regarding the content of speech.<sup>52</sup> In fact, scholarship is normally premised upon concepts such as merit, rigour, and excellence. Because it is reasonably assumed that relevant experts vet ideas presented in an academic context, they are likely to benefit from some form of distinction.<sup>53</sup> This epistemic gatekeeping, while potentially exclusionary, is absolutely crucial for the university, because it ensures that information emanating from inside its walls has satisfied some scholarly threshold. The implications of this are clear: not all opinions are equal and not everyone is automatically entitled to a platform on campus.

The obvious response to those who invoke merit is that none of these potentially restrictive conventions ought to apply to speakers who come from *outside* the university (who might merely express an interest in an attractive venue). One might also contend that the umbrella of academic freedom (and perhaps freedom of expression more broadly) extends to include the presentation of ideas, concepts, and arguments *at all stages* of their development. Thus, there is a legitimate worry that the relatively strict meritocratic

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<sup>51</sup> Stanley Fish, *Versions of Academic Freedom: From Professionalism to Revolution* (Chicago, IL: University of Chicago Press, 2014), xi.

<sup>52</sup> Joan W. Scott's recent writing is particularly instructive on this point: "The principle of academic freedom was not, as critics sometimes describe it, an endorsement of the idea that in the university anything goes. The call for faculty autonomy rested on the guarantee of quality provided by disciplinary bodies whose role is to establish and implement norms and standards and so to certify their members' professional competence." Joan W. Scott, *Knowledge, Power, and Academic Freedom* (New York, NY: Columbia University Press, 2019), 48.

<sup>53</sup> Haidt and Lukianoff refer to this process of meritocratic peer review as 'institutionalized disconfirmation.' Haidt and Lukianoff, *The Coddling of the American Mind*, 109.

standards of peer review, for example, could be invoked to restrict expression in other venues on campus. To further complicate matters, one might also make distinctions regarding the form of gatekeeping (i.e. a controversial pundit renting university space vs. being invited and/or hosted by an academic).

However, there is an argument to be made that the university campus is not analogous to the town square. Here, we see that universities are hybrid in practice, concurrently public *and* private institutions. If one accepts the premise that universities have a particular autonomy non-analogous to purely *public* expression, legitimate reasons to restrict platforms might include a well-founded anticipation of disruption to the normal operations of the university (especially if violence is likely), discourse that is likely to contravene applicable laws (i.e. hate speech), and/or (most controversially) sufficient pressure applied to the university by those who argue that a platform could cause harm. In all of these circumstances, the university would be regulating the content of speech, whether or not one agrees with each of these rationales. Ultimately, the point would be that universities should have wide discretion in regulating speech on campus in accordance with their own unique mission and norms. Further, considering that there is a plethora of other publicly available platforms, universities are not suppressing speech simply by reserving the right to restrict space to those who align with its particular institutional mission (and one could make the case that this would necessarily preclude pundits like Coulter).

In another version of the appeal to merit, some have emphasized that freedom of speech should not be equated with freedom from consequences.<sup>54</sup> Essentially, while

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<sup>54</sup> As one interviewee put it: “Freedom of speech doesn’t mean freedom from repercussions from that speech.” Personal Interview, November 22, 2018.



someone might have the right to expression in a way others might find objectionable (and potentially harmful), they do not have a right to be immune from social criticism in response to their expression. The question, then, is what consequences would be appropriate for objectionable speech. At least one of them might be restricted platforms, particularly in spaces that aren't strictly public or have an institutional commitment to some other principle or goal (much like universities).<sup>55</sup>

Second, deplatforming is justified by appealing to harm reduction. Since at least the early 1990s, there have been some significant changes in the way scholars conceptualize harm in relation to speech,<sup>56</sup> particularly in stretching the concept to include newly theorized harms<sup>57</sup> and highlighting the links between knowledge production and harm.<sup>58</sup> Traditionally understood as something that accrues primarily through clear cause and effect, harm can also be understood as a poisoned environment. While cumulative pollution might render the assignment of responsibility difficult,<sup>59</sup> the potentially permissive environment that is created by speech might lead to more serious harm. Accordingly, harm can be both indirect and temporal (see Bennett, in this volume). Although the topic of pornography infamously failed to engender consensus among

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<sup>55</sup> Bryan W. Van Norden, "The Ignorant Do Not Have a Right to an Audience," *The New York Times*, June 25, 2018, <https://www.nytimes.com/2018/06/25/opinion/free-speech-just-access.html>.

<sup>56</sup> For a brief summary of some of these works, see: Catherine A. MacKinnon, "Foreword," In *Speech & Harm: Controversies Over Free Speech*, edited by Ishani Maitra and Mary Kate McGowan (Oxford, UK: Oxford University Press, 2012), vi-xviii.

<sup>57</sup> Mary Kate McGowan, *Just Words: On Speech and Hidden Harm* (New York: NY: Oxford University Press, 2019).

<sup>58</sup> The concept of epistemic injustice is an apt example. See: Ian James Kidd, José Medina, and Gaile Pohlhaus, Jr., *The Routledge Handbook of Epistemic Injustice* (London, UK: Routledge, 2017).

<sup>59</sup> Another way to think about this is that some problems may be *structural* in nature making assignments of individual responsibilities difficult, if not counterproductive. See: Iris Marion Young, "Responsibility and Global Justice: A Social Connection Model," *Social Philosophy and Policy*, 2006, 23 (1): 102-130. Eduardo Bonilla-Silva, *Racism Without Racists: Color-Blind Racism and the Persistence of Racial Inequality in the United States* (Lanham: Rowman & Littlefield, 2006).

feminist theorists,<sup>60</sup> the issue itself remains an apt illustration of this theory and approach. Essentially, while pornography itself cannot “leap off the shelf and assault women,”<sup>61</sup> it leaves in its path a psychosocial wake that cannot be easily separated from the inferior status of women and the gendered violence visited upon them.<sup>62</sup> The internalization of disparaging views of women (which is reasonably imbibed from pornography) may eventually form the raw materials for a variety of physical (and emotional) abuses.<sup>63</sup>

More relevant to the present case is scholarship on hate speech, however; the key discursive pillar of the objections to Coulter analyzed below. Jeremy Waldron argues that hate speech vitiates a ‘public good’ of inclusion that is an integral part of liberal democracies, and that hate speech further attacks the dignity of its targets and their membership in the larger community.<sup>64</sup> He uses the concept of ‘group libel’ to capture the essence of the latter, whereby the law ought to prevent efforts to impugn groups with negative associations such that it would logically flow that equal standing within a political community could be questioned.<sup>65</sup> Legal restrictions preventing the most

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<sup>60</sup> Brenda Cossman and Shannon Bell, “Introduction,” In *Bad Attitudes on Trial: Pornography, Feminism, and the Butler Decision*, edited by Brenda Cossman, Shannon Bell, Lise Gotell, and Becki L. Ross, 3-47 (Toronto, ON: University of Toronto Press, 1997), 7. For perhaps the best volume capturing the various feminist approaches to the topic, see: Drucilla Cornell, *Feminism and Pornography* (New York, NY: Oxford University Press, 2000).

<sup>61</sup> Catharine A. MacKinnon, *Only Words* (Cambridge, MA: Harvard University Press, 1993), 15.

<sup>62</sup> MacKinnon believes that (heterosexual male) pornography consumers face an inevitability of deeply imbibing and then recreating the sexual fantasies depicted: “Sooner or later, in one way or another, the consumers want to live out the pornography further in three dimension. Sooner or later, in one way or another, they do” (19).

<sup>63</sup> Andrea Dworkin, for example, argues that “[m]ale power is the *raison d’être* of pornography; the degradation of the female is the means of achieving this power.” Andrea Dworkin, *Pornography: Men Possessing Women* (New York, NY: Perigee Books, 1981), 25. See, also: Michelle J. Anderson, “Silencing Women’s Speech,” in Laura J. Lederer & Richard Delgado (Eds.), *The Price We Pay: The Case Against Racist Speech, Hate Propaganda, and Pornography* (New York, NY: Hill and Wang, 1995), 123. For more recent scholarship that casts a critical eye on the potentially harmful effects of pornography, see: McGowan, *Just Words*. For a summary and analysis of some of the most prominent arguments against pornography, see: Amanda Cawston, “The feminist case against pornography: a review and re-evaluation,” *Inquiry: An Interdisciplinary Journal of Philosophy*, 2019, 62 (6): 624-658.

<sup>64</sup> Jeremy Waldron, *The Harm in Hate Speech* (Cambridge, MA: Harvard University Press, 2012), 4-5.

<sup>65</sup> *Ibid*, 47.

extreme of these targeted manifestations of hatred are legitimate because they provide a crucial prerequisite – a public *assurance* – for a system based upon egalitarian membership: “Hate speech and group defamation are actions performed in public, with a public orientation, aimed at undermining public goods.”<sup>66</sup>

At the individual level, Richard Delgado and Jean Stefancic catalogue a number of troubling potential reactions among the recipients of hate speech, ranging from mild physical responses to deeper psychological and emotional harm, contributing to self-destructive behavioural patterns.<sup>67</sup> Repeated exposure to harmful speech can lead to a general ‘cultural mistrust,’<sup>68</sup> whereby targets of hate speech might close themselves off from the broader society, internalize the stereotypes to which they have been exposed, devalue their own self-worth, and/or react with anger and frustration.<sup>69</sup>

Although hate speech constitutes a “psychic tax” for those it targets,<sup>70</sup> it might also produce cognitive effects within a larger audience. While someone passively receiving these hate messages may tend towards discounting them, when they experience other situations involving those targeted, previously received ideas may catalyze

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<sup>66</sup> Ibid, 100.

<sup>67</sup> Richard Delgado and Jean Stefancic, *Understanding Words That Wound* (Boulder: Westview Press, 2012), 13-14.

<sup>68</sup> Mari J. Matsuda covers the range of consequences that would leave one deeply distrustful: “Victims are restricted in their personal freedom. To avoid receiving hate messages, victims have to quit jobs, forgo education, leave their homes, avoid certain public places, curtail their own exercise of speech rights, and otherwise modify their behavior and demeanor.” Mari J. Matsuda, “Public Response to Hate Speech: Considering the Victim’s Story,” In *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment*, edited by Mari J. Matsuda, Charles R. Lawrence III, Richard Delgado, and Kimberlé Williams Crenshaw (Boulder, CO: Westview Press, 1993), 24.

<sup>69</sup> Richard Delgado, “Words That Wound: A Tort Action for Racial Insults, Epithets, and Name Calling,” In *Words That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment*, edited by Mari J. Matsuda, Charles R. Lawrence III, Richard Delgado, and Kimberlé Williams Crenshaw (Boulder: Westview Press, 1993), 91.

<sup>70</sup> Mari J. Matsuda, “Public Response to Hate Speech: Considering the Victim’s Story,” *Michigan Law Review*, 1989, 87 (8): 2320-2381, 2323.

unconscious associations.<sup>71</sup> Further, the toleration of hateful speech sends a potent signal to the entire polity that egalitarian principles can *coexist* with tacit identity-based exceptions in practice.<sup>72</sup> In this sense, there might also be a direct connection between discriminatory speech and concrete political movements,<sup>73</sup> because the former may create a permissive environment for the latter to thrive.

Harm reduction was the most consistent justification reflected in the primary data. According to some of the organizers, the main protest message was kept simple for strategic purposes: “no hate speech on our campus.”<sup>74</sup> The possibility of Coulter speaking was “scary” for one, a racialized woman who described her general experience at the University of Ottawa as “alienating.”<sup>75</sup> Stunned that fellow students would even want to invite someone like Coulter to campus, she viewed the prospect as “a really big threat.”<sup>76</sup> Although she did not attend the protest itself out of fear – and was relieved that White organizers were at the forefront – she was motivated to organize because “nobody should feel unsafe or attacked or unwanted” on campus.<sup>77</sup> Another organizer argued that it would be a “waste of time” to debate the minutia of whether or not her speech constitutes hate speech. Instead, protestors could legitimately “shut it down” because “[her] ideas have concrete impact on people’s lives.”<sup>78</sup>

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<sup>71</sup> These (un)conscious associations can have substantial impacts upon discourse, especially if they catalyze prejudicial credibility deficits. See, for example: Miranda Fricker, *Epistemic Injustice* (New York, NY: Oxford University Press, 2007).

<sup>72</sup> Delgado, “Words That Wound,” 93. Richard Delgado and Jean Stefancic, *Must We Defend Nazis?: Hate Speech, Pornography, and the New First Amendment* (New York, NY: NYU Press, 1997), 8-9.

<sup>73</sup> Alexander Tsesis, *Destructive Messages: How Hate Speech Paves the Way for Harmful Social Movements* (New York, NY: New York University Press, 2002).

<sup>74</sup> Personal Interview, December 11, 2018.

<sup>75</sup> Personal Interview, December 17, 2018.

<sup>76</sup> Ibid.

<sup>77</sup> As she recounted: “I do remember feeling like [sic] ‘thank God that I don’t have to go at the forefront and try to shut this thing down.’ I don’t think it would have worked so well had there not been so many white people involved.” Ibid.

<sup>78</sup> Personal Interview. November 22, 2018.

As mentioned, in advance of the scheduled event, organizers used a variety of outreach strategies that included both printed and online materials. In a section of the printed literature titled ‘What You Can Do,’ a number of suggestions are offered, including sending the then President of the University of Ottawa, Allan Rock, an email asking him to cancel the event. An attached draft letter frames the event as potentially causing harm to marginalized communities. The scheduled event, according to the organizers:

presents a worrying situation for many students on campus against whom and against whose communities Ms. Coulter has promoted hatred... As a campus which promotes a right to respect, diversity, and multiculturalism, a figure of such offense, hatred, and oppression has no place in our community.

The petition asks for President Rock and the administration to bar Coulter from campus “in order to promote a safe space for community members and student through limiting possible discrimination and hate speech on campus.” Its preamble likewise cites the reasonably anticipated harm that could be done to marginalized communities based upon her previous public commentary:

Ann Coulter in numerous public interviews, speeches, books, and columns has been cited making discriminatory, hateful, and violent comments against: women, Muslims, LGBTQ persons, persons of colour, migrants, Jewish persons, persons with disabilities and other marginalized communities.

Importantly, all of the promotional materials suggested that Coulter’s standard fare might be classified as hate speech under Canadian law. The aforementioned literature (email appeal) begins with ‘BAN HATE SPEECH,’ the draft email argues that freedom of

speech is balanced with freedom from discrimination on prohibited grounds, the petition explicitly references Section 319 of the *Criminal Code*, and some of the posters include ‘BAN HATE SPEECH’ alongside some objectionable quotes from Coulter. During the protest itself, crowds boisterously chanted “no more hate speech on our campus!”<sup>79</sup> The point here is not to definitively conclude that any of Coulter’s speech might run afoul of applicable Canadian law. Rather, this suggests that these appeals to relevant laws were ultimately efforts to justify speech restrictions based upon a specific conceptualization of harm. Not only would Coulter allegedly harm individuals as a direct result of her commentary, but she would also contribute to a potentially poisoned environment that would be at odds with the declared mission of the university.

Third, deplatforming is justified by appealing to a broader discursive strategy that attempts to halt the normalization of potentially harmful speech over time. Aside from the material and/or psychological harm that speech might inflict, extreme speech can tangibly shift discursive territory. The Overton Window is an oft-cited conceptual framework for understanding how policy options exist in a narrow but constantly shifting spectrum of legitimacy and possibility. Contemporary events have seen it “firmly embedded in the vernacular of seemingly every political news outlet” due to its analytical relevance.<sup>80</sup> Essentially, in any particular discursive environment there are what might be called boundaries of acceptable debate that are conditioned by what seems intuitively possible at the moment. Importantly, these boundaries are neither static nor easily defined. They are constantly shifting due to a synthesis of factors that might range from explicit legal

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<sup>79</sup> Associated Press, “Protest Cancels Ann Coulter Speech in Ottawa,” *YouTube*, March 24, 2010, [https://www.youtube.com/watch?v=mOP\\_kbU7XxA](https://www.youtube.com/watch?v=mOP_kbU7XxA).

<sup>80</sup> Joseph G. Lehman, “The Overton Window and Free Speech,” Mackinac Center for Public Policy, October 2, 2018, <https://www.mackinac.org/25904>.

prohibitions to implicit (unwritten) rules, norms, and conventions. While exposure to extreme speech might not necessarily catalyze support for a specific idea or position, it might render less extreme (but equally problematic) speech more palatable. Thus, the window of acceptable debate can perceptibly shift over time towards more extreme positions if and when extremity is gradually normalized.<sup>81</sup>

One of the most exemplary cases of this discursive strategy involved the phenomenon of Holocaust denial in the 1990s. The UK trial between *Penguin Books Ltd.* (as publisher of historian Deborah Lipstadt) and disgraced historian David Irving is now infamous.<sup>82</sup> At the time, a dedicated coterie of Holocaust ‘revisionists’ sought to seed doubt about the veracity of historically documented atrocities during the Second World War, appealing to the dispassionate pursuit of truth to shroud their unsavoury agenda. The case illustrated that an idea or argument could be so nefarious that merely entertaining it publicly might bestow it some unearned *legitimacy*, and this in turn could result in the infliction of *harm*. Further, Holocaust denial could be seen in the public eye as just one of a number of different (and perhaps equally legitimate) competing viewpoints. Accordingly, Lipstadt argues that “free speech does not guarantee them [Holocaust deniers] the right to be treated as the ‘other side’ of a legitimate debate.”<sup>83</sup> In other words, since racism is ‘irrational,’ it is impossible to combat the wider effects of Holocaust denial with reasoned discussion.<sup>84</sup> In sum, discursive strategy is less about

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<sup>81</sup> Mary Kate McGowan, *Just Words: On Speech and Hidden Harm* (New York, NY: Oxford University Press, 2019). Alexander Tsesis, *Destructive Messages: How Hate Speech Paves the Way for Harmful Social Movements* (New York: New York University Press, 2002).

<sup>82</sup> Deborah E. Lipstadt, *History on Trial: My Day in Court with David Irving* (New York, NY: HarperCollins Publishers, 2005), 18.

<sup>83</sup> *Ibid.*, 17.

<sup>84</sup> She writes: “[Holocaust deniers] are using [freedom of speech] not as a shield, as it was intended by the Constitution, but as a sword. There is a qualitative difference between barring someone’s right to speech

‘winning’ an argument in the court of public opinion and more about rehabilitating rejected or stigmatized ideas by seeding doubt and rendering them the object of debate (as opposed to a settled or accepted truth).

This basic non-normalization argument has become commonplace in contemporary anti-racist and anti-fascist politics and activism on campus and elsewhere.<sup>85</sup> Its most noteworthy pillar is an explicit skepticism of the ‘marketplace of ideas’ analogy that is reflected in liberal democratic theory and jurisprudence.<sup>86</sup> It therefore questions the assumption that an unrestricted marketplace will naturally tend towards normatively ‘good’ ideas succeeding.<sup>87</sup> This may be the case for at least two reasons. First, some ideas may not be relatively more popular because of their intrinsic merit but because of their disproportionate *power*. It may, then, be a mistake to assume that all ideas have enjoyed a full hearing, or that commonly accepted ideas have naturally been subjected to rigorous scrutiny. This epistemological position is a common tradition under the broad aegis of critical political theory and philosophy, popularized more recently by Michel Foucault,<sup>88</sup> but typically finding its roots in the writing of Friedrich

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and providing him or her with a platform from which to deliver a message.” Deborah E. Lipstadt, *Denying the Holocaust: The Growing Assault on Truth and Memory* (New York, NY: The Free Press, 1993), 26.

<sup>85</sup> Nesrine Malik, “The myth of the free speech crisis,” *The Guardian*, September 3, 2019, <https://www.theguardian.com/world/2019/sep/03/the-myth-of-the-free-speech-crisis>. Jasmine Zine, “The alt-right and the weaponization of free speech on campus,” *Academic Matters*, Fall 2018, <https://academicmatters.ca/the-alt-right-and-the-weaponization-of-free-speech-on-campus/>. Kate Manne and Jason Stanley, “When Free Speech Becomes a Political Weapon,” *The Chronicle of Higher Education*, November 13, 2015, <https://www.chronicle.com/article/When-Free-Speech-Becomes-a/234207>.

<sup>86</sup> For example, Mark Bray, explicitly rejects the ‘marketplace of ideas’ analogy: “[H]istorically, fascist and fascistic ideas have thrived in open debate. Sometimes public discourse has been sufficient to squash fascism. But sometimes it hasn’t been – which is why anti-fascists refuse to pin their hopes for the freedom and security of humanity on processes of public discourse that have already shown themselves to be fallible.” Mark Bray, *Antifa: The Anti-Fascist Handbook* (New York, NY: Melville House, 2017), 147-148.

<sup>87</sup> This optimism is a consistent thread of normative liberal theory, often expressed as a broader optimism invested in pluralism and tolerance. For an example of this (‘the liberal wager’), see: Stephen L. Newman. “Finding the Harm in Hate Speech: An Argument against Censorship,” *Canadian Journal of Political Science*, 2017, 50 (3): 679-697, 695.

<sup>88</sup> For Foucault, there is no objective truth in the sense that it represents a shared core or foundation that can be vindicated by an appeal to universal standards. What constitutes truth, then, is at least a partial function



Nietzsche.<sup>89</sup> Second, ideas do not always appeal to one's rational or logical sensibilities; indeed, it is difficult to ignore the overestimated liberal investment in individual rational calculation. The archetypical liberal subject as a rational information gatherer is at least misleading and at most a woefully inadequate paradigm for understanding the circulation of ideas.<sup>90</sup> Therefore, at the very least, the market analogy relies upon an overoptimistic presupposition, according to Jason Stanley:

The argument for the 'marketplace of ideas' presupposes that words are used only in their 'descriptive, logical, or semantic sense.' But in politics, and most vividly in fascist politics, language is not used simply, or even chiefly, to convey information but to elicit emotion. The argument from the 'marketplace of ideas' model for free speech works only if the underlying disposition of the society is to accept the force of reason over the power of irrational resentments and prejudice.<sup>91</sup>

Accordingly, the problem with Coulter is not just that her ideas are harmful *prima facie*, but that they have a caustic effect on the discursive environment *as a whole* by normalizing a specific tenor of speech and eroding possibilities for respectful public debate.<sup>92</sup> In essence, there is a potential *double* movement in political discourse. The first

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of politics. What becomes 'true' may have a traceable logic or justification but nonetheless necessitates an examination of why one discourse became intelligible as opposed to another; in other words, the requisite conditions for intelligibility, acceptability, and propagation, or what Foucault calls 'a nexus of knowledge-power.' Michel Foucault (Sylvère Lotringer Ed.), *The Politics of Truth* (Los Angeles, CA: Semiotext(e), 2007), 61.

<sup>89</sup> For an unsympathetic view of this lineage, see: Ronald Beiner, *Dangerous Minds: Nietzsche, Heidegger, and the Return of the Far Right* (Philadelphia, PA: University of Pennsylvania Press, 2018), 7. Other theoretical or philosophical traditions that feature amalgams of these ideas include Critical Race Theory, Critical Discourse Analysis, and diverse engagements with Antonio Gramsci.

<sup>90</sup> For Bray (in contradistinction to Mill), progressive advances in society are not a result of "a rational process of analysis," but "through the ongoing struggle of competing interests, which are perpetually shaped by shifting economic and social factors." Likewise, on university campuses, progressive advances are the accumulation of material agitation. In this sense, the university is not a neutral institutional and knowledge production is inherently political. Bray, *Antifa*, 160, 163-165.

<sup>91</sup> Jason Stanley, *How Fascism Works* (New York: Random House, 2018), 68-69.

<sup>92</sup> This was precisely what Rock had argued in the email to Houle referenced earlier.

is a shift to the (far) right and a redefinition of a ‘new normal.’<sup>93</sup> The second is a shift downward in the quality of public debate by normalizing speech that is ad-hominem, sensationalistic, and hateful.<sup>94</sup> Protest organizers recognized these discursive dynamics and pointed out other ways that power imbalances might shape the contours of debate about freedom of speech more broadly. One remarked that when there are alleged violations of freedom of speech (such as in the Coulter case), “it’s always the freedom of speech of the most privileged and the people who have the most power to be able to do harm.”<sup>95</sup> Another similarly referred to a predictable “pattern” in debates about freedom of speech: those who “believe vehemently in the principle of freedom of speech under any circumstances” might not have been exposed to or affected by speech that “led to harm or violence.”<sup>96</sup> In other words, categorical approaches to freedom of speech might also be a reflection of privilege.

Promotional materials for the protest also reflected some of this non-normalization justification in broad terms. Posters and email appeals included an encouragement to “support positive space on campus,” ostensibly by helping to keep Coulter off campus. The petition explicitly invoked relevant hate speech prohibitions as a reasonable limit for freedom of speech on campus and conveyed the desire to “promote a safe space for community members and students through limiting possible discrimination and hate speech on campus.” Similarly, the draft letter for President Rock asked that he

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<sup>93</sup> Susan Estrich, *Soulless: Ann Coulter and the Right-Wing Church of Hate* (New York: Regan, 2006), 40.

<sup>94</sup> “What she succeeds in doing is dividing us against each other, polarizing us whether we want to be polarized or not (and often we do not), playing to the lowest common denominator, and not only moving the ideological line to the right, but moving it downward in the process.” Ibid, 6.

<sup>95</sup> Personal Interview. December 18, 2018.

<sup>96</sup> Personal Interview. December 11, 2018.

and the university “assist in the preservation of the culture of our campus and right of our students to enjoy that culture free of discrimination and oppression.”

### 3.5 Deplatforming in Practice

Against these various justifications for deplatforming are a more familiar (perhaps reflexive) justifications for a large margin of appreciation for freedom of speech in liberal democracies (and especially on campus). Stretching all the way back to Socrates, Western political theory and philosophy has exalted an abstract individual free from illegitimate external constraint.<sup>97</sup> More recently, most people associate the liberal paradigm of contemporary democracies with the truth-based defence of John Stuart Mill.<sup>98</sup> According to him, since humans are fallible in their intellect, only by constant collision with error can truth be attained.<sup>99</sup> As such, every instance of censorship is an assumption of infallibility.<sup>100</sup> Further, one ought to eschew orthodoxy because even normatively good ideas need to be sustained through occasional epistemic competition.<sup>101</sup>

However, despite some persuasive arguments for (and against) deplatforming,<sup>102</sup> a separate and more interesting question is the strategic environment in which the tactic is employed. At the outset, this raises an interesting paradox: it is entirely possible to have a moral and intellectual case for a specific course of action (such as deplatforming) but not

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<sup>97</sup> For an excellent overview of the history of the concept in Western political theory and philosophy, see: Jacob Mchangama, “Clear and Present Danger: A History of Free Speech,” *The American Philosophical Association*, January 30, 2019, <https://blog.apaonline.org/2019/01/30/clear-and-present-danger-podcast-philosophy-outside-academia/>.

<sup>98</sup> Richard Moon, *The Constitutional Protection of Freedom of Expression* (Toronto, ON: University of Toronto Press, 2000), 9-12.

<sup>99</sup> John Stuart Mill (Mark Philp & Frederick Rosen Eds.), *On Liberty, Utilitarianism and Other Essays* (Oxford, UK: Oxford University Press, 2015).

<sup>100</sup> *Ibid.*, 19.

<sup>101</sup> *Ibid.*, 36-37.

<sup>102</sup> For a review and analysis of some relevant arguments, see: Eric Heinze, “No-platforming and Safe Spaces: Should Universities Censor more (or less) Speech than the Law Requires?” *Croatian Political Science Review* 55, no. 4 (2018): 79-108.

a strategic one (as the present case vividly illustrates). It also begs a further question: despite a litany of other (and likely more serious) threats to freedom of speech on campus (declining funding, contingent faculty, etc.), why do incidences of deplatforming tend to attract a disproportionate amount of media attention and public criticism? I think there are at least two reasons for this.

First, as outlined earlier, deplatforming highlights (often in a sensational way) the theoretical or philosophical tensions between a reflexive liberal paradigm of freedom of speech and a host of nuanced challenges to this paradigm.<sup>103</sup> Because freedom of speech is considered a hallowed right in liberal democracies (not without inconsistency, of course), even the most thoughtful and careful critiques of it can precipitate moral panic.<sup>104</sup> Two protest organizers conveyed these tensions in their justifications for deplatforming. For them, the law is not an accurate barometer for morality.<sup>105</sup> According to one, deplatforming as a form of ‘direct action’ fills in the gaps because Canadian “laws are quite limited in what they can accomplish in terms of keeping people safe from harm in a preventative way.”<sup>106</sup> Existing laws grant too great a margin of appreciation for speech if and when speech (like Coulter’s) can “lead to individual racist attacks.”<sup>107</sup> Further, deplatforming also highlights (and even compounds) some of the existential tensions at play in the contemporary university. Although campus life is often imagined

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<sup>103</sup> There are, however, nuanced challenges that take a ‘Millian’ approach more on its own terms, rather than presenting an alternative theoretical approach. See, for example, Bennett (in this volume).

<sup>104</sup> This was evident in the responses from major Canadian newspapers, although one should note that the fourth estate is particularly sensitive to issues related to freedom of expression. For a brief summary of some of the most important responses, see: Carson Jerema, “Ann Coulter: Canadian free speech hero,” *Maclean’s*, March 25, 2010, <https://www.macleans.ca/education/uniandcollege/ann-coulter-canadian-free-speech-hero/>.

<sup>105</sup> In one organizer’s words: “I don’t think we can tie our activism to what is and isn’t legal.” Personal Interview, November 22, 2018.

<sup>106</sup> Personal Interview, December 11, 2018

<sup>107</sup> Ibid.

in idyllic terms – as relatively democratic, autonomous, and representative of society’s diversity (although not perfectly) – in practice it is marked by incredibly divergent views regarding the ends to which the institution should strive. In the context of deplatforming, one of these existential tensions is unambiguous: freedom of speech as a non-interference principle and precondition for scholarly communities and a desire to minimize potential harm done to those who may be vulnerable.

Second, some of the most well-known incidences of deplatforming – including the present case and some of those previously mentioned – typically feature individuals who inhabit a discursive liminal space. This space is between the merely offensive on the one hand and what is actually proscribed by law on the other hand. In the middle is a simultaneously vast and opaque discursive territory where it is difficult to draw definitive boundaries of acceptable debate. Situating the university campus in this discursive territory only compounds the difficulty. Since the university is a publicly funded institution it ought to be subject to existing freedom of expression laws, but it is also in some sense a private institution with its own *particular* mission.<sup>108</sup> On this latter point, it legitimately restricts some forms of expression in accordance with this mission (i.e. student codes of conduct). This is because there are some compelling prerequisites for an equal and open scholarly environment; namely, something approximating ‘dignitary safety.’<sup>109</sup> Likewise, the concept of merit as expressed in academia provides a rationale for restricting the scope of expression tied to the particular mission of generating truth and knowledge. Again, there is disjuncture here between freedom of speech understood

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<sup>108</sup> The potential application of *The Charter* on campus is still indeterminate. For a classic case that found that universities are not legally considered part of the government, see: *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229.

<sup>109</sup> Sigal Ben-Porath, *Free Speech on Campus* (Philadelphia, PA: University of Pennsylvania Press, 2017), 62.

as a principle of non-interference and the particularities of the university as an institution that might reasonably limit freedom of speech.

This gap – between the existing external legal framework and the particular institutional rules and norms of the university – is precisely what has been exploited in order to generate controversy.<sup>110</sup> Essentially, in a concurrently strategic and ironic fashion, conservative provocateurs have constructed an immanent critique of the university campus by demonstrating that it violates its own values and principles in practice. Therefore, it is no accident that Yiannopoulos (and later Coulter, who also had a scheduled appearance canceled)<sup>111</sup> sought a platform at Berkeley specifically. Wanting to capitalize on the symbolic meaning and significance of that campus – the genesis of the Free Speech Movement of the 1960s<sup>112</sup> – Yiannopoluos was reported to have created a ‘Mario Savio Freedom of Speech Award’ and planned to award Ann Coulter its inaugural prize.<sup>113</sup> Savio’s son would later call this plan “some kind of sick joke”.<sup>114</sup> Although Yiannopolous has now fallen into disrepute and largely faded from the public eye,<sup>115</sup> his

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<sup>110</sup> Pearl Eliadis has previously used the term ‘controversy entrepreneur’ to refer to pundits who perform this edgework. I think this is an apt description. Pearl Eliadis, “The Controversy Entrepreneurs,” *Maisonneuve*. August 20, 2009, <https://maisonneuve.org/article/2009/08/20/controversy-entrepreneurs/>. See, also: Richard Moon, “The Attack on Human Rights Commissions and the Corruption of Public Discourse,” *Saskatchewan Law Review*, 2011. 73: 93-129.

<sup>111</sup> Merrit Kennedy, “After Ann Coulter Speech Cancellation, Protesters Rally At Berkeley,” *National Public Radio*, April 27, 2017, <https://www.npr.org/sections/thetwo-way/2017/04/27/525898344/after-ann-coulter-speech-cancellation-protesters-rally-at-berkeley>.

<sup>112</sup> Robert Cohen, “What Might Mario Savio Have Said About the Milo Protest at Berkeley?” *The Nation*, February 7, 2017, <https://www.thenation.com/article/what-might-mario-savio-have-said-about-the-milo-protest-at-berkeley/>.

<sup>113</sup> Savio was “the Berkeley rebellion’s most famous voice and most prominent leader.” Robert Cohen, *Freedom’s Orator: Mario Savio and the Radical Legacy of the 1960s* (New York: Oxford University Press, 2009), 82.

<sup>114</sup> William Wan, “Milo’s appearance at Berkeley led to riots. He vows to return this fall for a week-long free-speech event,” *The Washington Post*, April 26, 2017, [https://www.washingtonpost.com/news/grade-point/wp/2017/04/26/milos-appearance-at-berkeley-led-to-riots-he-vows-to-return-this-fall-for-a-week-long-free-speech-event/?utm\\_term=.4bd9e03d497c](https://www.washingtonpost.com/news/grade-point/wp/2017/04/26/milos-appearance-at-berkeley-led-to-riots-he-vows-to-return-this-fall-for-a-week-long-free-speech-event/?utm_term=.4bd9e03d497c).

<sup>115</sup> Charlie May, “The fall of Milo: Breitbart’s former star is now hawking supplements on Infowars,” *Salon*, February 21, 2018, <https://www.salon.com/2018/02/21/the-fall-of-milo-breitbart-s-former-star-is-now-hawking-supplements-on-infowars/>.

meteoric rise was propelled at least in part by methodically weaponizing a perception that has gained impressive traction in the wake of the culture wars: that the university campus is where freedom of speech goes to die.<sup>116</sup> Likewise, Coulter has consistently portrayed campuses as breeding grounds for extremism and the origins of sociocultural tumult, especially at Berkeley, where the “‘Free Speech’ movement kicked off the campus riots in 1964.”<sup>117</sup> For example, in her book released the year after the University of Ottawa debacle, she writes: “The closest this country has been to the violent mobs of the French Revolution was the upheaval of the anti-war protests and race riots of the late sixties – all led by liberals.”<sup>118</sup>

Regarding the efficacy of deplatforming, the present case points to two primary potential pitfalls. First, it might counterintuitively increase the exposure of harmful ideas. If one believes that mere exposure to Coulter’s speech is enough to potentially cause harm – irrespective of context – the publicity generated as a result of the cancellation inordinately multiplied Coulter’s reach in Canada. Therefore, one approach to harm reduction might be an effort to limit the total number of individuals exposed to Coulter, and particularly those who might be immediately harmed (based on their identity) or those who are the ‘unconverted,’ so to speak. The outcry precipitated by these events might also suggest that Canadians have a reflexive sympathy for those who have had their speech suppressed, irrespective of the content of their speech. Coulter and Levant are undoubtedly media savvy and were only too willing to take advantage of this

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<sup>116</sup> Ryan Holiday. “I Helped Create the Milo Trolling Playbook. You Should Stop Playing Right Into It.” *Observer*. February 7, 2017. <https://observer.com/2017/02/i-helped-create-the-milo-trolling-playbook-you-should-stop-playing-right-into-it/>.

<sup>117</sup> Ann Coulter, *Demonic: How the Liberal Mob is Endangering America* (New York: Crown Forum, 2011), 158.

<sup>118</sup> *Ibid*, 157.

sympathy in order to generate some incredible media coverage. Of course, this is why attempting to speak on campus is such a potent political strategy for ‘controversy entrepreneurs’ like them.<sup>119</sup> If successful, gaining a platform within a university might provide some symbolic legitimacy because of the associated esteem of the institution. Even if a speaker is not strictly an academic, speaking on campus still connotes legitimacy because it is assumed that access is not extended to just anyone who manages to book a lecture hall. If unsuccessful, denial of a platform can be a vehicle for media exposure, public sympathy, and a chance to portray political opponents in an unsavoury light. Given this dynamic, it is possible that minimizing potential controversy and any associated publicity is a potent counter-response, particularly if and when a speaker’s explicit strategy is to elicit them. This minimization might preclude explicit protest but it need not be a tacit acceptance of potentially harmful speakers. There are potential alternatives that can simultaneously cultivate an environment of support for those who are likely to be negatively affected *and* grapple with the nuances of a non-ideal strategic environment.<sup>120</sup>

Based on my interviews, protest organizers were not unaware of this dynamic, but were instead hoping that rebuking Coulter would have a performative or declaratory effect. According to the former SFUO executive, the biggest discussion that took place among organizers was whether or not Coulter would ‘win’ if the event were shut

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<sup>119</sup> Frederick Schauer, “The Hostile Audience Revisited,” In *The Perilous Public Square: Structural Threats to Free Expression Today*, edited by David E. Pozen, pp. 65-83 (New York: Columbia University Press, 2020).

<sup>120</sup> For a more contemporary and thoughtful discussion of this strategic environment, see: Shannon Dea, “Free speech and the battle for the university,” *Academic Matters*, Fall 2018, <https://academicmatters.ca/free-speech-and-the-battle-for-the-university/>.



down.<sup>121</sup> However, there was a notable divergence among organizers and protestors (as mentioned), and a lack of an explicit protest strategy arguably tended towards a more uncompromising approach in practice. Although one organizer was at the time happy that the protest might have led directly to the decision to cancel the event, they now question whether or not the cancellation may have been a contrived opportunity to generate controversy.<sup>122</sup> In the moment, though, organizers experienced a “general sense of victory” despite not being able to properly convey that it was Coulter who ultimately cancelled the event.<sup>123</sup> However, it is hard to reconcile this optimism with an overwhelmingly (and perhaps predictable) negative media portrayal.<sup>124</sup>

Second, and more significantly, deplatforming risks providing unearned moral and intellectual legitimacy. This strategic dynamic was particularly evident in the Coulter case because of her already existing profile and reach, but also because there are longstanding critiques of contemporary university campuses that further amplified her claims.<sup>125</sup> In this latter sense, then, she was hypothesis testing by potentially appearing on campus. Essentially, there is a popular perception that universities are an inhospitable place for conservatives and her inability to speak merely confirmed this perception. This particular strategy on the part of Coulter is not surprising. More compelling, however, is the degree to which Coulter and others have done two simultaneous but largely

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<sup>121</sup> The strategy that was settled on, at least at the SFUO level, was to be “a bit obnoxious” in the event itself, to make the opposition “clear,” but not to obstruct to a level that would allow Coulter to become a martyr in the public eye. Personal Interview, October 25, 2018.

<sup>122</sup> In their words: “If they could come up with a somewhat sensationalized explanation as to why it was cancelled and if they have a monopoly over mainstream media airspace in order to shape the narrative of why it was cancelled and demonize protestors in the process, then it may also have been cancelled for opportunistic purposes.” Personal Interview, December 11, 2018.

<sup>123</sup> Personal Interview, October 25, 2018.

<sup>124</sup> Jerema, “Ann Coulter: Canadian free speech hero.”

<sup>125</sup> See, for example: Joe Friesen, “Conservatives’ on-campus flyers maligning ‘left-wing’ professors anger academics, faculty representatives,” *The Globe and Mail*, September 12, 2019, <https://www.theglobeandmail.com/canada/article-conservatives-on-campus-flyers-maligning-left-wing-professors-anger/>.

irreconcilable things: systematically devaluing the virtue of victimhood while portraying *yourself* as a virtuous victim. In the inevitable stream of Coulter's post-cancellation media engagements and subsequent news and opinion pieces, Coulter was given ample space to portray herself as a victim and contemporary university campuses as intolerant. For example, in response to the letter from Houle, Coulter claimed that "he is guilty of promoting hatred against an identifiable group: conservatives."<sup>126</sup> This accords with some of her previous writing and public statements. Tellingly, her book from 2008 begins with this line: "Liberals always have to be the victims, particularly when they are oppressing others."<sup>127</sup>

But how does someone who is clearly *not* a marginal individual by any means claim to be a victim and garner an impressive amount of coverage and sympathy? At least part of this puzzle is the degree to which liberal democratic societies generate a reflexive sympathy for those who might have their speech suppressed, irrespective of its content. Additionally, the media has an innate stake in freedom of speech as a principle and might therefore have a predilection for portraying the issue in more categorical terms. But the response to Coulter's deplatforming might also be read more symptomatically to highlight the ways in which Coulter's claims can be understood as a deliberate obfuscation of victimhood in order to garner political capital. Alyson M. Cole refers to this phenomenon as an "inversion" that "nurtur[es] a general hostility to all claims of victimization, while at the same time elevating an impossibly pure archetype of True

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<sup>126</sup> Pearson, "Host U of O draws ire of U.S. firebrand."

<sup>127</sup> Ann Coulter, *Guilty: Liberal "Victims" and Their Assault on America* (New York, NY: Crown Forum, 2008), 1.

Victimhood.”<sup>128</sup> While this might seem rational or strategic from Coulter’s perspective as a consistent pundit on the front lines of the culture wars, it is still striking in its irony:

[A]s the Left desperately struggles to disengage from ‘victim politics,’ the Right jockeys to carve out a space within it. While conservative critics deem victimism to be a pervasive threat and call to restrain victims, they nevertheless become in effect practitioners of victim politics by devising and promoting new groups of victims.<sup>129</sup>

Despite Cole diagnosing this dynamic in contemporary American politics more broadly, she curiously notes that the university campus looms large in the discourses that invert victimhood.<sup>130</sup> Thus, one might add conservatives on campus to this list of new victims.

In a similar tone, Rebecca Stringer argues that contemporary politics has been marked by a collective eschewal of the identity category of ‘victim,’ a move intimately tied to notions of self-sufficiency that form the core of neoliberal discourse and politics.<sup>131</sup> For her, this represents not the disappearance of the category of victim but its *reversal*, by altering “the perception of who can and cannot be seen as a real and legitimate victim.”<sup>132</sup> This is a fitting description of Coulter’s claims, as she so clearly ‘mirrored’ the discourse of her detractors, hoping to shore up her own legitimacy as a potential victim while portraying them as serious threats to the vitality of campus (and even society).<sup>133</sup> The point, then, is that deplatforming might have a counterintuitive effect for reasons completely detached from the moral concern one has for those most negatively affected by speech. It risks the potential of solidifying already existing

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<sup>128</sup> Alyson M. Cole, *The Cult of True Victimhood: From the War on Welfare to the War on Terror* (Stanford, CA: Stanford University Press, 2007), 22.

<sup>129</sup> *Ibid.*, 4.

<sup>130</sup> *Ibid.*, 24.

<sup>131</sup> Rebecca Stringer, *Knowing Victims: Feminism, Agency and Victim Politics in Neoliberal Times* (New York, NY: Routledge, 2014), 8.

<sup>132</sup> *Ibid.*, 11.

<sup>133</sup> *Ibid.*, 38.

perceptions on two fronts: that well-intentioned and legitimate invocations of victimhood on campus are merely cynical power plays, and that supposed violations of freedom of speech are a more fundamental threat to a liberal democratic society (rather than harmful speech itself).

This places protestors in an unsavory double bind. Not confronting harmful speech might broadcast to the community the message that members of marginalized groups can be impugned with impunity. It might also demonstrate that the institution prioritizes a commitment to abstract principles like freedom of speech even if disproportionate material harm is a potential result. Confronting harmful speech with protest, though, might reinforce stereotypes about campus communities and amplify speech that ought to be mitigated. Although it is beyond the scope of this chapter to offer specific prescriptions, the present data and analysis suggests that there is a noticeable disjuncture between the theory of deplatforming and the practice of deplatforming. Whereas the former may be informed by sound theoretical and philosophical justifications, the latter is prone to unintended consequences. Therefore, deplatforming may not be as effective as is typically assumed. This is particularly the case when its targets are within the liminal space discussed earlier – one between merely offensive speech and potentially illegal speech – but it is likely that the tactic becomes more effective the closer a speaker is towards the latter end of that spectrum. In any case, considering these unintended consequences, deplatforming is a tactic that should not be expected to tend towards its intended effect in the absence of extremity (i.e. *prima facie* violations of law).

Although deplatforming has been a relatively frequent occurrence on university campuses since at least the 1960s, the practice and its associated justifications have become the focus of much contemporary debate.<sup>134</sup> Rather than assessing its legitimacy primarily based upon theoretical and philosophical justifications, I think practical considerations ought to be equally considered and weighed. Perhaps a more fruitful measure of deplatforming's effectiveness, then, is the degree to which it isolates and/or reduces support for *ideas*, rather than the degree to which it isolates and/or reduces support for *individuals*.<sup>135</sup> Importantly, while harmful individuals may be denied a platform in a particular instance, their harmful ideas are still free to circulate. This strategic calculation necessarily includes thinking through any potential unintended consequences and making difficult strategic decisions in a non-ideal environment. Ultimately, decision-making that includes these practical and strategic considerations would be beneficial on multiple fronts: reducing exposure to harmful ideas and hopefully mitigating harm itself, conserving the time and resources of university administrations that are often ill equipped to weather such controversies, and attenuating the popular misconception that universities are somehow destroying freedom of speech.

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<sup>134</sup> Interestingly, the former SFUO executive claimed that “we [organizers] didn’t have that word, ‘deplatform’,” at the time of the protest. At the least, it hadn’t yet fully entered the lexicon of contemporary political contestation. Personal Interview, October 25, 2018.

<sup>135</sup> Sometimes there is an overestimation of the effectiveness of deplatforming associated with this conflation. See, for example: Zack Beauchamp, “Milo Yiannopoulos’s collapse shows that no-platforming can work,” *Vox*, December 5, 2018, <https://www.vox.com/policy-and-politics/2018/12/5/18125507/milo-yiannopoulos-debt-no-platform>. Taylor Link, “Milo Yiannopoulos attacks his fans for failing to support him emotionally and financially,” *Salon*, August 26, 2018, <https://www.salon.com/2018/08/26/milo-yiannopoulos-attacks-his-fans-for-failing-to-support-him-emotionally-and-financially/>. Shree Paradkar, “Giving Maxime Bernier a platform legitimizes his dangerous ideas,” *The Toronto Star*, September 25, 2019, <https://www.thestar.com/opinion/star-columnists/2019/09/25/giving-maxime-bernier-a-platform-legitimizes-his-dangerous-ideas.html>.

## CHAPTER 4

### 4.1. “Free Expression and the ‘Campus Crisis Feedback Loop:’ How the Chicago Principles Came to Canada”

*Venue: American Review of Canadian Studies (Under Review)*

Abstract: Similar to the United States, Canada has recently experienced heightened concerns related to free expression on university campuses. In response, two majority Conservative provincial governments issued ministerial directives (Ontario in 2018 and Alberta in 2019) based on the Chicago Principles, compelling their post-secondary institutions to create explicit policy statements. Rather than evaluating empirical support for a campus ‘crisis,’ this article instead presents an analytical framework for understanding the emergence of the ministerial directives. I argue that the successful California gubernatorial campaigning of Ronald Reagan created a ‘campus crisis feedback loop,’ one that includes the mutually reinforcing phenomena of campus unrest, sensationalistic news coverage, overwhelmingly negative public opinion, and partisan opportunities to channel negative public opinion.

The feedback loop subsequently became a pillar of conservative political messaging in the United States. This article’s comparative and historical analysis demonstrates that while both countries experienced campus unrest, particularly during the 1960s, Canada has not traditionally responded with government intervention. Thus, the importation of the Chicago Principles led to a final closing of the feedback loop in Canada. The article then provides a brief chronology of two pivotal campus controversies: the Jordan Peterson and Lindsay Shepherd affairs. They made unprecedented government intervention more palatable, by generating intense scrutiny and criticism of university campuses, bolstering the idea of a campus ‘crisis,’ and creating a more receptive public climate for conservative messaging on higher education.

Lastly, the article presents an anatomy of the ministerial directive in Alberta. I argue that its ineffectiveness is a result of flawed policy development and implementation, demonstrating that its intended effect was shaping public attitudes in a way that sustains conservative messaging and significantly borrows from American discourse and politics. The policy analysis includes an interview with the relevant Minister and internal documents gleaned from an access to information request.

## 4.2. Introduction

Although concerns about the state of free expression on campus have been a consistent theme of conservative discourse and politics for decades, the issue swiftly moved from opinion editorials to official government policy following the election of majority conservative provincial governments in Alberta (2019) and Ontario (2018). Both Doug Ford's Progressive Conservatives (PC) and Jason Kenney's United Conservative Party (UCP) issued ministerial directives compelling all post-secondary institutions in their respective provinces to develop explicit policy statements (Giovannetti and Hauen, 2018; Graney, 2019a). The cadence of campus controversy can easily create the (mis)perception that free expression is threatened on campus, but closer inspection reveals that the alleged crisis is a manifestation of potent political messaging that first emerged in the United States in the 1960s. Since then, Canadian conservative parties have taken advantage of shifting public attitudes in response to widely reported campus controversies, both of which mirror historical developments south of the border.

The most obvious sign that the alleged crisis reflects influences from the south is the fact that the ministries responsible for higher education in Alberta and Ontario used a framework for their policies that originated at the University of Chicago in 2014. The 'Chicago Principles,' as they are colloquially known, have generated much debate in the United States (Ben-Porath, 2018; Poliakoff, 2018). Although originally proprietary to the University of Chicago, they eventually morphed into a more generalized policy template backed by a nationwide campaign for their adoption. When the Chicago Principles came to Canada, they morphed again, from a voluntary potential policy framework into a compelled government directive (Cameron, 2020). Curiously, despite their limited

relevance in a Canadian legal context (Moon, 2018), their imposition aroused relatively little concerted resistance. ‘Copycat’ law and policy frameworks are obviously attractive for their simplicity and expedience, but they are also problematic because they ignore the particularities of different institutional contexts and legal jurisdictions, in addition to potentially dispersing policies that do not yet have the benefit of comparative and longitudinal study (PEN America, 2019, 87).

Based on the available evidence, it is clear that the ministerial directives in Alberta and Ontario are more symbol than substance (D’Orazio, 2020; Newman, 2020; Turk, 2020). Consequently, the directives are unlikely to have a tangible impact in strengthening expressive protections on campus. Rather than focusing on policy efficacy, this article instead presents an analytical framework for understanding the emergence of the ministerial directives, one that highlights the historical continuity of exploiting campus unrest for partisan opportunity. A fitting place to begin is situating these policy initiatives in the broader historical context of campus unrest and political intervention since the 1960s, an era when campuses across North America experienced both significant disruptions and increased societal prominence.

While government intervention like the ministerial directives is unprecedented in Canada (CAUT, 2018), the United States has a long history of government intervention in response to campus unrest. The most relevant historical antecedent is the Free Speech Movement at the University of California at Berkeley (1964-1965), a prime example of the sociocultural tumult of the 1960s as experienced on American campuses. Future President Ronald Reagan’s immensely successful use of campus unrest in his California gubernatorial campaigning (1967) created what I call a ‘campus crisis feedback loop,’



one that includes the mutually reinforcing phenomena of campus unrest, sensationalistic news coverage, overwhelmingly negative public opinion, and partisan opportunities to channel negative public opinion. I present a brief historical comparison between the United States and Canada to demonstrate that the provincial ministerial directives and importation of the Chicago Principles heralded a final closing of the feedback loop in the latter. In sum, I argue that the ministerial directives ought to be understood in their proper historical context: a reliable feedback loop that has reliably paid partisan dividends throughout the past half-century and substantially borrows from American conservative electoral strategy.

I then turn to two campus controversies that made the closing of the feedback loop possible in Canada: the Jordan Peterson and Lindsay Shepherd affairs. Together, they would generate international headlines and intense scrutiny of university campuses. I provide a chronology of these affairs and demonstrate how they bolstered the idea of a campus ‘crisis.’ With a relatively more receptive public climate, free expression gradually became both an explicit feature of conservative electoral strategy and eventually a target of public policy. Lastly, I provide an anatomy of the ministerial directive from the Alberta Ministry of Advanced Education.<sup>136</sup> Using FOIP data obtained from the Ministry and an interview with its Minister, Demetrios Nicolaides, I reveal how the ministerial directive was based on scant to non-existent research and consultation, standing in stark contrast to the purportedly ‘consultative’ process informed by a ‘gold standard’ policy framework. This new data provides the most concrete evidence yet that provincial public policy in response to the alleged campus ‘crisis’ primarily reflects

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<sup>136</sup> Attempts to obtain similar data from Ontario were unsuccessful. Likewise, similar requests for interviews were declined from relevant officials in Ontario.

conservative electoral strategy, as opposed to a principled commitment to increase free expression on campus based upon robust research and consultation.

#### **4.3. The Origins of the Campus Crisis Feedback Loop**

Because free and open inquiry is *constitutive* of the university as an institution (MacKinnon, 2018, 37; Whittington, 2018, 29), it is perhaps natural that it has been the site of countless battles over free expression. Expressive restrictions are rightly considered antithetical (Newman, 1996; Kant, 1992), but this institutional reflex has only been sustained through a constant struggle against those that would otherwise constrain or erode it. Because of the extraordinary autonomy and independence required for universities to do justice to their unique mission, challenges to free and open inquiry are often proprietary to the institution. Explicit external intervention (i.e. government) is thus rare, and especially so in Canada. There are, however, some important historical antecedents that can both shed light on contemporary developments and help build an analytical framework for understanding the emergence of the unprecedented provincial ministerial directives. A look at this history – beginning with the 1960s<sup>137</sup> – shows that campus unrest was the initial catalyst for a reliable feedback loop that would eventually prompt explicit government intervention across the United States. Further, the campus unrest of the 1960s and political responses to it helped to lay the groundwork for contemporary conservative political messaging on higher education across North America.

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<sup>137</sup> This is not to say that relevant history begins here. Of course, the McCarthy era similarly constituted an incredible challenge to free expression on campus. The 1960s, however, heralded a more strategic and refined electoral strategy of targeting campus unrest. For an introduction to the politics of higher education during the McCarthy era, see: Ellen W. Schrecker. 1986. *No Ivory Tower: McCarthyism & the Universities*. New York: Oxford University Press.

An exemplar of student movements that both fomented campus unrest and led to the expansion of free expression is the Free Speech Movement (FSM) at Berkeley (Perlstein, 2014, 82). Uniquely influential for its time, the FSM “shattered the serenity of the University of California” and encapsulated the broader sociocultural tumult of the 1960s. It began in earnest when some student activists had returned to campus after volunteering in the Freedom Summer of 1964 and were incensed that the Berkeley administration forbade political advocacy on campus (Lipset and Wolin, 1965). At the time, ‘political neutrality’ rules confined potential advocacy to the two major American political parties. FSM supporters rallied against the Berkeley administration when it attempted to shut down a relatively small part of the campus dubbed the ‘Bancroft strip,’ a space that typically featured a throng of student outreach and advocacy, and was allegedly in violation of the political neutrality rules (Cohen, 2009, 81). Subsequent protests and sit-ins attracted thousand of students, eventually led to the administration relenting, and galvanized student movements across the country and around the world (Mercer, 2019).

The twin moral impetuses for student protestors at the time – the Civil Rights Movement and Vietnam War – converted idyllic campuses into political battlegrounds, sometimes quite literally as in the cases of Columbia University in 1968 (Schuessler, 2018), Berkeley in 1969 (Bingham, 2019), and Kent State in 1970 (Law, 2019). Campus unrest dominated news headlines of that decade, largely featuring unflattering coverage. It tended to highlight “the most sensational aspects” of student protest when not “overtly hostile” (Schrecker, 2010, 91). By hewing an editorial line close to defensive university administrations and portraying the campus as beset by radicals run amok, newspaper

coverage solidified a negative perception of campus culture and arguably eroded these institutions' legitimacy in the public eye. In the case of the FSM, specifically, coverage would routinely include explicit redbaiting, casting aspersions on the group based on the (imputed) ideological sympathies of some of its organizers and devotees (Cohen, 2009, 130-131).

Unsurprisingly, public opinion during the Cold War era was not sympathetic to the incubation of social movements that were then (and arguably still are) considered subversive. The vast majority of Californians, for example, were vociferously opposed to the FSM and their protest tactics. Polling in California at that time revealed that 92% of adults in the state had "heard or read something about the demonstrations," and a majority (55%) disapproved strongly with a 74% overall disapproval rate (Field, 1965, 199-200). According to historian, Ellen Schrecker:

Ninety-eight percent of the 186,000 messages that poured in to California's educational authorities in response to the Free Speech Movement... opposed the student activists. In November 1968, the state's voters overwhelmingly rejected a large bond issue for the California state colleges. And by the spring of 1969, the Gallup Poll was reporting that 82 percent of its respondents wanted to expel campus militants, while 84 percent supported withdrawing their federal student loans. Three years later, according to the same poll, 'campus unrest' still registered as the single most important issue confronting the nation (2010, 92).

Politicians were eager to capitalize on the opportunity, portraying the campus as a breeding ground for radical politics and thus a harbinger of instability. Ronald Reagan would secure the governorship of California in 1967 in part by promising to "clean up the mess at Berkeley" (Kahn, 2004), effectively "transform[ing] the attack on the academic community into a winning political formula" (Schrecker, 2010, 92-93). Reagan imbibed the sense that something was amiss in experiencing the palpable concern among

Californians and “[e]xcoriating student protest came naturally to him” (Perlstein, 2014, 83). In his words, “this was the number one thing on the people’s mind,” so he effectively tapped into a Californian public that thought that Berkeley administrators were too tolerant of campus unrest, including then President Clark Kerr (Rosenfeld, 2013, 300). As historian Rick Perlstein explains, Reagan “provid[ed] a political outlet for all the outrages – outrages that, until he came along, hadn’t seemed like political issues at all” (Perlstein, 2008, 75).

Ignoring the advice of sage consultants who were keen to avoid a perception of him as anti-intellectual (as a result of his Hollywood roots), Reagan instead “owned” the issue when it became apparent that it struck a cord with the average Californian voter (Perlstein, 2014, 82). He was motivated by an intuitive understanding that the events at Berkeley would be interpreted through a lens of “class resentment” that understood students as entitled and arrogant, even among potential voters outside the Republican Party base (Perlstein, 2014, 83). In the speech that officially launched Reagan’s gubernatorial bid, he asked:

Will we allow a great university to be brought to its knees by a noisy dissident minority? Will we meet their neurotic vulgarities with vacillation and weakness or will we tell those entrusted with administering the university we expect them to enforce a code based on decency, common sense, and dedication to the high and noble purpose of that university (Rosenfeld, 2013, 302)?

In Reagan’s now infamous ‘morality gap’ speech in the run up to the election, he declared: “A small minority of beatniks, radicals and filthy speech advocates have brought shame on a great university” (Bay Area Television Archive, N.D.). The response was raucous. Reagan would continue to keep Berkeley in his crosshairs, and it soon

became both a rallying cry of his base and a staple of his campaign and public speeches (Perlstein, 2008, 83). Eventually this morphed into an explicit call for a formal inquiry into Berkeley's handling of the unrest (Turner, 1966). Notably, the incumbent, Pat Brown, was the subject of much criticism for not doing more to tame campus unrest in California. Reagan's promise to implement a new status quo akin to 'obey the rules or get out' was thus key to his "stunning upset victory" in 1967 (Perlstein, 2014, 88).

Although Reagan's legislative agenda was more modest than what was reasonably expected – based on his strident criticisms on the campaign trail and then in the Governor's office – he did shift the governance of the higher education to favour his agenda (Turner, 1969). Notably, the Governor's office itself was inserted into university domains that naturally led to concerns about institutional autonomy, including surveilling the political activities of students and professors and vetting potential faculty hires (Rosenfeld, 2013, 379). But the major lever at his disposal was state budgeting for the state university system (and his state legislature veto power) (Hill, 1967; Davies, 1968). Shortly after his election, Reagan's initial plan to simultaneously cut the state's higher education budget by 10% and impose tuition fees was made public (Rosenfeld, 2013, 369). In response to the leaked news, UC Berkeley quickly froze admissions until more details were forthcoming, and the friction between Reagan and Kerr became palpable (Hechinger, 1967). Cuts did happen, but they were more modest than Reagan's original intention (Kahn, 2004). Still, critics argued that even relatively modest budget cuts would hinder the accessibility of quality education in the state, particularly at a time when enrolments were rising and campus was an integral component of economic competitiveness.

With a shift in the balance of power on the Board of Regents clearly in Reagan's favour, President Kerr was dismissed a mere three weeks into Reagan's tenure as Governor (Davies, 1967). Other changes included removing the ultimate authority of chancellors for faculty appointments and imposing tuition fees, which had been non-existent in the University of California system until then (Perlstein, 2014, 88). By the end of the decade, Reagan and the University of California were "engaged in open warfare" (Roberts, 1969a). Students reportedly hung an effigy of Reagan on the Berkeley campus, adorned with a sign that read 'REDUCE REAGAN BY 10%,' referring to the budget cuts (Perlstein, 2014, 84). In 1968, Reagan's campus visit prompted chants of 'fuck Reagan' from student protestors, to which he responded with a middle finger (Perlstein, 2014, 89).

Reagan's use of the Berkeley campus as a political prop is an important historical precursor for the alleged campus crisis in the contemporary moment, but more important is the way this successful strategy was imbibed by others wanting to similarly build their partisan capital. The United States was undergoing massive sociocultural changes at the time, reckoning with its legacy of racism at home while encountering limits to its power abroad. A bemoaning of the alleged moral degeneracy and questioning of traditional forms of authority on campus conveniently fit into the broader ideological orientation of the Reagan revolution. The California public's enthusiastic response to Reagan's messaging reflected their "considerable opposition to the race riots and to the notion of Berkeley as a den of moral delinquents and intellectual carpetbaggers" (Reston, 1966).

Polling before Reagan's victory indicated that the most pressing issues in the minds of voters were 'crime, drugs, and juvenile delinquency' and that 45% of Californians thought Reagan was most appropriate candidate to address them (Perlstein,

2008, 92). The potency of Reagan's messaging was, then, premised on "reduc[ing] the complex and unsettling changes sweeping America to the ostensibly simple matter of giving those ungrateful college kids and egghead administrators a little old-fashioned discipline" (Rosenfeld, 2013, 359). Reagan's consistent messaging was also a way to garner impressive media coverage, considering the latter was already fixated on the nation's campuses. This strategy "made him a national political star," with campus unrest becoming the focus of discussion for many of his television appearances between 1967 and 1970 (Perlstein, 2014, 88).

When campus unrest inevitably spread elsewhere, "other politicians recognized the political dividends involved in attacking radical students and professors" (Schrecker, 2010, 93). For example, in President Nixon's infamous speech on April 30, 1970 announcing the American military incursion into Cambodia, he articulated campus unrest as an expression of global instability (and an obvious target of his 'law and order' agenda and messaging):

My fellow Americans, we live in an age of anarchy, both abroad and at home. We see mindless attacks on all the great institutions which have been created by free civilizations in the last 500 years. Even here in the United States, great universities are being systematically destroyed. Small nations all over the world find themselves under attack from within and from without (New York Times, 1970).

When earlier speaking of similar student-led disruptions at Columbia University in 1968 (Cronin, 2018), Nixon said that the campus unrest there was "the first major skirmish in a revolutionary struggle to seize the universities of this country and transform them into sanctuaries for radicals and vehicles for revolutionary political and social goals" (Perlstein, 2008, 265). Although ideological coherence was not a



particularly strong feature of Nixon's messaging, one stance remained impressively consistent: "that calls for intellectual freedom were how the holier-than-thou covered up a will to subversion" (Perlstein, 2008, 68). Nixon's messaging was thus a continuation of earlier redbaiting and overlapped seamlessly with Reagan's tough tone. His response to a Rutgers University history professor, Eugene Genovese, an avowed Marxist that made allegedly controversial statements about American involvement in Vietnam, was just one such glaring example (Nixon, 1966).

While much of the chorus of criticism directed at campus was clearly designed to satiate potential voters, state legislators eventually began introducing bills that were aimed at physically taming campus unrest, and sometimes they explicitly invoked their control of higher education budgets. Over 70 bills of this kind were introduced in California alone (Schrecker, 2010, 94). Despite them constituting an unprecedented attack on institutional autonomy, a relatively greater problem was that they were *popular*. Democratic Party leaders in California, for example, anguished over this fact and their potential response to Reagan's hardline approach, given that the latter was "obviously popular" with the electorate and a "political coup" for the former (Roberts, 1969b). Polling at the end of the decade indicates that 57% of Californians thought "professors who advocate 'controversial ideas' have 'no place' on state-supported campuses" (Roberts, 1969a).

#### **4.4. Campus Criticism in Conservative Discourse and Politics after the 1960s**

The key takeaways from this historical antecedent are twofold. First, as a result of the sociocultural upheaval of the 1960s and the dramatic way it played out on campus, the

latter quickly became synonymous with the specter of youthful protest in the popular imagination. The association was bolstered by the fact that these protest movements erupted precisely at a time when higher education was developing both greater societal esteem and relevance (Ladd and Lipset, 1975, 1). The political stakes are perhaps higher in the contemporary moment, because there is an explicit recognition that universities play a crucial role in social reproduction. They incubate future leaders and are a litmus test for ideas that may one day become dominant. Thus, critiques of campus unrest are often a proxy for anxieties about sociocultural changes and what happens on campus is seen as relevant for politics in general.

Second, and as a direct result of the first, overwhelmingly negative reactions to the FSM and other campus protest movements (in media and public opinion) were ripe for partisan opportunities. Even in the mostly ‘liberal’ academy, impressive polling across the professoriate in the 1970s found responses to campus unrest that “can only be described as ambivalent” (Ladd and Lipset, 1975, 203). Professors who might have supported the free expression of students to protest on campus were alienated when tactics became increasingly disruptive to the basic functions of the institution. One can therefore understand how Reagan’s messaging on Berkeley paid dividends and was an essential pillar in the launch of his political career. While an argument could be made that Reagan harboured a principled commitment to ‘cleaning up the mess at Berkeley,’ it is impossible to ignore the calculated partisan capital associated with this messaging. Although the 1960s were an extraordinary time that might frustrate direct (and potentially clumsy) historical analogies, it is clear that Reagan’s messaging would both build upon previous campus critiques and sharpen them in response to contemporary events. In sum,

Reagan solidified a form of scepticism of higher education in American public discourse and especially mainstream conservative politics.

An early pioneer of the latter was William F. Buckley Jr., one of the most influential American public intellectuals of the 20<sup>th</sup> century. Looking back, his now classic *God & Man at Yale* (1951) was prophetic and helped to lay the ideological groundwork for the Reagan revolution (Fastenberg, 2011). Although Buckley's treatise initially received an ambivalent response, the allegedly liberal and secular indoctrination he bore at Yale University foretold the contemporary discourse of an inhospitable environment for conservatives on campus (Shields and Dunn, 2016). Allan Bloom's runaway bestseller, *The Closing of the American Mind*, seriously raised the bar for these critiques in 1987, and there has been a steady stream of similar conservative polemic since (Bawer, 2012; D'Souza, 1991; Kimball, 1990; MacDonald, 2018; Murray, 2019; Scruton, 2015; Shapiro, 2010; Sowell, 2009). The frequency and effectiveness of these claims confirms that campus critique has become a reliable thread of conservative politics and discourse.

In addition, there is an entire network of self-styled campus 'watchdog' organizations that routinely surveil faculty and student groups in order to generate negative media coverage, alter public perceptions, and sometimes directly advocate for intervention (i.e. the dismissal of professors and disciplining of students). Most have reliably conservative and libertarian leanings, like Campus Reform (Tapper, 2020; Schmidt, 2015), Turning Point USA (Mele, 2016), and Young America's Foundation (Cooley, 2017), while others are mostly focused on criticism of Israel on campus, like Campus Watch (McNeil, 2002; Mearsheimer, 2015, 325) and Canary Mission (Nathan-

Kazis, 2018). In a separate category are some non-partisan organizations that research, lobby, and educate in the area of free expression on campus but do not necessarily conceptualize campus as an explicitly partisan battlefield, like Heterodox Academy (Belkin, 2017; Friedersdorf, 2018a) and the Foundation for Individual Rights in Education (FIRE) (Capuzzi Simon, 2016).

Recent campus controversies have provided ample fodder for these longstanding critiques and watchdog organizations. The Milo Yiannopolous riot at Berkeley (Fuller, 2017), Charles Murray's violent deplatforming at Middlebury (Saul, 2017), and terse exchanges between students and faculty members that went viral at Yale (Friedersdorf, 2015) and Evergreen State (Hartocollis, 2017) are just a few examples of such incidences in the past half decade. President Donald Trump responded directly to the Berkeley riot by tweeting his disapproval, suggesting that universities that did not provide platforms for speakers could have their federal funding jeopardized (Svrluga, 2019). This prefaced an executive order that came two years later, one that vaguely resembles the ministerial directives north of the border (Thomason, 2019). Across the United States, state legislatures have introduced bills with campus expression as their target. As PEN America notes, many of these policies exceed the Chicago Principles and, while containing some meritorious elements, features others that might counterintuitively jeopardize free expression on campus (PEN America, 2018, 72-84).

Unsurprisingly, contemporary polling reflects all of these mutually reinforcing phenomena. In 2017, both Pew and Gallop polling revealed a sharp partisan divide in how Americans view contemporary higher education. The former showed that well over half of Republicans (58%) think that colleges and universities are a negative influence in

society (compared to just 19% of Democrats), and the numbers predictably increase among more conservative Republicans (65%) (Fain, 2017; Pew, 2017). The latter showed that 67% of Republicans (and those who lean Republican) have some or very little confidence in higher education (compared to 43% of Democrats and those who lean Democrat), with almost a third (32%) acknowledging their alleged liberal and/or political orientation (Jaschik, 2017; Newport and Busteed, 2017). Irrespective of whether or not these attitudes accurately reflect the campus experience, these numbers present a strong impetus for politicians, especially conservative ones, to continue to echo critiques alleging that universities have been captured by progressives who constitute an inhospitable environment for those with whom they disagree.

#### **4.5. An Incomplete Feedback Loop: Comparing Campus Unrest in Canada**

Although the aforementioned history and context is distinctly American, Canada has also experienced its fair share of campus unrest. Despite this, an historical comparison reveals that the campus crisis feedback loop has been both less acute and incomplete, the latter due to a lack of government intervention. The importation of the Chicago Principles in the form of the two provincial ministerial directives heralded a more explicit closing of the loop, the result of conservative politicians taking advantage of contemporary campus controversies and a relatively more receptive public climate for intervention.

In Canada, the significant sociocultural tumult of the 1960s included “a revolution in postsecondary education” (Lexier, 2012, 82). As new institutions opened, higher education gradually ceased to be the sole province of the elite, and student populations increased exponentially. Likewise, an equally impressive student movement began a

tradition of associating university campuses with the spectre of youthful protest in the public imagination. The ‘New Left,’ for example, was very much a campus phenomenon, deeply influenced by radical theory and philosophy of the day (Clément, 2016, 93).

Campus unrest elsewhere, like the student upheavals in New York and Paris, for example, made headlines across Canada (Palmer, 2009, 204). Unsurprisingly, then, when former University of California President, Clark Kerr, planned to deliver a speech in Toronto, student protestors would cheerfully disrupt it in solidarity with their allies at Berkeley and around the world (Horn, 1998, 320). According to historian Michiel Horn, student activism flourished in the 1960s, as not insignificant numbers of students “demanded that the institutions must become a means of achieving social change” (1998, 318). Events that punctuated that decade both symbolize the mood of the moment and establish a series of important historical antecedents for understanding contemporary events:

From east to west, [Students for a Democratic University] chapters at Canadian universities agitated in 1968-9, their demands paralysing campuses. Libraries were locked down, buildings occupied, faculty clubs invaded by squealing pigs and gas-masked students screaming, ‘Thought police! Thought police!’ Teach ins, boycotts of classes, marches on department chairs, challenges to traditional behaviours and curriculum, and students petitioning for and rallying around a small but significant number of victimized Marxists professors were commonplace (Palmer, 2009, 288).

In Quebec, in particular, the rebelliousness of the 1960s was perhaps most palpable on campus (Igartua, 2012). The closest analogue to the Free Speech Movement in size and scale is the fundamental role of students during the Quiet Revolution, and especially at McGill University, “a centre of agitation” during that era (Palmer, 2009, 287). In 1967, when the McGill administration disciplined some members of the campus

newspaper's staff for publishing what it branded 'obscene libel,' student protestors occupied an administrative building and were eventually evicted by force by Montreal police (Palmer, 2009, 287). The protest in support of free expression would preface an approximately three-year period of constant conflict at McGill, combining the general phenomenon of campus militancy across North America with a nascent Quebec independence movement (McGill Library, N.D.). Reflecting radical student impulses for participatory decision-making, students would stage strikes and occupy campus buildings in a bid for greater representation in campus governance and administration.

In one of the largest student demonstrations in Canadian history, approximately 15,000 students marched to the campus (amid heavy security presence) (Mills, 2010, 139) in March of 1969 to demand "Quebec's quintessential ivory tower" become a French language institution accessible to more Francophones (Palmer, 2009, 353; Mills, 2010, 152). As one of the protest movement leaders and professor Political Science and Economics (who would later be dismissed) (Mills, 2010 149), Stanley Gray, writes: "McGill was a bastion of privilege that proudly insulated itself from the Québec majority" (Gray, 2004). The McGill campus therefore became a proxy for "a city-wide movement of social upheaval" (Mills, 2010, 145). 'Opération McGill français,' as it was dubbed, was greeted with horror in the English press in Quebec, and many of the student radicals were easily conflated with more militant Front de libération du Québec (FLQ) activities when tensions later escalated into violence (and the invocation of martial law).

The disruptions did not go unnoticed in federal politics, with the then Federal Minister of Justice, John Turner, raising the prospect of domestic military intervention (Gray, 2004). Although reactions to the status quo in the province ranged from liberal-

minded reform (Jean Lesage) to radical revolution (the FLQ and affiliates), “Quebec’s university campuses were, by late 1967 [when FLQ bombs ripped through Montreal], judged to be nurseries of radicalism and dangerous ideas” (Palmer, 2009, 347). Opération McGill was a notable convergence of many different social movement milieus, which still remains a crucial moment: when the university, as an institution, became *symbolically* important as an element of the consciousness-raising of a generation. For many of the protestors, McGill “was a symbol of both the privileges of settler colonialism and of the technocratic and inhuman nature of American imperialism” (Mills, 2010, 147). But in a much simpler sense, campus became *politically* significant as a battleground within which different factions could wage new forms of warfare.

Despite much of the leftist campus communities in the province decrying the violent approach of the FLQ, they also formed an important base of support in the province. During the October Crisis, thousands of students (and some professors) from universities and CEGEPs voiced support for the FLQ, voted for strikes, pressured their administrations, and staged occupations (Mills, 2010, 180). The invocation of the War Measures Act at the request of the Quebec government led to a suspension of civil liberties and the eventual arrest of some 500 individuals. The founts of free expression that flowed through campus were summarily stilled and the overwhelming state response would extend across Canada, too. In British Columbia, for example, the RCMP prevented a student newspaper from publishing a professor’s sympathetic take on national liberation and the provincial government’s response included an order-in-council targeting educators who similarly expressed sympathy (Clément, 2008, 74; Mills, 2010, 182). The ensuing October Crisis (1970) punctuated the peak of the student movement in Canada –



the latter would “would all but collapse” in its wake (Mills, 2010, 183) – but there were other important events that preceded it.

Mere blocks away in Montreal, in January of 1969, the most important campus confrontation in Canadian history, the Sir George Williams affair, shone a spotlight on systemic racism within the halls of academia (Shum, 2015). Following a complacent administrative response to accusations of racism at the hands of a biology professor, hundreds of students initiated a sit in at the campus computer centre that would last two weeks. When negotiations between the protestors and administration broke down and word spread that riot police would soon breach the building, students barricaded themselves inside and eventually a fire broke out (its precise source remains unknown). Computer equipment was damaged (and some ejected from the ninth story windows), almost 100 were arrested, police beat some students upon their arrest, and estimated damages exceeded a million dollars. As the students were ejected from the building, some onlookers screamed racial epithets at them (Forsythe, 1971).

According to Rodney John, one of the six Caribbean students who initiated the complaints, “students were portrayed as radicals and troublemakers who were bent on destroying the university” (John, 2019). The overwhelmingly negative responses to John and the other students alleging racial discrimination – from media, public opinion, police, and politicians – were a sobering reminder of anti-Black racism in Canada and also an inspiration for subsequent anti-racist thought and activism. (Austin, 2007; Martel, 2012; Mills, 2010). In particular, the affair provoked the ire of federal politicians who impugned “Caribbean students and the lax immigration laws that allowed them access to Canadian higher education” (Palmer, 2009, 286). Their ire transformed into calls for

more restrictive regulations pertaining to international students. Although such regulations never materialized, it is one of the exceedingly rare examples in which campus unrest led to explicit policy proposals in Canada.

In September of 1969, a strike at Simon Fraser University reflected the tensions of collegial governance when demands for increased autonomy collide with the prerogative of administrators. Student protestors wanted to address the dominance of easily documented industry ties within the university and redistribute institutional power to be more responsive to the community. Previous student occupations had additionally uncovered administrative files showing that the RCMP had dossiers on hundreds of Simon Fraser students. When the Department of Political Science, Sociology, and Anthropology, which housed some major supporters of the student movement, worked around existing regulations by involving students in their tenure and promotion activities, senior administrators objected. In response, a majority of students in the department and eight faculty members commenced a strike, vowing to forego classes altogether. Approximately two weeks later, dismissal proceedings were initiated against eight professors. Despite lengthy appeals processes, the vast majority of the eight were unsuccessful in their attempts to remain in the department. Because of their critical orientation and confrontational approach, some alleged that their dismissal constituted a 'purge' (Horn, 1998, 314). The President at the time, Kenneth Strand, "brought the 1960s to an abrupt halt," telling those who made demands upon the university that: "The society and economy is capitalist and the university serves that system" (Palmer, 2009, 289).

For the most part, student protest movements of this period seemed to have declined as suddenly as they first emerged (Horn, 1998, 321). Thus, something like

legislative or ministerial intervention would have seemed unwarranted, especially since the October Crisis was an abrupt suspension of civil liberties and some administrations embarked upon institutional reform (such as McGill pledging to ameliorate its structural linguistic disparities). Canadian politicians certainly made their views known, however. For example, ex-Prime Minister John Diefenbaker denounced Stanley Gray in the House of Commons in 1968 (Gray, 2004).

Despite its significant wane, the student movement did contribute to some concrete changes on campus. Chief among these were the upending of the paternal role of university administrations, devolving some forms of administrative decision making, increasing student representation in campus governance, creating additional expressive venues for students (like radio stations and newspapers), and diversifying academic canons to better respond to increasingly diverse campus demographics. Here, the demands of Canadian activists coalesced with student movements abroad under a common banner of ‘democratizing’ the institution (Ladd and Lipset, 1975, 35). Up until the 1960s, most students were subject to *in loco parentis* rules and regulations on campus, which severely restricted their freedom (i.e. curfews, dress codes, behavioural guides, etc.). Thus, at the same time that students garnered new expressive venues, they also became a potential threat to others’ free expression on campus.

Predictably, this enlarged sphere of freedom for students led to increased public scrutiny and criticism over time. University administrators were keenly aware that students and faculty using campus as a staging ground for radical politics would gradually have a negative effect on the public’s perception of higher education (Horn, 1998, 324). The occasional campus controversy erupted in subsequent decades. For

example, the 1990s saw often intense debates about the alleged threat ‘political correctness’ posed to free expression, especially on campus (Bercuson, et al., 1997; Berman, 1992; Bromwich, 1992; Dunant, 1994; Emberley, 1996; Gates, et al., 1994; Mitchell and Backhouse, 1995; Richer and Weir, 1995; Prentice, 2000; Prentice and Stalker, 1998; Wilson, 1995). However, despite no shortage of campus unrest, sensationalistic news and opinion, and negative public attitudes (including those of politicians), Canada’s feedback loop has curiously lacked any substantive government intervention in higher education in response.

A limited historical and comparative analysis such as this precludes confident explanations as to why this is the case, but a few explanatory factors are clear and observable. By comparison, Canada notably lacks the same concerted campaign among conservatives to undermine confidence in higher education, even relative to size and scale. The tone of political discourse is markedly more modest, but not for a lack of trying among those who resemble American-flavoured shock and awe punditry.<sup>138</sup> As such, a coterie of conservative columnists routinely echo similar criticisms of campus: intolerant students intoxicated by social justice, (Kay, 2018, 2008b; Murphy, 2016, 2014, 2013; Wente, 2017, 2016), overzealous university leadership (Levant, 2010a, 2010b; Murphy, 2010), a ‘nutty’ professoriate dedicated to progressive indoctrination (Kay, 2013, 2007; O’Neill, 2006), and, more broadly, a slowly dying enterprise of objective and disinterested scholarship (Kay, 2008a). However, until very recently, these criticisms would not be considered an objective basis for public policy. As for watchdogs, Canada has its own self-styled non-partisan research and advocacy organization – the Justice

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<sup>138</sup> Notable exemplars of this genre include: Ann Coulter, Rush Limbaugh, David Horowitz, Ben Shapiro, Milo Yiannopolous, Sean Hannity, Glenn Beck, Dennis Prager, Dinesh D’Souza, Andrew Breitbart (now deceased), Michelle Malkin, and Bill O’Reilly.

Centre for Constitutional Freedoms (JCCF) – although its purported non-partisan credentials can easily be called into question (Newman, 2020, 26; Doherty, 2019). It is perhaps best known for its yearly reports detailing the state of free expression on campuses across Canada, which routinely generate headlines across Canada, particularly in right-leaning publications (Carpay and Kennedy, 2018).

But, again, this spotlight on campus expression has not translated into widespread public concern. Up until the contemporary moment, it seems to have had a negligible effect on policy options aside from the occasional complaint voiced by conservative politicians.<sup>139</sup> Even now, when Canadians are arguably the most receptive to the concept of a campus ‘crisis,’ recent polling from Environics (commissioned by the Canadian Association of University Teachers) indicates that a paltry 25% of Canadians feel as though free expression is threatened on campus (CAUT, 2018). By contrast, a very healthy majority of Canadians (62%) feel as though free expression is secure on campus.

Without a widespread public concern with which to draw upon for political capital, Canadian politicians have had relatively little appetite in making free expression on campus an explicit electoral strategy and/or policy priority. The cadence of campus controversy throughout the past few decades has certainly bolstered claims that something is terribly amiss. However, the idea that the various challenges related to free expression on campus necessarily constitutes a ‘crisis’ (and necessitates government

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<sup>139</sup> By this, I mean policies related specifically to free expression on campus. Concerns about the state of free expression may form a justificatory pillar for other policies, such as the gradual waning of public funding for post-secondary education. An exemplary example of politicians expressing a disdain for higher education is when former Conservative Prime Minister, Stephen Harper, infamously suggested that people not ‘commit sociology’ in attempting to understand recent arrests related to a terrorism case. See: Meagan Fitzpatrick. 2013. “Harper on terror arrests: Not a time for ‘sociology.’” *CBC News*. April 25. <https://www.cbc.ca/news/politics/harper-on-terror-arrests-not-a-time-for-sociology-1.1413502>.

intervention) did not take root until approximately 2016, when campus events intervened to put the wind at the back of conservative campus critics.

#### **4.6. A Receptive Public Climate: The Jordan Peterson and Lindsay Shepherd Affairs**

In just a few years, Jordan Peterson went from a relatively unknown clinical psychologist and professor at the University of Toronto to an international bestseller and cultural phenomenon. Simultaneously beloved and besmirched (Bartlett, 2018; Bowles, 2018; Dunn, 2018; Friedersdorf, 2018b; Maher, 2017; Mishra, 2018; Murphy, 2016; Sanneh, 2018; Schiff, 2018; Southey, 2017; Tabachnick, 2018; Wells, 2019; Wilhelm, 2018; Young, 2018), Peterson is arguably the most famous Canadian academic of all time, all the while enriching himself by appealing to a vast demographic of centrists and non-specialists who crave his easily digestible self-help guidance (Chiose, 2017; Köhler, 2018; Maimann and Green, 2018). Although partially propelled by culture war conflagrations to the south and a spate of deplatforming incidences in Canada and elsewhere (Smith, 2020), it was the Icarus-like rise of Peterson that catalyzed a Canadian version of the alleged campus ‘crisis.’ His crusade would then be followed by a related controversy involving a graduate student at Wilfrid Laurier University, Lindsay Shepherd, who likewise became a hero of conservative campus critics everywhere.

In September of 2016, Peterson uploaded a *YouTube* video titled ‘Fear and the law’ in which he declared his opposition to an alleged ‘political correctness’ gripping contemporary academia. His main target, however, was proposed legislation that added gender identity and expression to the prohibited grounds of discrimination in relevant federal law (Bill C-16). Echoing a similar backlash against Canadian human rights law

from approximately a decade ago (Section 13 of the Canadian Human Rights Act) (Eliadis, 2014; Moon, 2010, 2019; Clément, 2018), Peterson erroneously claimed that he would be persecuted if he refused to abide by Bill C-16 (i.e. using the preferred pronouns of trans individuals). Peterson demonstrated an apparent ignorance of Canadian human rights law, as Bill C-16 simply extended existing protections that already apply to other vulnerable minorities in Canadian law (Cossman, 2018; Dragicevic, N.D.; University of Toronto, 2016). But his claim that misgendering a trans individual could eventually result in jail time (if he failed to abide by human rights tribunal decisions if he were the respondent in a complaint) was just the type of hyperbole that could sharpen existing critiques of human rights protections and ignite the newest cultural war battle. Later, when his application for federal research funding was unsuccessful, he attributed it to political biases among the peer reviewers rather than the merit of his application (Savva, 2017).

Public discussion quickly shifted from the object of the legislation – ameliorating discrimination against one of society’s most vulnerable groups – to what might happen if someone like Peterson refused to use preferred pronouns. Instead, the trans rights movement became a proxy for a broader and unsavoury movement of left-wing ideologues (‘postmodern neoMarxists,’ to use Peterson’s language) who want to impose their censorious agenda while striving for ostensibly virtuous objectives. Opposition to Peterson (both on campus and online) only generated more headlines and time in the spotlight. The first major conflagration on the University of Toronto campus was a ‘free speech rally’ organized in support of Peterson in October of 2016 (Liew, N.D.). When protestors attempted to prevent Peterson from addressing the crowd, they

counterintuitively provided Peterson's crusade with some legitimacy in the public imaginary; 'social justice warriors' now seemed to be the new campus puritans and conservative pundits were generously provided new evidence to support their cause.

Online, where Peterson's presence exploded, he garnered ample criticism but gradually amassed an impressive army of supporters that dutifully came to his defence, sometimes doxxing and harassing his critics. On campus, however, Peterson received an official rebuke from a range of sources, including student unions (Currie, 2016), faculty members (Yun, 2016a), and the university administration (Yun, 2016b). Approximately one year later, Peterson was again in the news for a proposed blacklist that would sort potential courses and professors based on their political slant (CBC Radio, 2017). In response to this and other allegedly objectionable public statements, an open letter explicitly calling for his dismissal began circulating (Currie, 2017). Among the punditry, lines were quickly and predictably drawn, between those who lauded Peterson as a noble figure who just might get away with so drastically upsetting the progressive status quo on campus and those who saw a cynical pseudo-intellectual's attempt at martyrdom.

Peterson continued to garner headlines when a teaching assistant at Wilfrid Laurier University, Lindsay Shepherd, showed her first-year Communications seminar a clip of him debating others on a public current affairs television show (TVO's *The Agenda*) (Hutchins, 2017). According to Shepherd, her objective was to stimulate discussion regarding the political nature of language use in contemporary society. She was later summoned to a meeting that included her teaching supervisor, Nathan Rambukkana, the graduate chair of her department, Herbert Pimlott, and the Manager of Wilfrid Laurier's Gendered Violence Prevention and Support initiative, Adria Joel. In the



meeting, Shepherd bore accusations that her pedagogical decision likely created an inhospitable learning environment for trans and non-binary students, and thus contravened applicable law and policy. In particular, Shepherd's defence of showing the clip 'neutrally' was questioned since her own account seemed to shift through the course of the meeting, the Peterson clip would have been a noteworthy departure from course content, and academic staff are required to properly address complaints that arise from the classroom. Criticism of Shepherd included a clumsy analogy of neutrally showing a speech from Hitler (Hopper, 2017). Palpably shaken, Shepherd was instructed to hew more closely to the content of the course and submit draft outlines of her future seminar plans. Shepherd surreptitiously recorded the meeting and subsequently reached out to Peterson himself (Hutchins, 2017) and then Christie Blatchford at the *National Post*, who eventually broke the story nationally (2017).

It was a tantalizing smoking gun for some. Particularly for conservative campus critics, this was a clear example of faculty exercising their pedagogical discretion to shut down conservative ideas in the classroom. However, because of the venue and Shepherd's position as both an employee and trainee (as a graduate student), free expression (as a non-interference principle) is not the appropriate lens with which to analyze the case. Academic freedom absolutely includes the right of professors to make pedagogical judgments based upon their own disciplinary expertise, and that necessarily means making decisions about course content based on learning objectives (Braley-Rattai and Bezanson, 2020, 77). At best, teaching assistants have limited autonomy in this regard, and there is a good reason for that: they are still considered apprentices. Nonetheless, inserting Peterson into a classroom environment requires some pedagogical

care and precision because of the intense and polarizing discourse he had animated. The problem, then, is the inelegant actions taken by Shepherd's superiors, who arguably demonstrated an ignorance of the applicable law and policy, even if they were responsible to follow up on an official complaint and had good pedagogical reasons to intervene. Although there is still debate over the precise nature of the complaint (i.e. whether it was 'official'), observers at the time alleged that the meeting was the result of a line of conversation that ran through the campus Rainbow Centre (an organization that supports LGBTQ students), Adria Joel, and Nathan Rambukkana (Chiose, 2018).

The university eventually exonerated Shepherd but the controversy continued. Shepherd experienced a whirlwind of media exposure, joined Twitter in earnest to inform others of her experience, and, like Peterson, quickly found an eager following both online and off. And again, like Peterson, some of this following engaged in online harassment, ranging from disparaging emails sent to university employees to harassment and threats of violence. But Twitter was just one front in her crusade against the university. The two others were a lawsuit (Brean, 2018) and a newly formed student group, the Laurier Society for Open Inquiry. The latter would invite a string of controversial academics and pundits – like Meghan Murphy (Brean, 2019a), Frances Widdowson (Shimo, 2009), and Faith Goldy (Brean, 2019b) – the types of individuals that would guarantee protests and test the university's support for free expression. The group often had difficulty securing venues on campus due to security costs imposed by the university. The event featuring Goldy, for example, faced a raucous protest that forced its cancellation (Booth, 2018). To its credit, Wilfrid Laurier University's President, Deborah MacLatchy publicly apologized for the Shepherd ordeal (MacLatchy, 2017) and subsequently created a task

force that resulted in a fairly robust institutional statement supporting free expression (before it was compelled via ministerial directive) (Wilfrid Laurier University, N.D.).

#### **4.7. Policy Responses to the Alleged Campus ‘Crisis’**

At the moment, Peterson’s extensive international speaking tours have all but disappeared amid poor health and personal issues (Beyerstein, 2020), and Lindsay Shepherd has faded from the spotlight and become a low-key conservative commentator. Nonetheless, the consequences of the Peterson and Shepherd affairs are still palpable. Without the unprecedented scrutiny and criticism of Canadian campuses unleashed by these controversies – in tandem with a raft of other campus controversies around the same time (Chandler, 2018; Dawson, 2018; Hauen, 2017; Lumsden, 2016; Malyk, 2017) – it is doubtful that government intervention in the form of the ministerial directives would have been seriously considered. Up until then, it would have been easy to mistake the alleged campus crisis for a foreign (mostly American) phenomenon. But in just a few years, a Canadian version of the feedback loop was playing out on campuses across the country. The overall effect of Peterson and Shepherd has thus been a significant sharpening of longstanding campus critiques, ones that had not yet gained traction in mainstream Canadian discourse and politics. It did not take long for conservative politicians to sense the wind at their back and to subsequently seize the opportunity, finally closing the feedback loop in Canada by importing the Chicago Principle and justifying an unprecedented policy response.

Just a few days after the Shepherd recording had gone public, then federal Conservative Party (opposition) leader, Andrew Scheer, opened question period in

parliament grilling Liberal Prime Minister Justin Trudeau about her treatment, asking: “Mr. Speaker, will the Prime Minister join me in condemning the egregious crackdown on free speech at Wilfrid Laurier University?” Trudeau did not address the question and instead Minister of Science, Kirsty Duncan, offered a vague response that seemed to imply that Shepherd’s conduct was objectionable:

Mr. Speaker, our government is committed to creating open spaces for Canadians to debate and express their views. In a free society, we may disagree with someone's views, but we must defend their right to hold them, unless those views promote hate. Intolerance and hate have no place in Canadian society or in our post-secondary institutions. We will continue to fight to ensure that the Charter rights of Canadians are upheld and that every Canadian can feel safe and secure in their community (Dickson, 2017).

Scheer would go on to make free expression on campus a part of his official election campaign for Prime Minister, referring to a ‘troubling trend’ gripping Canadian university campuses (Smith, 2017). Campaign materials distributed on some campuses bore an image of Scheer with the words: “Because you can only hear the same left-wing talking points from your professors so many times” (Friesen, 2019). Considering that higher education policy options at the federal level are limited due to provincial jurisdiction, his proposal included expressive protections becoming an explicit criterion for grant applications made to federal research funding agencies (i.e. the Tri-Council). Although Scheer’s proposal faded after the Conservatives lost the federal election in October of 2019, similar policies eventually took root at the provincial level.

On May 30, 2018, the Ontario PC Party released their full campaign platform in a document titled *For the People: A Plan for Ontario* (a mere week before the election) (Giovannetti, 2018). In the section on education, it promised to: “Mandate universities to

uphold free speech on campuses and in classrooms” (Ontario PC Party, 2018). The PC Party won a majority on June 7 and subsequently announced some contours of their policy on August 20, including the development of mandatory free expression statements and commensurate enforcement measures (Jeffords, 2018).

On August 30, 2018, the full details were released. The Ministry of Training, Colleges, and Universities provided a deadline of January 1, 2019 for all publicly funded post-secondary institutions in the province to “develop and publicly post [their] own free speech policy” in line with minimum requirements set out by the Ministry (Ontario Office of the Premier, 2018a). These requirements included: a definition of free expression, some core principles contained in the Chicago Principles, the applicability of discipline measures for policy violations, and a reiteration of internal complaint mechanisms. In addition, each institution was required to submit an annual report to the Higher Education Quality Council of Ontario. Crucially, if institutions failed to satisfy these requirements, the policy noted that, “the ministry may respond with reductions to their operating grant funding, proportional to the severity of non-compliance” (Ontario Office of the Premier, 2018a). According to the Office of the Premier, the new policy was “based on best practices from around the world” (Ontario Office of the Premier, 2018b).

On March 30, 2019, the Alberta UCP released their full campaign platform (Graney, 2019b). In it they promised to: “Require all universities and colleges to develop, post, and comply with free speech policies that conform to the University of Chicago Statement on Principles of Free Expression” (UCP, 2019, 61). The UCP won a majority in the Alberta provincial election on April 16, 2019 (Keller, Giovannetti, and Tait, 2019). On May 6, 2019, their earlier campaign promise was confirmed as one of the first policy

initiatives of the UCP's higher education portfolio; the UCP would indeed follow Ontario's lead in using the Chicago Principles as the basis for (allegedly) strengthening expressive protections on campus (Graney, 2019a).

#### **4.8. Anatomy of the Alberta Ministerial Directive**

Alberta's Advanced Education Minister, Demetrios Nicolaides, argues that the Chicago Principles provided a "strong foundation" for the policy because it provided a template that adequately balanced a number of key concerns: commitment to a wide latitude for expression on campus, compatibility with applicable law, recognition of appropriate time, place, and manner expressive restrictions, and an appreciation for the university as a cohesive community (2020). Elsewhere, Nicolaides has hailed the Chicago Principles as the 'gold standard' of potential policy frameworks (Graney, 2019c), a view taken by some in the United States (Poliakoff, 2018). The directive provided institutions with three options: a resolution formally adopting the Chicago Principles, a resolution endorsing eight key pillars from the Chicago Principles, or a more discretionary and institution-specific policy consistent with the eight key pillars from the Chicago Principles.<sup>140</sup> The initial timeline in Alberta required institutional drafts by September 23 and the policy in effect by October 15, reflecting a desire among the ministry to deliver on the policy during the 2019-2020 academic year (FOIP, 19). Amid concerns among post-secondary institutions in the province, Nicolaides announced extensions to November 15 and December 15, respectively (Condon, 2019).

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<sup>140</sup> For an example of the ministerial directive sent to Alberta post-secondary institutions, see: <https://cloudfront.ualberta.ca/-/media/ualberta/office-of-the-provost-and-vice-president/foe/letter-from-minister-nicolaides-free-speech.pdf>.

In a response to media inquiries, Minister Nicolaides promised “thorough, collaborative consultation with institutions, faculty, and students in order to fulfill this campaign promise” (Smith, 2019). However, advice presented to Minister Nicolaides on June 5, 2019 – advice that reflects the eventual contours of the policy – indicates that the Ministry was interested in downloading the consultative process to institutions themselves, “limit[ing] the Minister’s exposure to controversial topics, and operational and implementation concerns that will likely be raised” (FOIP, 26). In sum, advice from the Ministry casted doubt on “an extensive consultation role for the Minister” (FOIP, 26). Nonetheless, there are some key (positive) differences between the directive in Alberta and Ontario. The approach in Alberta was noticeably less adversarial, something the Minister was keen to emphasize (2020). In particular, no mention was made about a lack of compliance resulting in funding cuts.<sup>141</sup> In Ontario, the directive explicitly highlights the need to include disciplinary procedures, whereas Alberta’s does not. Alberta’s directive also did not include an annual policy review or other form of external oversight (elaborated upon below).

Although some speculated that the JCCF would have a recognizable influence in the UCP policy (Newman, 2010, 21; Field Law, 2019), Nicolaides claims that he “didn’t consult with them at all during [the] process,” an assertion supported by documents from the Ministry (2020). Briefing notes compiled for responses to media inquiries indicates that the Ministry was keen to distance itself from the JCCF (and especially its head

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<sup>141</sup> At first glance, this may seem to be a significant difference, but the UCP’s other major higher education policy is an immediate (and drastic) reduction in post-secondary funding, and a longer-term move to use performance-based metrics as a condition for a portion of government funding. See: Madeline Smith. 2020. “Post-secondary funding in Alberta will be tied to performance, says minister.” *Calgary Herald*, January 21. <https://calgaryherald.com/news/local-news/alberta-moves-to-outcomes-based-approach-to-post-secondary-funding/>. Janet French. 2020. “Alberta universities, colleges face varied government funding cuts.” *CBC News*. March 8. <https://www.cbc.ca/news/canada/edmonton/universities-colleges-technical-institutes-post-secondary-1.5489585>.

Carpay), after the group released a draft legislative proposal in May of 2019 (JCCF, 2019). Notably, the JCCF draft legislation reflects similar efforts in the United States from right-leaning organizations, like the American Legislative Exchange Council and Goldwater Institute (Emmett and Johnson, 2017; Kurtz, Manley, and Butcher, 2017). Due to the close associations between Carpay and the UCP, the latter was likely keen to distance themselves from the latter when Carpay came under fire for comments he made at a conference hosted by a controversial, far-right website (Rieger, 2018). Ministerial advice in response to the draft legislation noted that formal legislation is likely too aggressive given the historical predilection of post-secondary institutions to accede to governmental prerogatives, might entail a much longer timeline, does not self-evidently align with the Chicago Principles, and would further contravene a purported UCP promise to reduce ‘red tape’ (and instigate more government oversight) (FOIP, 21).

Keyano College was the first institution to develop their statement and opted for an endorsement of the Chicago Principles (Clancy, 2019). The vast majority of institutions, however, chose to create a proprietary institutional statement in accordance with the Chicago Principles and the ministerial directive (Wyton, 2019).<sup>142</sup> On December 16, 2019, the UCP announced that post-secondary institutions in the province had complied: “Institutions either formally adopted the principles of the Chicago Statement or developed their own policies that reflect the spirit of the statement” (Government of Alberta, 2019). Internal correspondence from December 4, 2019 indicates that at least two institutions had their policies ‘resubmitted;’ the Southern Alberta Institute of Technology and Olds College (FOIP, 138). Internal correspondence from December 18,

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<sup>142</sup> For an example of some of the consultations undertaken during the process, see the University of Alberta’s Advisory Group on Free Expression: <https://www.ualberta.ca/provost/our-initiatives/freedom-of-expression/index.html>.



2019 indicates that Olds College still had not had their submission approved by the Ministry. It was “initially returned for revision, as the department’s review showed that it did not sufficiently reflect the key principles” (FOIP, 141).

According to the NDP Advanced Education Critic, David Eggen, there is no evidence of a ‘crisis’ on Alberta campuses, and he suspects that something else led the UCP to make the Chicago Principles a pillar of its post-secondary policy (2020). He says that university administrators in the province were “puzzled” by the directive and some found it “vaguely offensive” considering the long history of free expression on campus (2020). Nonetheless, it appears as though every institution in Alberta acquiesced without any trace of resistance. Minister Nicolaides noted that most of the submitted policies were approved in their first iteration and that their adoption was “quite seamless” overall (2020). Given the immense discretionary power at the hands of a majority government, it is unlikely that post-secondary institutions would risk defying a ministerial directive, especially considering the clear austerity agenda associated with the UCP and the explicit threat of funding reductions associated with a similar policy in Ontario. If a latent benefit of the policy was to justify itself through potential non-compliance, Eggen thinks that it “was largely unsuccessful” because administrations in the province did not “take the bait” by resisting, a move that could have solidified campus critiques and symbolically vindicated the UCP (2020).

Some of the initial reporting in response to the policy included critical voices that were skeptical of the relevance and applicability of the Chicago Principles to Canadian universities. As summarized in communications and public engagement materials gleaned from the Ministry, these critics argue that the Chicago Principles “are only a

means of appealing to conservative supporters, and that they do not address all of the relevant issues surrounding free speech” (FOIP, 5). In response, the materials note that multiple esteemed institutions in the United States have already endorsed the Chicago Principles, that their implementation will entail “collaborative consultation,” and that Alberta’s post-secondary institutions already have existing policies related to free expression (FOIP, 5). In an interview with Nicolaides, he was likewise keen to tout the “consultative and collaborative” contours of the Ministry’s policy development (2020).

Contrary to this and similar public statements, ministerial policy development and decision-making were done without any substantive input from or consultation with relevant stakeholders. In fact, internal documents reveal that the campaign promise to implement the Chicago Principles as a policy framework was put in to motion after the election without much regard for existing institutional policies and practices. Instead, the UCP and Ministry seems to have embarked upon their policy based solely on anecdotal evidence gleaned from current events. Asked whether the ministerial directive was catalyzed in response to any specific event(s) on campus, Minister Nicolaides said that it was not a single event but rather “elements of a trend occurring here in Alberta” (2020). These elements included students being sanctioned for their expression and speakers being obstructed on campus, both allegedly “representative of a broader trend” (2020).

Despite his claim that a ‘trend’ was gripping post-secondary institutions in Alberta and around the world, Nicolaides has only ever cited a handful of examples (Condon, 2019): students at the University of Calgary who were sanctioned for criticizing an instructor online (Slade and Cook, 2012), a professor at the University of Lethbridge

who was suspended,<sup>143</sup> and a scheduled speaker at Mount Royal University who had their event pre-emptively cancelled (Hopper, 2019). Other recent high profile examples that were not cited include a University of Alberta anti-abortion group that was required to pay a pre-emptive security fee to organize a campus event (Dawson, 2018) and a Mount Royal University student wearing a ‘Make America Great Again’ hat who was chastised by another student in a viral video (Lumsden, 2016). Nonetheless, even combined, these incidences are difficult to construe as a ‘trend,’ and certainly not one that is supported by empirical data.

According to internal documents, Minister Nicolaides solicited information related to Alberta institutions’ potential alignment with the Chicago Principles as one of his first priorities. Less than a month after the election, on May 14, 2019, the Ministry provided Minister Nicolaides with the results of its “preliminary, high-level analysis” of existing policies, gleaned from publicly accessible information on institutional websites (FOIP, 13). The analysis begins with an appropriate caveat given the dearth of available data: “findings are not conducive to making definitive assessments of institutional alignment to the Chicago principles at this time, but rather serve as an interim understanding of the landscape of this area” (FOIP, 13). Based on the information that could be analyzed, institutions in the province “generally appear[ed] to be committed to the principle of free speech, as demonstrated through a diversity of policies” (FOIP, 14). There is, however, neither a “stand-alone policy on free speech” nor a “uniform approach” across the institutions (FOIP, 14).

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<sup>143</sup> Although it is unclear to whom Nicolaides was referring, it is likely Anthony J. Hall, who retired in disgrace in 2018 after some of his associations with conspiracy theorists and Holocaust deniers were made public. See: *CBC News*. 2018. “Controversial University of Lethbridge professor to retire this fall.” August 8. <https://www.cbc.ca/news/canada/calgary/university-lethbridge-anthony-hall-retire-1.4778277>.

The analysis notes that the principle of free expression is embedded in a number of institutional policies and practices but that the analysis was inherently limited due to relying solely upon publicly accessible information. Thus, more time and direct communication with the institutions would be necessary in order to make a more confident determination. Despite the limited scope, the analysis found that “up to seven [of 26] institutions appear to be mostly aligned to the Chicago principles, while up to 17 institutions are somewhat aligned” (FOIP, 14). Figures 1 and 2 (below) depict these institutional alignments. Most importantly, the analysis makes clear that direct correspondence with the institutions is indispensable for acquiring an accurate and representative evidentiary basis for policy development and implementation:

The ministry’s current analysis is removed from the institutional context and may lack an awareness of other institutional practices and approaches [sic] which may further ensure free speech and expression on post-secondary campuses. Post-secondary institutions are best positioned to provide their full suite of relevant policies and documents to the ministry. To ensure a full and robust understanding of post-secondary institutions’ commitment to free speech, the Minister could consult with post-secondary institutions and request submission of the documents they consider relevant (FOIP, 14).

Implementation of the policy began in earnest in June of 2019. Minister Nicolaides met with the board chairs of post-secondary institutions in the province on June 21, and again with student leaders on June 25. Engagements such as this are presented as evidence of a markedly different approach, especially compared to Ontario’s explicit threat of provincial funding cuts for non-compliance. In Minister Nicolaides’s own words (2020):

I felt that it would be best to sit down and have a conversation with our university and college board chairs and let them know that this is a priority of our

government, and [sic] how can we work together on achieving this and I was happy that we were able to deliver that.

However, the speaking notes prepared for Minister Nicolaides for both of these engagements indicate that the Minister was merely informing stakeholders of the policy change rather than engaging in consultative policy development (FOIP, 52-53, 74-75, 94-95, 105-106). Shortly thereafter, on July 4, 2019, the ministry sent a letter to all 26 post-secondary institutions outlining details of the new policy.<sup>144</sup>

Ministerial advice (from June 5, 2019) recognizes that institutions will retain some discretion in how they govern the limits of expression on campus, so the policy will naturally be “limited by legal and practical matters” (FOIP, 25). This is the reason why the Ministry did not recommend a uniform policy, because the discretion of individual institutions would render the policy inconsistent regardless; and it may actually be less specific and instructive if uniform (FOIP, 27). The Ministry likewise recommended no formal role for the Minister to review, approve, and/or enforce the institutional policies. Ministry documents highlighted a series of associated benefits: limiting legal risk, respecting institutional autonomy, and keeping the Minister above the fray of proprietary controversies. Instead, the policy should include a case by case review of potential deviations, since targeted funding cuts would be imprecise, laden with unintended consequences, and might invite legal challenges (FOIP, 28-29).

Asked about future policy assessment, Nicolaides said that universities themselves are “best suited to make sure that they’re reviewing the policy and there is compliance with the policy” (2020). As such, there is no reporting mechanism

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<sup>144</sup> A copy of the actual letter can be found on the University of Alberta website. See: <https://cloudfront.ualberta.ca/-/media/ualberta/office-of-the-provost-and-vice-president/foe/letter-from-minister-nicolaides-free-speech.pdf>.

comparable to the Ontario ministerial directive. Nicolaides also said that he would reach out to post-secondary administrations if it were clear that campus events were “inconsistent” with the new policy (2020). As for explicit review, Nicolaides noted the “very strong willingness” of institutional leadership to work with the Ministry and is thus satisfied that “they’ll be good stewards of the policies that they’ve created” (2020).

#### **4.9 Evaluating the Alberta Ministerial Directive: Closing the Feedback Loop**

Based on the available evidence, it is clear that the ministerial directive in Alberta was hastily conceived and implemented and, more fundamentally, based on a willful ignorance of empirical data and analysis. The only plausibly positive effect of the directive is that institutions were provided an opportunity to revisit and bolster their longstanding commitments to free expression in policy and practice, and in a way that hopefully trickles down into institutional culture on a quotidian level. However, an analysis of the policy development and implementation reveals that its impetus was more likely a desire to shape public attitudes. In sum, its lack of tangible effect was a result of conscious policy design and not the unfortunate by-product of an otherwise well conceived policy priority for a newly elected government. One can reasonably conclude, then, that the policy was chiefly conceived as a vehicle for bolstering the (mis)perception of a campus crisis, and is therefore a crucial event in closing the feedback loop in Canada.

The most prominent indication that the policy was not intended to shift the status quo for expressive protections on campus is the fact that existing institutional policies and practices already largely conformed to the Chicago Principles, with some expected

variability across institutions. This, combined with the fact that the Ministry decided against a single, uniform policy across the province, suggests that institutional alignment with the Chicago Principles was mostly a formality. Further, there are also two obvious tensions in the policy development and implementation that blunt both their supposed justification and potential effect.

First, there is a tension between the declared desire on behalf of the UCP to reduce red tape while simultaneously compelling institutions to consume time and resources to conform to what is, in essence, a formality. Every post-secondary institution would require a modicum of data and analysis in order to initiate a policy alignment. By not first soliciting institutions' 'full suite of relevant policies and documents,' the Ministry, in effect, downloaded the responsibility for data and analysis onto the institutions themselves, and assumed without sufficient evidence that the Chicago Principles would alleviate an already insufficiently defined problem. In the absence of any supportive empirical data, the Ministry assumed that deficient institutional policies and practices could be the source, at least in part, for the small handful of campus controversies that were ostensibly indicative of a 'trend.' The assertion that the Chicago Principles are the 'gold standard' for potential policy frameworks is unsupported, based on an apparent lack of data and analysis and a prudent consideration of alternative frameworks. An anatomy of policy's development and implementation, therefore, raises serious questions about the efficacy of 'copycat' law and policy frameworks related to free expression on campus.

Second, there is a tension between the explicit recognition that the directive will have a limited effect due to factors outside of the Ministry's control and the decision to

forgo a single, uniform policy. For example, the Ministry recognized that the policy would be inherently ‘limited by legal and practical matters’ and also by institutional discretion in implementation and compliance. In this context, uniformity across institutions would help mitigate limitations at the institutional level; especially considering the alleged source of the problem is institutional decision-making that departs from applicable law and policy. The policy, then, seems to provide a façade of flexibility and appreciation for institutional independence while rendering the policy itself less effective, if the purported goal is to increase expressive protections on campus.

Ministry documents outlining the criteria for approving the draft policies reveals that only three of the eight principles were non-negotiable (FOIP, 119-123). Even then, the proposed evaluation criteria only required two of these three to be considered for approval, and partial alignment with the Chicago Principles overall could still result in a policy’s approval. The evaluation criteria placed little emphasis on three other principles, noting that they were already visible in applicable law and policy. Since preliminary research by the Ministry established that a very healthy amount of institutions were either mostly (approximately 27%) or somewhat (approximately 65%) aligned with the Chicago Principles already (based on limited, publicly accessible data) but the institutional policy approval allowed *partial* alignment, it is unclear the degree to which the policy tangibly shifted institutional policies and practices. If a single, uniform policy was disadvantageous from the Ministry’s perspective, it would have been more efficient to embark upon a targeted approach, focusing mostly on institutions that demonstrated a deficit in policies and practices in the original data and analysis.



Further, aside from the meetings with board chairs and student leaders, there was little consultation with the campus constituencies affected by the policy. The Ministry provided no information or analysis related to existing law and policy related to Alberta institutions and instead imposed a foreign policy framework. The problem the policy would ostensibly address was poorly defined, making it difficult to rationally connect the alleged problem with the proposed policy. In its messaging, the Ministry emphasized the fact that Ontario had already used the Chicago Principles, as if compelled adoption by Ontario institutions would signal potential applicability (also compelled) to Alberta institutions. It is difficult to assess the degree to which the Ontario government might have conducted more robust research.

Regardless, due diligence in policy development and implementation would include an analysis specific to Alberta institutions, considering that there is great variability across Canadian post-secondary institutions in terms of policies and practices (as noted by ministerial research and advice). At the very least, soliciting more information from institutions related to their policies and practices could have provided both a stronger evidentiary basis for the policy and a more accurate picture about how it would affect different constituencies. Faculty, for example, was notably absent, despite their free expression protections (i.e. academic freedom) being wholly distinct from free expression as a general principle and constitutional protection.

Intent on delivering an election promise before the upcoming academic year, the initial timeline for development was unreasonable, particularly because the responsibility for research and analysis was mostly downloaded to institutions themselves. This is why

the Ministry eventually decided to extend the timeline, and also why some institutions still found it challenging to meet the deadline.

## **Figure 4.1. Ministerial Assessment Criteria for Institutional Compliance**

### **Institutional Compliance with Chicago Principles on Free Expression**

#### **Chicago Principles Criteria:**

- Institutions are places of open discussion and inquiry, committed to protecting and promoting free expression.
- Community members have the right to criticize and question other views expressed on campus, but cannot obstruct or interfere with others' freedom of speech.
- Institutions should not attempt to shield students from ideas or opinions that they disagree with or find offensive. Mutual respect and civility are valued, but do not constitute sufficient justification to limit free speech.
- Free speech may be limited if it violates the law.
- Free speech may be limited if it is incompatible with the functioning of the institution.

#### **Assessment:**

- **Not aligned/Unable to assess:** The institution's codes, policies, and procedures do not reference this criteria or the ministry is unable to assess at this time.
- **Somewhat:** The institution's codes, policies, and procedures are somewhat aligned to this criterion. The concepts are featured as secondary elements.
- **Mostly:** The institution's codes, policies, and procedures are mostly aligned to this criterion. The criterion is referenced as a policy or guideline requirement.
- **Fully aligned:** The institution's codes, policies, and procedures are fully aligned to this criterion.

#### **Disclaimer:**

This preliminary, high-level assessment was conducted on the basis of public information that is readily available. Institutions may have further provisions indicating alignment, which are not captured in this analysis due to a lack of public availability.

**Figure 4.2. Ministerial Assessment for Institutional Compliance**

<b>Chicago Principle Criteria</b>	Open discussion and inquiry. Protect free expression.	Right to criticize and question. No interference with others' freedom.	Students not to be shielded from opposing views.	Free speech may be limited if it violates the law.	Free speech may be limited if disruptive to functioning.	<b>Overall Compliance</b>
Athabasca University	Mostly aligned	Somewhat aligned	Unable to assess	Unable to assess	Unable to assess	Somewhat aligned
University of Alberta	Fully aligned	Fully aligned	Somewhat aligned	Fully aligned	Unable to assess	Mostly aligned
University of Calgary	Mostly aligned	Unable to assess	Unable to assess	Mostly aligned	Unable to assess	Somewhat aligned
University of Lethbridge	Mostly aligned	Somewhat aligned	Somewhat aligned	Mostly aligned	Unable to assess	Mostly aligned
Alberta University of the Arts	Mostly aligned	Unable to assess	Unable to assess	Somewhat aligned	Unable to assess	Somewhat aligned
Grant MacEwan University	Mostly aligned	Somewhat aligned	Somewhat aligned	Unable to assess	Unable to assess	Somewhat aligned
Mount Royal University	Mostly aligned	Mostly aligned	Unable to assess	Somewhat aligned	Somewhat aligned	Somewhat aligned
NAIT	Somewhat aligned	Somewhat aligned	Unable to assess	Mostly aligned	Unable to assess	Somewhat aligned
SAIT	Fully aligned	Fully aligned	Unable to assess	Unable to assess	Somewhat aligned	Mostly aligned
Bow Valley College	Somewhat aligned	Somewhat aligned	Unable to assess	Unable to assess	Unable to assess	Somewhat aligned
Grande Prairie Regional College	Mostly aligned	Somewhat aligned	Unable to assess	Unable to assess	Unable to assess	Somewhat aligned
Keyano College	Somewhat aligned	Somewhat aligned	Unable to assess	Unable to assess	Unable to assess	Somewhat aligned
Lakeland College	Mostly aligned	Mostly aligned	Unable to assess	Mostly aligned	Unable to assess	Mostly aligned
Lethbridge College	Mostly aligned	Somewhat aligned	Unable to assess	Unable to assess	Somewhat aligned	Somewhat aligned
Medicine Hat College	Fully aligned	Mostly aligned	Mostly aligned	Mostly aligned	Unable to assess	Mostly aligned
NorQuest College	Fully aligned	Fully aligned	Mostly aligned	Fully aligned	Mostly aligned	Mostly aligned

<b>Chicago Principle Criteria</b>	Open discussion and inquiry. Protect free expression.	Right to criticize and question. No interference with others' freedom.	Students not to be shielded from opposing views.	Free speech may be limited if it violates the law.	Free speech may be limited if disruptive to functioning.	<b>Overall Compliance</b>
Northern Lakes College	Somewhat aligned	Somewhat aligned	Unable to assess/Not aligned	Mostly aligned	Unable to assess/Not aligned	Somewhat aligned
Olds College	Somewhat aligned	Mostly aligned	Somewhat aligned	Somewhat aligned	Mostly aligned	Somewhat aligned
Portage College	Unable to assess	Unable to assess	Unable to assess	Unable to assess	Unable to assess	Unable to assess-relevant policies and procedures not available to public on website.
Red Deer College	Fully aligned	Mostly aligned	Fully aligned	Somewhat aligned	Somewhat aligned	Mostly Aligned
The Banff Centre	Somewhat aligned	Unable to assess	Unable to assess	Unable to assess	Unable to assess	Unable to assess-limited references to artistic freedom of expression only.
Ambrose University	Somewhat aligned	Somewhat aligned	Somewhat aligned	Unable to assess	Unable to assess	Somewhat aligned
Burman University	Somewhat aligned	Somewhat aligned	Somewhat aligned	Unable to assess	Somewhat aligned	Somewhat aligned
Concordia University of Edmonton	Mostly aligned	Mostly aligned (academic freedom)	Mostly aligned	Unable to assess	Unable to assess	Somewhat aligned
Saint Mary's University	Mostly aligned	Somewhat aligned	Somewhat aligned	Mostly aligned	Unable to assess	Somewhat aligned
The King's University	Somewhat aligned	Somewhat aligned	Fully aligned (academic freedom)	Fully aligned	Somewhat aligned	Somewhat aligned

#### 4.10. Conclusion

Given that mainstream conservative discourse and politics in Canada has recently embraced a more substantial skepticism towards higher education, the polarization previously analyzed in the United States may unfortunately be a prelude for things to come. In the United States, the campus crisis feedback loop has paid partisan dividends, by tapping into existing resentments and refining them into a partisan campaign issue and, eventually, legislative proposals. In Canada, too, conservative politicians decidedly took advantage of contemporary events and sympathetic public attitudes to justify government intervention and provide a façade of effective public policy. This is evidenced by the analysis of this article and the fact that both Alberta and Ontario set about their policy changes immediately post-election, strongly suggesting that both governments saw their ministerial directives as low-stakes policy deliverables that required little time, resources, and political capital to implement.

In sum, in the same way that the Chicago Principles are a ‘copycat’ policy framework, the campus ‘crisis’ is a copycat partisan strategy. The exaggeration associated with the campus ‘crisis’ would only be plausible in a Canadian context with a constant reinforcement from American politics and discourse. The twin phenomena of a raft of American campus controversies and then a few distinctly Canadian campus controversies created a perception that the two countries were experiencing the same problem, and that using just one prominent policy framework – the Chicago Principles – might likewise be appropriate in both countries (by choice or by force). To be clear, this does not mean that the alleged campus ‘crisis’ is *wholly* an American phenomenon that has subsequently been imported into Canada. Canadian universities obviously struggle

with navigating the boundaries of free expression (and academic freedom) on their campuses, too. But the tone, style, polarization, and partisanship of American politics and discourse associated with campus expression are only one *particular* response to potential challenges on campus. Canada, then, has instead had its response to campus expression challenges *conditioned* to a large degree by events to the south. Accordingly, another key takeaway from this analysis is that ‘copycat’ policy frameworks for campus expression cannot necessarily travel across different terrain with ease. The imposition of the Chicago Principles in Canada shows that they always bear the risk of serving significantly different purposes when used in different political, institutional, legal, and social contexts.

As noted, a variety of commentators have already argued that the ministerial directives in Alberta and Ontario are more style than substance. For example, Stephen L. Newman thinks the frame of analysis for the Ontario policy (similar to an executive order in the United States) (Svrluga, 2019) ought to be ‘symbolic politics,’ whereby gestures to attract public support catalyze policy as opposed to tangible outcomes (Newman, 2020, 22). In blunter terms, “bashing the academic left wins points with the conservative base even if nothing much changes on campus” (Newman, 2020, 23). Bolstering the (mis)perception of a campus crisis is attractive to conservative policymakers because it piggybacks on longstanding anxieties about youth culture, decades of pundits alleging that post-secondary institutions have been captured by progressives, and a constant cadence of campus controversies illustrating the sometimes absurd nature of campus unrest.

If one were closely following mainstream reporting over the past half-decade, it would be easy to think that, like their counterparts in the United States, Canadian universities were struggling to maintain their commitments to free expression. Irrespective of whether or not this (mis)perception actually mirrors reality across Canadian institutions, the idea of a campus ‘crisis’ has become a target of public policy in a dramatic fashion. Rather than contrasting an empirical record of expressive protections with policy responses, this article has instead offered an analytical framework to illustrate how responses to campus unrest have formed a reliable feedback loop. Using an historical and comparative approach, the concept of a feedback loop provides crucial history and context for understanding the emergence of the ministerial directives. Importantly, as the historical and comparative analysis suggests, the ministerial directives mark a significant shift in Canadian politics, one that represents the importation of a more acute feedback loop from the United States (via the Chicago Principles) and solidifies free expression on campus as a pillar of conservative electoral strategy in Canada.

An anatomy of the ministerial directive in Alberta, in particular, demonstrates that the policy was marred by several shortcomings (like a lack of data and analysis) and internal tensions (like the tension between efficiency and oversight). Given the partisan contours of free expression on campus in North America and the inherent ineffectuality of the policy, it is reasonable to conclude that the ministerial directive in Alberta was intended to primarily affect public attitudes in a way that sustains conservative messaging (and borrows significantly from similar discourse and politics from the United States). It was a low-stakes policy deliverable in their platform precisely because, as conceived, it required little to no consultation, data, analysis, and review. Overall, though, the

ministerial directive ought to be understood not just as an opportunistic and partisan form of public policy, but a consistent thread of conservative political strategy over the past half-decade that now has a stable home in Canada.

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## **CHAPTER 5**

### **5.1. Conclusion**

Considering that my three thesis publications come to conclusions proprietary to each of those individual analyses, a cohesive conclusion in this section is a challenge. However, by extrapolating from each of these different analyses and connecting to the broader relevance of my research, some common connections and key takeaways can be found. After discussing four of these, I will end with some general commentary on the future of the politics of free expression on campus, in addition to future research directions that have been opened up for me as a result of this research project.

### **5.2. Understanding Harm for Understanding Politics**

The first and foremost key takeaway from this project (in addition to those from the publications) is that theories and conceptualizations of harm (and victimhood) are absolutely essential for understanding the political moment. Harm is already difficult to ignore if one is attuned to controversies related to free expression on campus (and elsewhere), since harm is the most frequently invoked justification for restricting expression. But the importance of harm transcends what is happening on campus and is reflected in political contestation across contemporary society.

On the one hand, more nuanced and expansive conceptualizations of harm are sensitizing society to previously under recognized and under appreciated harms that have caustic effects on individuals, groups, and society at large. This has been remarkably positive, as it has catalyzed gradual (if uneven) efforts at greater inclusion. On the other hand, however, more nuanced and expansive conceptualizations of harm can lead to



untenable standard for evaluating the legitimate threshold of harm for restricting expression. To further complicate matters, it is not just historically marginalized individuals and groups that are invoking harm as an expressive restraint. Increasingly, individuals and groups who are, by any measure, already disproportionately privileged in society are adopting the language of harm, victimhood, and grievance as a way to further their own ends.

All of this points to the importance of deciding who gets to define harm and how they do so, which is not at all self-evident. Using an ostensibly *objective* measure of harm, like one established via jurisprudence, is potentially problematic because expression can always fall short of such a measure but still cause harm. Using an ostensibly *subjective* measure of harm, like automatically validating an individual's disclosure of harm, is potentially problematic because expression can always cause some form of harm but ought not be restricted. In between these two problematic poles is an understanding of harm that is essentially *political*, or subject to forces of contestation and, as such, one that is neither fully fixed nor predictable. This research project has focused its analysis on this liminal and incredibly fraught space and, as I explain a bit later, this space will continue to animate my research agenda.

### **5.3. The Politics of Free Expression is *Not* a Zero-Sum Game**

The second key takeaway from this project (in addition to those from the publications) is that the zero-sum framing of academic and public debates about campus expression is unwarranted and unproductive. Those familiar with these debates will know that they are often polarized between right-leaning voices that understand free expression as a potent

tool in their culture war arsenal and left-leaning voices that understand free expression as a convenient and opportunistic excuse for tolerating hate. Further, staunch supporters of free expression tend to discount or completely ignore the potential harms flowing from expression while skeptics of free expression discount or completely ignore the progressive promise of free expression. Put simply, this polarization hinders the possibilities for honest debate about campus expression, severely undermines public confidence in higher education, and degrades the state of public discourse. I recognize the understandable reticence to bolster the exaggerated and partisan perception of a ‘crisis.’ But, as I mentioned previously, the absence of a ‘crisis’ is not the absence of a problem. In one sense, this research project has been an effort to separate these two things, and to properly diagnose and address the latter with ample data and analysis.

In efforts to downplay legitimate concerns one might have about campus expression, a range of commentators have emphasized the fact that free expression primarily protects individuals from *state* interference. As a result, they claim that defences of free expression that protect potentially harmful expression conflate that principle or right with *freedom from consequences*. The problem with this supposed resolution of the tension between free expression and protection from harm is that debates about the former rarely, if ever, hinge on whether or not expression ought to have consequences, but instead on what are *appropriate* consequences for *specific* forms of expression. Further complicating this stance is the fact that it is not self-evident whether or not universities ought to *exceed* applicable law and policy in how they restrict expression, given their self-professed commitments to free expression.

A related effort to downplay legitimate concerns about free expression is a familiar criticism found in nearly all critical approaches to political theory and philosophy: the fact that abstract rationales can often belie lived experience and justify discriminatory practices to protect some higher order ideal or principle. This position, which has some argumentative merit, unfortunately leads many to believe that interlocutors in academic and public debates are avowedly committed to either free expression or protection from harm. Of course, the two are obviously in tension at times, on campus and elsewhere, but a defence of free expression, particularly of a progressive civil libertarian orientation, is certainly not irreconcilable with a commitment to ameliorating various forms of inequality.

So, a zero-sum framing is unwarranted because it tends to obscure legitimate problems associated with the contemporary state of campus expression and it is unproductive because it necessarily entails the ignorance of nuance. Perhaps more importantly, the polarization that has shaded academic and public debate about campus expression has elided what is at stake in the bigger picture. In the absence of individuals and groups that are genuinely invested in a passionate defence of free expression, the moral and intellectual high ground associated with it will too easily be relinquished to a myriad of unsavoury individuals and groups.

A perhaps too pessimistic view of these debates is to understand free expression as essentially “a slogan: a label each of us applies to language and conventions we approve of” (Dabhoiwala, 2020). As Stanley Fish glibly remarked more than a quarter-century ago, ‘there’s no such thing as free speech’ (1994). For him, a principled invocation of free expression tends to yield to political convenience. I am not so

pessimistic, and my conviction is bolstered by conversations with countless individuals during the course of my research. For example, one of the most interesting (if peripheral) phenomena uncovered during the course of my research was the degree to which those within campus communities imbibe practices of self-censorship completely at odds with the role and mission of their institutions. Universities feature some of the most robust protections for expression in society, including the special right of academic freedom. Although these protections may be uneven and inconsistent depending upon one's status and labour conditions, a university protects wide latitude for expression when compared to private employment spaces (and other spaces outside of the public sphere). Paradoxically, then, many of those with whom I met, discussed, and interviewed during the research conveyed a grim state of self-censorship.

Often for different reasons, academics explained how their expression was implicitly conditioned by norms that significantly impacted their collegial relationships and career prospects. Even if some of these individuals were skeptical about free expression at a philosophical level, they nonetheless thought that self-censorship was a problem in an academic environment premised upon open inquiry. Importantly, the practice of self-censorship seems to me to *transcend* political lines. I think this suggests that academics have an innate stake in debates about free expression and that *some* version of free expression is a *prerequisite* for healthy academic communities, and not just a convenient justification for furthering one's own ends.

#### 5.4. The ‘Crisis’ and the Role of the Media

The third key takeaway from this project (in addition to those from the publications) is the fact that the alleged campus ‘crisis’ is intimately tied to the power of the media in framing contemporary events. Although right-leaning media has a more easily explainable predilection to report upon campus controversies that portray (what is presumed to be a left-leaning) universities unfavourably, Canadian media *as a whole* has exhibited an extraordinary fixation on campus events over the past half-decade. The reason for this is likely complex and deserving of more in-depth study, but I think there are at least a few explanatory factors contributing to this dynamic.

First, free expression is the lifeblood of journalism. Therefore, one can make the case that journalists and journalistic outlets are more likely to expend resources dedicated to stories that relate to questions about free expression. Second, many journalists are professionals in the sense of having credentials obtained through higher education. During this time, they are likely to have kept apprised of the often messy and bitter nature of campus politics. Their immersion in this environment might likewise create a predilection for stories related to campus controversies. Third, stories about campus controversy have some interest and momentum behind them because universities are widely recognized (rightly or wrongly) as an institution connected to government and the public sphere more broadly. Consequently, university campuses easily become a proxy for some of the sociocultural anxieties of Canadian society, including those related to the country’s trajectory as a whole, the alleged insufficiency of youth, and already existing fractures along the lines of gender, race, class, etc.

Finally, in a much simpler sense, controversy, hypocrisy, and scandal are typically good raw materials for popular news items. It is not lost on Canadian journalists that many universities claim to uphold free expression as a constitutive principle but have a less than impressive historical record of actually doing so. In this sense, then, media scrutiny is warranted because the university is a (mostly) publicly funded institution that sometimes (and unfortunately) values its image more than its self-professed principles when the two collide. Because of the impressive autonomy that universities enjoy, arguably a prerequisite for their unique social mission, a critical eye is an important democratic safeguard.

Nonetheless, the disproportionate focus on campus controversies in Canadian media provided (and continues to provide) a skewed impression. There is no shortage of intense scrutiny and criticism when universities make poor decisions, but accolades are typically few and far between for good decisions, which, on the whole, vastly outweigh the former. Thus, one cannot be faulted for thinking that something is terribly amiss on campus if their primary experience of university includes sensationalized reporting that lacks important detail. This reality bolsters the need for additional scholarly research on the topic and especially research that is accessible to the general public. Put simply, due to no fault of the journalistic enterprise itself, the complexity and nuance of this and related issues are not always best conveyed through a journalistic medium.

### **5.5. Universities in the Prison of the Market**

The fourth and final key takeaway from this project (in addition to those from the publications) is that university decision-making in relation to free expression

controversies is sometimes hindered by calculations of material self-interest. Put simply, the more that universities understand themselves as businesses within a competitive marketplace, the more likely they are to prioritize competitiveness over constitutive principles like free expression. Further, it is inevitable that the material self-interest of the institution and constitutive principles will inevitably collide. An institutional commitment to free expression is therefore something that requires constant reanimation, because free expression naturally entails disagreement and maintaining a coherent brand and competitive edge may sometimes preclude such disagreement.

Nonetheless, the root of the problem is not solely shortsighted administrative decision-making. A much graver concern is the economic incentive structure of administrative decision-making, which arguably has the greatest impact on possibilities for free expression on campus. For example, gradually shrinking public funding for higher education in Canada, and the commensurate increasing reliance upon private funding, has created a situation in which universities are positively incentivized to stray from their connections to the public good. Likewise, when students are understood as consumers as opposed to citizens, institutions become more vulnerable to the whims of its student population. Institutional responsiveness and accountability is a good thing and many of the avenues in which students exercise power within contemporary higher education are a result of legitimate grievances and decades of struggle. However, recent events – including many of those detailed in this dissertation – illustrate the fact that student advocacy and the self-professed (constitutive) principles of the institution are increasingly colliding in dramatic and potentially irreconcilable ways. The result, I think, is that university decision-making is conditioned to a large degree by *risk-aversion*. In

sum, when university administrations make decisions primarily based upon preserving their public image, free expression is more likely to be a derivative consideration.

### **5.6. The Future of the Politics of Free Expression on Campus**

The global pandemic has certainly attenuated the previous attention paid to campus expression in Canadian public discourse. Depending upon how the next few years of uncertainty unfold, conversations about the state of campus expression may pale in comparison to more existential questions about the future of higher education. Despite this, I still think that universities will continue to struggle in calibrating the proper balance between their self-professed commitments to free expression and propensities to limit expression in excess of applicable law and policy (when incentives warrant).

Therefore, if the ‘new normal’ includes a gradual return to on-site teaching and learning, I very much doubt that controversies related to speaking events in on North American campuses will disappear. A high-profile cancellation still promises impressive media coverage and opportunities to bolster existing negative perceptions about higher education, and progressive politics in general. The attraction for controversy entrepreneurs is compounded by the fact that universities, despite no shortage of experience on this front, still seem to struggle in responding.

Similarly, cases of controversial academics and controversial research agendas have continued apace, generating additional scrutiny and criticism, in addition to new debates about the limits of campus expression. In sum, I expect these phenomena to continue roughly at the same pace and to largely reflect the political contours of existing academic and public debates. Unfortunately, this entails an impressive durability of



exaggerated portrayals of the state of campus expression, fueled by the feedback loop posited earlier and a reticence to honestly grapple with existing problems for fear of lending credibility to ‘crisis’ framing.

The major changes heralded as a result of the alleged campus ‘crisis’ relate to law and policy. As my comparative and historical analysis has demonstrated, the unprecedented nature of the Alberta and Ontario ministerial directives is difficult to overstate. That said, the Alberta and Ontario ministerial directives are primarily performative and therefore of limited policy value, in the sense of actually strengthening protections for expression on campus. However, their major effect on the law and policy of campus expression has been in creating a firmer link between government and universities, which will inevitably lead a court further down the road to consider *Charter* applicability in a new, and likely more favourable, light. Based on the data I have collected, it is not possible to speculate on whether or not this result was an explicit consideration during provincial policy development. Nonetheless, the new potential for *Charter* applicability to university campuses will be a *significant* change for the latter, because it would extend the most robust expressive protections in Canadian law to a venue that has typically not explicitly incorporated *Charter* considerations in its decision-making related to potential expressive restrictions.

In addition, a seminal case was decided at the Alberta Court of Appeal in early 2020 that will have wide ranging implications for university decision-making related to campus expression (*UAlberta Pro-Life v. University of Alberta*). Although provincial courts have come to contradictory conclusions about *Charter* applicability across Canada, the case represents perhaps the most straightforward application of the *Charter* in the

context of free expression yet. At the very least, it will result in some universities exercising more caution when restricting expression, including erring on the side of content neutrality (provided potential expression is within the bounds of law and policy) and providing more forthright reasons for decision-making in order to avoid being unprepared for costly and unnecessary litigation.

As for the policy legacy of the ministerial directives, only Ontario has some form of policy review or oversight, in the form of annual reports from the Higher Education Quality Council of Ontario (HEQCO), an agency of the Ontario Government. Since the ministerial directive was issued in 2018, HEQCO has released two annual reports (in 2019 and 2020) and both are revealing. Of the conservative estimate of over 40,000 ‘non-curricular’ events that took place in Ontario post-secondary institutions in 2019, HEQCO reported only *one* cancellation that resulted from ‘safety and security concerns’ between January and August (2019, 4). Following the inaugural round of yearly reports from Ontario institutions, HEQCO subsequently provided a template questionnaire, the answers to which are required to be posted online by each institution. Similarly, of the conservative estimate of over 70,000 ‘non-curricular’ events that took place in 2020, not a *single* event was cancelled as a result of ‘security-related financial concerns.’ One event, however, was *rescheduled* in order to minimize potential security costs (2020, 2-3). During this same time period, 26 complaints were formally brought forward to Ontario institutions related to free expression, all of which were satisfactorily resolved internally, according to the report (2020, 3).

Although a full accounting of each institution’s annual report is warranted to contribute to extant academic literature, the two HEQCO reports suggest that the status

quo is drastically at odds with the Ontario government's original policy impetus. Unless one argues that the policy itself is solely (or even mostly) responsible for free expression suddenly commanding such impressive respect on Ontario campuses, it is difficult to justify such an unprecedented policy initiative in response to such an admittedly measly problem. My policy analysis has provided an intimate look at the Alberta ministerial directive, specifically, but additional research is warranted in both provincial jurisdictions. Key questions to ask might include: how adoption of the Chicago Principles will tangibly affect university decision-making, how adoption may or may not have a trickle down effect within institutional culture, and how adoption will affect expression, dissent, and protest on campus in the long-term.

As a result of these unprecedented changes over the course of this research project, my future research focus will include a more explicit grounding in law and policy, which I explain in some detail below.

### **5.7. Future Research Directions**

In terms of future research directions, I have three new projects that I am looking forward to commencing. The first is the aforementioned (and ongoing) book project under contract with the University of Toronto Press, tentatively titled *Expressive Freedom on Campus: The Alleged Crisis and the Conceptual Elasticity of Harm*. The book will include the three thesis publications and substantially expand upon them with in-depth case studies of major campus controversies over the past half-decade, an historical look at how campus expression has changed since the 1960s, and an exploration of justifications for free expression outside of the liberal legal and philosophical paradigm. Notably, the

book will rely upon ample interview data gleaned from semi-structured interviews with a wide range of voices in debates about the state of campus expression, including professors, journalists, pundits, politicians, administrators, and activists, in addition to ample access to information data gleaned from Canadian universities.

The first three chapters present a comprehensive introduction to the alleged ‘crisis’ of free expression on campus, including an expanded comparative history of responses to campus unrest in the United States and Canada, an expanded conceptual mapping of the applicable law and policy of campus expression (including new legal analysis), and an expanded case study of the Jordan Peterson and Lindsay Shepherd affairs. The next four chapters examine the main interpretive frameworks offered in the wake of the alleged ‘crisis:’ the ‘snowflake thesis,’ the ‘diversity backlash thesis,’ and the ‘academic merit thesis.’ These chapters build on the necessarily limited section included in the first thesis publication by offering a more substantial analysis of each framework and then presenting my own response and interpretive framework. Here, I argue that, in addition to the constitutive tension of free expression on campus, campus controversies reflect a much broader conceptual elasticity of harm, one that unduly serves as a justification for expressive injunctions and restrictions. The last three chapters feature in-depth case studies, including: 1) the similar reactions (and backlashes) to Section 13 of the *Canadian Human Rights Act* and *Bill C-16* (and how they relate to free expression); 2) additional incidences of deplatforming on campus as case studies to demonstrate how the tactic is prone to unintended consequences; and 3) and the discourse and politics of Israel/Palestine on campus, which is arguably the most apt illustration of how elastic conceptualization of harm might unduly restrict otherwise legitimate debate and critique.

The second research project responds to law and policy developments that occurred during the course of this research project and will be the focus of a Social Sciences and Humanities Research Council Postdoctoral Fellowship application (with James L. Turk, Director of the Centre for Free Expression at Ryerson University). As mentioned, a recent legal decision (*UAlberta Pro-Life v. University of Alberta*) and the ministerial directives in Alberta and Ontario have heralded a stronger nexus between universities and government, a crucial prerequisite for the applicability of constitutional protections for expression (the *Charter*). Given these unprecedented developments, I will investigate how *Charter* applicability would affect the law and policy of campus expression. The project will entail extensive legal analysis of relevant cases, interviews with university administrators and legal counsel, and freedom of information requests. Although there is a modest amount of literature on this topic in the field of Law and Legal Studies, I will be addressing a major gap in Political Science by addressing *Charter* applicability from a policy perspective. I will have a valuable opportunity to do some of the initial analysis for this project in association with a conference hosted by the Department of Political Science at the University of Alberta, one that will examine the legacy of the *Charter* in Canadian law and politics during its 40<sup>th</sup> anniversary. My proposed paper will ask normative questions about the university's role in supporting the public good and how that accords with the letter and spirit of constitutional human rights protections. In sum, I will show how different understandings of the role and purpose of universities - as hybrid institutions sitting uncomfortably between public and private - will impact new prospects for *Charter* applicability.

The third research project takes up a philosophical question that has lingered in the background of my research project since undertaking my comprehensive exams. Amid all of the academic and public debate about the state of free expression at the moment, a consistent feature seems to be a curiously shifting political territory, a reversal of sorts. Whereas right-leaning voices were understood as the most vocal opponents of free expression in the post-war era, today they seem to be some of its most vocal supporters. At the same time, left-leaning voices have perhaps never exhibited a stronger skepticism of free expression. In light of this, I would like to investigate ‘free expression skepticism,’ specifically within critical (political) philosophy. My intuition, in part based on this research project, is that some free expression skepticism within critical (political) philosophy is based on an unmerited essentialism, unable to distinguish between a dominant liberal philosophical paradigm and free expression as a distinct democratic principle. In this, I follow the work of Eric Heinze, who argues that free expression is a democratic, rather than a liberal, principle and right.

My first step is to carve out justifications for free expression outside of the dominant liberal philosophical paradigm, one that typically underpins constitutional protections in liberal democracies. I will do this by examining the works of three seminal academics that are widely recognized for critiques of liberal philosophy and practice: Judith Butler, Michel Foucault, and Stuart Hall. Here, I will analyze extant literature in a new light, asking if free expression can be buttressed by critical philosophical justifications essentially at odds with liberal philosophy. Preliminarily, I will focus on two potential justifications: truth telling as a radical critique of illegitimate power and the contingency of communicative authority. This research is the subject of a paper proposal

to the annual conference of the Canadian Political Science Association at SSHRC's Annual Congress of the Humanities and Social Sciences and will hopefully be submitted to the *Canadian Journal of Political Science* in the future.

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